

TOM AND DONNA DALES

PLANNING JUSTIFICATION REPORT

**OFFICIAL PLAN AND ZONING BY-LAW
AMENDMENT FOR PART LOTS 14 & 15,
CONCESSION 5, GREENOCK, MUNICIPALITY OF
BROCKTON**

FEBRUARY, 2024

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- B- Compilation of Bruce County Official Plan Amendments
- C- Correspondence
- D- Proposed By-law and Schedule

1. INTRODUCTION

On behalf of our clients, Tom and Donna Dales, Cobide Engineering Inc. is pleased to submit the Planning Justification Report in support of the Official Plan Amendment, Zoning By-law Amendment and Removal of Holding Symbol Applications at Part of Lots 14 & 15, Concession 5, geographic Township of Greenock, Municipality of Brockton.

The intent of this report is to analyze the land use planning merits of the requested applications to determine the appropriateness of the proposed uses. The request will be analyzed within the context of the surrounding community and the relevant planning documents, including the Provincial Policy Statement, the Bruce County Official Plan, and the Municipality of Brockton's Comprehensive Zoning By-law.

Appended to this report are the following:

Appendix A: Survey, Surveyor's Report and Legal Transfer

Appendix B: A Compilation of Bruce County Official Plan Amendments with a Retained Lot Less than "generally 40 ha."

Appendix C: Correspondence

Appendix D: Draft By-law and Schedule

1.1 PURPOSE AND SCOPE

The content of this Planning Justification includes:

- A description of the site, its existing physical conditions and its setting within the surrounding area; and
- A description of the Development Concept; and
- An overview of the other supporting reports and studies; and,
- An outline of and rationale for the subject application; and
- An overview of the relevant planning policy and regulations that affect the proposed planning application, including Provincial, County, and Municipal policy and regulations; and
- An assessment of the proposed planning application in respect to the relevant policy and regulatory framework, and a planning opinion and justification for the applications.

1.2 HOW TO READ THIS REPORT

Each section heading will reference the document from which the policy has been obtained. Each subsection heading will reference the policy number and policy,

generally verbatim. The subsection will contain a discussion wherein the policy is spoken to in the context of the proposed development.

2. SITE CONTEXT

2.1 SITE DESCRIPTION

The subject lands are legally described as Part of Lots 14 & 15, Concession 5., geographic Township of Greenock, Municipality of Brockton, County of Bruce. The lands subject to the applications are identified as Part 1 on Plan 3R-10757 attached in Appendix A and as Figure 2 in this report.

The subject lands are approximately 17.6 ha in area and have frontage on Bruce Road 20. Currently, the subject lands are vacant and contain a mature woodlot to the north and are bounded by the Teeswater River to the south and east. The remainder of the lands are in agricultural production.



Figure 1: Aerial Photograph

2.2 SURROUNDING LAND USES

The subject lands are surrounded by agricultural lands, scattered residential houses, the Teeswater River and the Provincially Significant Wetland Complex- the Greenock Swamp.

3. THE DEVELOPMENT CONCEPT

3.1 BACKGROUND

A surplus farm dwelling severance on the subject lands was approved in 2019 wherein the farmstead located at municipal address 442 Bruce Road 20, that included a house and associated outbuildings were severed from the remaining farmland. Consistent with provincial requirements, the retained farmland was re-zoned A1-1-H1 and A1-1 to not permit another residential dwelling on the retained lands. During this application the Environmental Protection zones did not change. The H1 provision recognized the lands as having high archaeological potential, and this holding required an archaeological assessment prior to further development of the lands.

At the time of the application and based on the information provided, the subject lands appeared to be one parcel, and as such, the restrictive zoning prohibiting future dwelling was also placed on the lands north of the Teeswater River.

Since these 2019 applications, Mr. and Mrs. Dales have confirmed that the lands north of the Teeswater River are in fact, a separate parcel. The Teeswater River watercourse has been determined to be “navigable”, which has the effect of creating a natural severance of the property since the Crown retains title to this “navigable” watercourse by operation of law. This has the effect of forming two separate parcels, since there is an intervening owner between the parcels (the Crown). A survey, and legal title to these lands has been drafted and registered. It is noted, that despite these lands just being surveyed and given a title, the lands would or could have been considered a separate parcel since the *Beds of Navigable Water Act (1911)*. A legal opinion on this matter has been included in Appendix C.

The navigability of the Teeswater River is not contemplated by this report nor the Official Plan Amendment and Zoning By-law Amendment for which has been applied for; the navigability has been determined and confirmed by the appropriate experts and the legal transfer of the parcel has been completed. But rather, this report contemplates the implications of this determination on the 2019 Consent and Zoning applications.

It is requested that the restrictive zoning prohibiting a residential dwelling be removed from the lands north of the Teeswater River (Part 1) and that that restrictive zoning prohibiting a residential dwelling remain on the lands southeast of the Teeswater River

(Part 2), being the “true” retained lands subject to the 2019 surplus farm dwelling application.

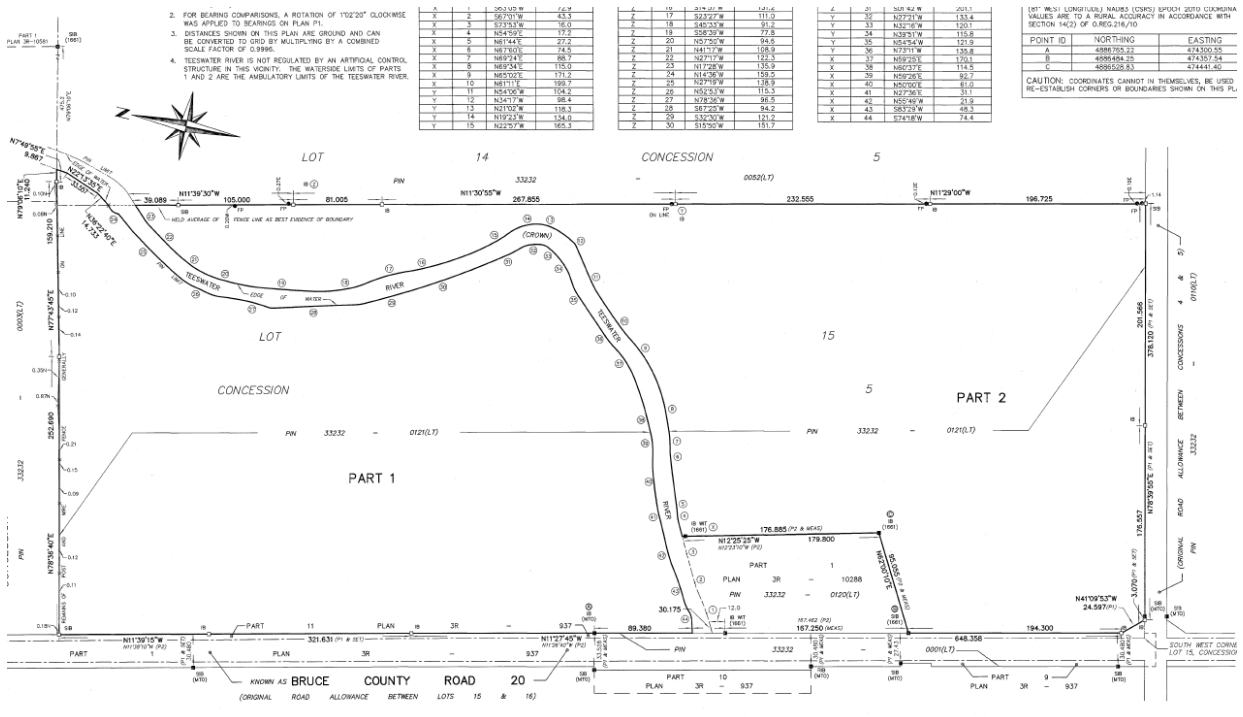


Figure 2: Survey

3.2 PRE-CONSULTATION

On July 7, 2023, Cobide Engineering Inc. corresponded with County of Bruce staff, about the proposal. An excerpt from this correspondence is below:

“...It is the County opinion that S.6.5.3.3 b) iii) was correctly applied to the subject property to prevent the erection of a new dwelling on the remnant agricultural parcel. A County Official Plan Amendment is required to provide relief, which will not be supported by Bruce County Planning Staff.

This is further supported by the Ontario Superior Court & Ontario Court of Appeals between Municipality of Middlesex Centre (applicant) -and- David Ronald MacMillan, Janice Lynn McIntosh (respondent) Municipality of Middlesex Centre v. MacMillan et al., 2015 ONSC 2988--re: Beds of Navigable Waters Act | Canadian Justice Review Board. The Crown argues that it is an abuse of the Beds of Navigable Waters Act to allow it to be used to frustrate sound planning principles embodied in the Planning Act. While this case was centered around to establishing navigability and a proposed

Consent, the effect of using the Beds of Navigable Waters Act to refute sound planning principles embodied in the Planning Act remains the same.

Should the proponent still wish to proceed with the understanding of the above information they will need to submit the following:

- County Official Plan Amendment
- Zoning By-law Amendment

In order to lift the holding on the subject property, they will also need to submit an archaeological assessment in consultation with the Saugeen Ojibway Nation with the recommendations, if any, having been implemented.”

The entirety of the pre-consultation minutes are included in Appendix C. A Bruce County Official Plan Amendment and a Zoning By-law Amendment are being sought and an Archaeological Assessment was completed to fulfil the pre-submission requirements outlined in the pre-consultation letter.

4. OVERVIEW OF THE SUPPORTING STUDIES

4.1 ARCHAEOLOGICAL ASSESSMENT

A Stage One, Two and Three Archaeological Assessment was undertaken on the subject lands and has been submitted in support of the removal of the Holding provision applied to the subject lands.

During the Stage Two Assessment, five distinct Indigenous artifacts areas were discovered. All of these finds were recommended to go to a Stage 3 Assessment. The subsequent Stage 3 site-specific assessments revealed that, due to low yields and the absence of diagnostics, none of these sites have further CHVI and do not warrant Stage 4 mitigation of development impacts. **Therefore, no additional archaeological assessments are recommended, and the study area can be considered free of archaeological concern.**

The report stated several times that there are minimal archaeological studies on surrounding lands but that ...“The discovery of Indigenous sites in the vicinity of the

Teeswater River underscores the historical significance of waterways as crucial transportation corridors for past populations. Particularly noteworthy is the identification of 14 artifacts (combined Stage 2 and Stage 3 findings), with six crafted from Saugeen chert.”

A portion of the property were not assessed in the Stage and 3 Archaeological Assessment and therefore, the H1- Holding provision must remain on these lands. A proposed Zoning By-law Amendment Schedule is attached in Appendix D.

5. RATIONALE FOR APPLICATIONS

5.1 CURRENT PLANNING DESIGNATIONS AND ZONES

The subject lands are designated Rural, Agriculture and Hazard in the Bruce County Official Plan.

The property is zoned Environmental Protection Special (EP-1), Environmental Protection (EP), General Agriculture Special with Holding (A1-H1) and General Agriculture Special (A1-1).

5.2 REQUIRED APPLICATIONS

A Bruce County Official Plan Amendment to provide relief from Section 6.5.3.3.3 b) iii) “The remnant agricultural lands shall be rezoned to prohibit the future erection of a residential dwelling of any type on the agricultural lands provided that a residential dwelling does not exist at the time of severance.”

It is proposed that the subject lands; Part 1, north of the river; be re-zoned from Environmental Protection Special (EP-1), Environmental Protection (EP), General Agriculture Special with Holding (A1-1-H1) and General Agriculture Special (A1-1) to Environmental Protection Special (EP-1), Environmental Protection (EP), General Agriculture Special (A1-x). It is proposed that the Holding symbol on the subject lands are removed from the portion of the property that has been subject to an Archaeological Assessment and that the holding remain on the lands that have not been assessed. The Environmental Protection Special (EP-1) and Environmental Protection (EP) zones are not proposed to change.

6. PLANNING POLICY

6.1 PLANNING ACT

The Planning Act requires approval authorities considering planning applications to have regard to, among other things, matters of Provincial Interest. Those matters of Provincial Interest relevant to the Subject Applications are as follows:

- (b) the protection of the agricultural resources of the Province;
- (d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;
- (j) the adequate provision of a full range of housing, including affordable housing;

The Planning Act also requires decisions related to planning applications to be consistent with Provincial Policy (such as the Provincial Policy Statement) in effect on the date of the decision. Section 16 of the Planning Act provides the legislative authority for municipalities to regulate the following (among other matters) in Official Plans:

- Goals, objectives and policies to manage and direct physical change and the effects on the social, economic, built and natural environment of the municipality;
- Descriptions of the means for informing and obtaining input from the public with respect to Official Plan Amendments and Zoning By-laws; and

Section 34 of the Planning Act provides the legislative authority for municipalities to regulate the following (among other matters) in Zoning By-laws:


- the use of land;
- the type of construction, height, bulk, location, size, floor area, spacing,
- character and use of buildings;
- minimum and maximum density;
- minimum and maximum height; and
- requirement to provide off-street parking and/or loading facilities.

6.2 PROVINCIAL POLICY STATEMENT

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. As a key part of Ontario's policy-led planning system, the PPS sets the policy foundation for regulating the development and use of land through Municipal documents like the Official Plan and Zoning By-law.

The current PPS came into effect May 1, 2020. Section 3(5) of the Planning Act requires that all decisions affecting planning matters shall be consistent with policy statements issued under the Act. The following table demonstrates how the proposed Official Plan and Zoning By-law Amendments are consistent with the policies of the 2020 PPS that, in our opinion, have particular relevance to this proposal:

Table 1: Provincial Policy Statement Policies

<p>2.1.5 Development and site alteration shall not be permitted in:</p> <p>a) significant wetlands in the Canadian Shield north of Ecoregions 5E, 6E and 7E1;</p> <p>unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions.</p> <p>2.1.8 Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.4, 2.1.5, and 2.1.6 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.</p>	<p>The subject lands contain a portion of the Provincially Significant Wetland- The Greenock Swamp.</p> <p>While the exact location of the residence has yet to be determined, the residence may be within 120 m of the PSW (see blue circle below).</p>  <p>The extent of the wetland on the property is well defined with a tree line. The portion of the subject lands subject to the application has been cleared and used for agricultural production for several years.</p> <p>The development concept proposes a residential dwelling. To facilitate this</p>
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	<p>potential development, no tree clearing would be required and impacts the PSW are not expected.</p> <p>It is likely a permit from Saugeen Valley Conservation Authority will be required to facilitate the development.</p>
<p>2.3.1 Prime agricultural areas shall be protected for long-term use for agriculture. Prime agricultural areas are areas where prime agricultural lands predominate. Specialty crop areas shall be given the highest priority for protection, followed by Canada Land Inventory Class 1, 2, and 3 lands, and any associated Class 4 through 7 lands within the prime agricultural area, in this order of priority.</p>	<p>The majority of the lands subject to the application are designated Rural in the Bruce County Official Plan. The lands are located in an area with a varied soil composition from Classes 1-7, with the soil composition being influenced from the nearby Provincially Significant Greenock Swamp Wetland Complex and the Teeswater River.</p>
<p>2.3.3.3 New land uses in prime agricultural areas, including the creation of lots and new or expanding livestock facilities, shall comply with the minimum distance separation formulae.</p>	<p>The construction of the house will need to meet MDS I. There appears to be sufficient room between the proposed location and surrounding barns to meet the MDS I requirements.</p>
<p>2.3.4.1 Lot creation in prime agricultural areas is discouraged and may only be permitted for:</p> <ul style="list-style-type: none"> a) agricultural uses, provided that the lots are of a size appropriate for the type of agricultural use(s) common in the area and are sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations; b) agriculture-related uses, provided that any new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services; 	<p>That the intent and requirements of this policy are satisfied by retaining the restrictive zoning prohibiting a residential dwelling on the parcel southeast of the Teeswater River, being Part 2 on Plan 3R-10757. This can be considered the “true” retained parcel of the 2019 surplus farm dwelling severance application.</p> <p>The subject lands, being Part 1 north of the Teeswater River, do not need to obtain a Consent to Sever as they are their own parcel by operation of law and the natural severance of the lands.</p>

<p>c) a residence surplus to a farming operation as a result of farm consolidation, provided that:</p> <ol style="list-style-type: none"> 1. the new lot will be limited to a minimum size needed to accommodate the use and appropriate sewage and water services; and 2. the planning authority ensures that new residential dwellings are prohibited on any remnant parcel of farmland created by the severance. The approach used to ensure that no new residential dwellings are permitted on the remnant parcel may be recommended by the Province, or based on municipal approaches which achieve the same objective; and d) infrastructure, where the facility or corridor cannot be accommodated through the use of easements or rights-of-way. 	<p>Therefore, these lands do not need to meet the PPS severance policy criteria therein.</p> <p>It is noted that PPS 2.3.4.1 policies are not intended extend past the property boundary to limit the construction of residential dwellings on separate, adjacent lots.</p>
<p>2.6.2 Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved.</p>	<p>A Stage One, Two and Three Archaeological Assessment were completed on the subject lands. Several artifacts were discovered, but the assessed portion of the property is now considered clear of archaeological concern.</p>

6.3 BRUCE COUNTY OFFICIAL PLAN

The Bruce County Official Plan was approved by the Ontario Municipal Board in 1999. The Five-Year Review to the Plan was approved by MMAH in 2010. The purpose of the Bruce County Official Plan is to establish a policy framework to guide the physical, social and economic development of the County and to protect the natural environment within the County to the year 2021. Bruce County is currently working on a new Official Plan.



Figure 3: Bruce County Official Plan Schedule A

The subject lands are designated Agriculture, Rural and Hazard. The subject lands are mostly Rural (approximately 55%), but the Agricultural policies have been referenced for the sake of this report.

6.3.1 SECTION 5.5 AGRICULTURAL AREAS

Sections 5.5.1 Introduction, Section 5.5.2 Agricultural Objectives and Section 5.5.4.1 Permitted Uses in Agricultural Areas outline that the policies protect Agricultural Areas from the intrusion of land uses that are not compatible with agricultural operations. The Plan seeks to identify and preserve areas of active ongoing agriculture in the Agricultural Areas and preserve and strengthen the Agricultural Area for active farming operations. Agricultural Areas permit a primary and a secondary farm residence.

6.3.2 SECTION 5.5.5 GENERAL POLICIES

2. Development within the Agricultural Areas will occur in a manner which provides for large continuous areas of prime farmland free from conflicting and incompatible land uses. An area may be excluded from prime agricultural areas only if it complies with Section 2.3.5 of the Provincial Policy Statement (PPS).
3. The Agricultural Areas of the County are intended to permit primarily agricultural uses, uses which are supportive of agriculture, and limited non-farm development by the severance of surplus dwellings.

Discussion:

The applications would facilitate a residence to be constructed on an existing lot north of the Teeswater River. While a small portion of farmland would be taken out of active production (2 to 5 ac.) for the construction of this residence, the remainder of the land will continue to be farmed and to form part of Mr. Dale's farming operation.

Outside of the small removal of land from active production, the applications are unlikely to impact normal farming operations on the subject lands as the Teeswater River bisecting the lands has necessitated the parcels to be farmed separately. A field entrance to the subject lands from Bruce Road 20 has always been in use.

Finally, primary and secondary residences are a permitted use in the Agricultural designation. Given the subject lands are their own parcel, the construction of a primary residence is a permitted use in Agricultural Areas.

6.3.3 SECTION 5.5.11 PROVINCIAL MINIMUM DISTANCE SEPARATION

New land uses, including the expansion of existing or the establishment of any non-agricultural uses including the creation of lots, and new or expanding livestock facilities shall comply with the Provincial Minimum Distance Separation Formulae (as amended from time to time).

Discussion:

The construction of the residence will have to meet MDS I at the time of building permit. The current proposed location for the residence is on the northern side of the lot, closer to the woodlot. This location is 500+ m from barns in the area, and therefore, no concerns remain about the ability to meet MDS I and no zoning relief is being sought to implement the development of the lot.

6.3.4 SECTION 6.5.3.3 CONSENTS – AGRICULTURAL AREAS

b) Where the lot will be for an existing residence and buildings surplus to a farming operation as a result of farm consolidation provided:

- i) The owner of the lands to be severed is a 'bona fide farmer'. For the purposes of this policy, the 'bona fide farmer' must:
 - a) own and farm the lands on which the surplus dwelling is proposed to be severed from;
 - b) own and farm other lands; and

- c) own a residence elsewhere, or reside as a tenant elsewhere, therefore rendering the residence on the subject farm surplus to their needs. In situations where the agricultural portion of the subject lands is rented in whole or in part to others, the owner of the subject lands shall not qualify as a 'bona fide farmer'. A 'bona fide farmer' shall be defined as to include a limited company, sole proprietorship, incorporated company, numbered company, partnership, non-profit and other similar ownership forms.
- ii) The lot proposed for the residence and buildings surplus to the farming operation shall be limited in area and shall only be of sufficient size to accommodate the residence surplus to the farming operation, accessory buildings (where including accessory buildings does not render the lot excessively large in the opinion of the Land Division Committee), a well and a sewage disposal system, while ensuring that as little land as possible is removed from the agricultural lands.
- iii) The remnant agricultural lands shall be rezoned to prohibit the future erection of a residential dwelling of any type on the agricultural lands provided that a residential dwelling does not exist at the time of severance.
- iv) Minimum Distance Separation (MDS I) formula requirements are to be met for the proposed severed lot if livestock facilities or anaerobic digesters exist on the retained farmlands. MDS I does not apply to existing barns on separately titled lots.
- v) Given that no new dwelling/residence can be erected as a result of the residence surplus to a farm operation being severed from the farm holding, the severance shall not need to meet the Mineral Resource Area, Aggregate/Quarry Operation or sanitary landfill site setback requirements.
- vi) The existing surplus dwelling/residence is habitable at the time of application.
 - vii) The policies of Sections 6.5.3.3.1 and 6.5.3.3.2 do not apply to surplus farm residence severances.

Discussion:

It is noted that a Consent is not being applied for as part of this application, but the basis and requirements for this application are rooted in a previously approved Consent and Zoning By-law Amendment on the subject lands. It is also noted that the proposed new residence will be located in a portion of the subject lands that are designated Rural.

In 2019, Mr. Dales completed a surplus farm dwelling severance to sever the farmhouse and associated outbuildings, located south of the river from the remaining farmland. At the time of the surplus farm dwelling severance, it appeared the farm

included lands both north and south of the river. Therefore, the restrictive zoning prohibiting a residential dwelling was applied to both properties as the retained lands in compliance with PPS and BCOP policies.

Since those applications, the title has been rectified to reflect two separate and distinct properties and a survey of these properties is included in Appendix A. Since the 2019 applications, the Teeswater River watercourse has been determined to be “navigable” on the subject lands, which has the effect of creating a natural severance of the property, forming two separate parcels, since the Crown retains title to this “navigable” watercourse by operation of law. While the recent survey and deed preparation “formally” recognized one property north of the river and one property south of the river using the edge of the river as the lot boundary, it is noted these two properties have existed since the crown grant. A legal opinion is offered on this in Appendix C by Peter Loucks LL.B.

While the *Beds of Navigable Water Act (1911)* was retroactive, many of the titles in rural Ontario had been granted prior to 1911. Many of the original crown patents did not expressly address a navigable waterway on the property, and these title records were not suddenly rectified to clarify the extent of the title for properties with a navigable river.

Therefore, the present applications for an Official Plan Amendment and Zoning By-law amendment require a re-examination of the 2019 applications and whether it remains appropriate the restrictive zoning to prohibit a residential dwelling should remain on the subject lands, given this additional information that the original Lot 15, Concession 5, geographic Township of Greenock is made up of two distinct and separate parcels, and importantly, that these parcels were separate at the time of the 2019 applications.

It is my professional opinion that PPS 2.3.4.1 c and BCOPA 3b iii policies are not intended extend past property boundaries to limit the construction of residential dwellings on separate, adjacent parcels. Further, that PPS 2.3.4.1 c and BCOPA 3b iii regarding prohibiting residential dwellings on the remnant parcel of farmland created by the severance are still satisfied because the restrictive zoning will remain on the parcel south of the river, being the “true” retained portion subject to the original surplus farm dwelling severance.

It is not the author’s intention to advocate for the removal of the restrictive zoning that prohibits future residential dwellings on retained farmlands after surplus farm dwelling severances in general. The author wishes to highlight the unique set of circumstances

that has necessitated these applications and makes them justifiable from a planning perspective.

Finally, it is worth mentioning in the planning analysis that had Mr. Dales completed the natural severance and recognition of the two properties on the subject lands prior to the surplus farm dwelling severance on Part 2, south of the river (i.e. natural severance first, surplus farm dwelling severance second), it is likely that he would have achieved his goal of a surplus farm dwelling severance on Part 2, south of the river, and a primary residence on Part 1, north of the river. This is discussed further in Section 7.1 of this report.

In essence, unfortunately Mr. Dales has completed the applications and associated legal and survey work out of order for the easiest path forward. This author finds it hard to penalize him for this, nor does this author feel that it frustrates the principles of good planning if the same outcome would have ultimately likely been approved in a different order.

6.3.5 CONCLUSIONS

In conclusion, a unique set of circumstances has necessitated these applications, and makes them justifiable from a planning perspective. Planning applications and decisions are based on the information available at time of the application, and as such, the zoning was applied across both parcels.

Since this decision, two parcels have been confirmed at the location and confirmed to have existed at the time of the application in 2019. The intent of the policy, being that residential dwellings are prohibited on the retained lands is still being upheld by this zoning remaining on the Part 2 lands south of the river. It is my professional opinion that PPS 2.3.4.1 c and BCOPA 3b iii policies are not intended extend past property boundaries to limit the construction of residential dwellings on separate, adjacent parcels. Further, that PPS 2.3.4.1 c and BCOPA 3b iii regarding prohibiting residential dwellings on the remnant parcel of farmland created by the severance are still satisfied because the restrictive zoning will remain on the parcel south of the river, being the “true” retained portion subject to the original surplus farm dwelling severance.

6.4 MUNICIPALITY OF BROCKTON COMPREHENSIVE ZONING BY-LAW

The Corporation of the Municipality of Brockton By-Law number 2013-26, as amended, being a by-law to regulate the use of lands and the character, location and use of buildings and structures in the Municipality of Brockton was approved in 2013.

6.4.1 CURRENT ZONING

The property is zoned Environmental Protection Special (EP-1), Environmental Protection (EP), General Agriculture Special with Holding (A1-H1) and General Agriculture Special (A1-1). The A1-1 zoning prohibits a 'Dwelling, – Accessory Detached'.

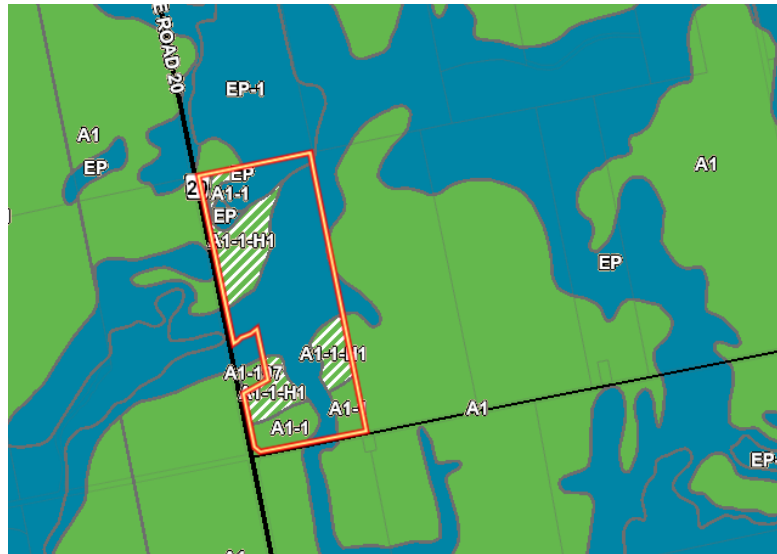


Figure 4: Zoning Map

6.4.2 PROPOSED ZONING

It is proposed that the subject land; Part 1, north of the river; be re-zoned from Environmental Protection Special (EP-1), Environmental Protection (EP), General Agriculture Special with Holding (A1-1-H1) and General Agriculture Special (A1-1) to Environmental Protection Special (EP-1), Environmental Protection (EP), General Agriculture Special (A1-x).

It is proposed that the Holding symbol on the subject lands are removed from the portion of the property that has been archaeologically assessed and that the holding

remain on the lands that has not been assessed. The Environmental Protection Special (EP-1) and Environmental Protection (EP) zones are not proposed to change.

A Draft Zoning By-law Amendment and Schedule are attached in Appendix D.

6.4.3 SECTION 5.2 SURPLUS FARM DWELLING SEVERANCE

Where the County of Bruce or its delegate has approved the severance of a surplus farm dwelling property the following provisions shall have effect:

- i. Notwithstanding the General Agriculture Zone Section 6.2 provisions to the contrary, the height, yard setbacks, lot coverage, and ground floor area for legally existing buildings and structures are recognized;
- ii. The property containing the surplus farm dwelling(s) and any accessory buildings or structures is recognized as a non-farm lot in accordance with Section 6.1 a);
- iii. All future buildings and structures, or additions to existing buildings and structures, shall comply with the provisions of this By-law;
- iv. The Lot Frontage for severed surplus farm dwelling lots may be reduced below the required Zone provisions and shall be in accordance with Section 3.26.9;
- v. Agricultural lot sizes may be reduced below the minimum required lot area provided that an agricultural lot is not reduced below 4.0 hectares;
- vi. A minimum lot size of 0.4 hectares is required for the severed surplus farm dwelling lot;
- vii. Shall comply with the requirements of the Minimum Distance Separation Formulae;
- viii. Where a dwelling does not exist on the remnant agriculture parcel, the appropriate Zone Map in this By-law shall be amended to change the A1 General Agricultural Zone to A1-1 General Agricultural Special for the agricultural parcel preventing the future erection of a new dwelling; and,
- ix. The appropriate Zone Map in this By-law shall be amended for areas of the land that are within an area noted as “High Archaeological Potential” in the Bruce County screening maps and may be zoned with a -H1 holding in accordance with Section 4.4.

Table 2: Zoning Matrix

A1 Zone, deficiencies identified in red.

Regulations-Agriculture Lot	Required	Provided
-----------------------------	----------	----------

Lot Area, Minimum	39 ha	17.6 ha
Lot Frontage, Minimum	100 m	321.63 m
Minimum Front Yard	20 m	Will meet
Interior Side Yard	20 m	Will meet
Exterior Side Yard	20 m	Will meet
Minimum Rear Yard	20 m	Will meet
Building Height, Maximum	n/	Will meet
Maximum Lot Coverage	15%	Will meet
Floor Area	70 m ²	Will meet

6.4.4 CONCLUSIONS

In conclusion, the Zoning By-law is proposed to recognize the existing lot size and permit a primary dwelling. The H1-Holding provision is proposed to be removed on the that have been subject to an archaeological assessment and the H1 Holding is proposed to remain on the lands that have not. The Environmental Protection zones (EP and EP-1) and not proposed to change as part of this amendment.

A Draft Zoning By-law Amendment and Schedule are attached in Appendix D.

7. CASE LAW

7.1 MUNICIPALITY OF MIDDLESEX CENTRE V. MACMILLAN ET AL., 2015 ONSC 2988--RE: BEDS OF NAVIGABLE WATERS ACT

In the pre-consultation letter, the Bruce County Planning Department cited the case law example of the Municipality of Middlesex Centre v. MacMillan et. al. (2015) as partial justification for not supporting the applications. An excerpt from the pre-consultation letter is below:

“It is the County opinion that S.6.5.3.3.3 b) iii) was correctly applied to the subject property to prevent the erection of a new dwelling on the remnant agricultural parcel. A County Official Plan Amendment is required to provide relief, which will not be supported by Bruce County Planning Staff.

This is further supported by the Ontario Superior Court & Ontario Court of Appeals between Municipality of Middlesex Centre (applicant) -and- David Ronald MacMillan, Janice Lynn McIntosh (respondent) Municipality of Middlesex Centre v. MacMillan et al., 2015 ONSC 2988--re: Beds of Navigable Waters Act | Canadian Justice Review

***Board.** The Crown argues that it is an abuse of the Beds of Navigable Waters Act to allow it to be used to frustrate sound planning principles embodied in the Planning Act. While this case was centered around to establishing navigability and a proposed Consent, the effect of using the Beds of Navigable Waters Act to refute sound planning principles embodied in the Planning Act remains the same.”*

Navigability:

On the point of navigability, in the case of Municipality of Middlesex Centre v. MacMillan et al., 2015, the respondents were attempting to use a municipal drain as a navigable waterway. The navigability of the Teeswater River is not contemplated by this report nor the Official Plan Amendment and Zoning By-law Amendment for which has been applied for; the navigability has been determined and confirmed by the appropriate experts and the legal transfer of the parcel has been completed.

For background, to determine navigability several components are examined in the process of the Ontario Land Surveyor offering their opinion on the navigability. As shown in the report from Culbert Surveying Limited in Appendix A, the Teeswater River has been determined and depicted in surveys as navigable as far back as 1978. It is very clearly depicted on the 1880 Map of Greenock Township that was included in the archaeological assessment.

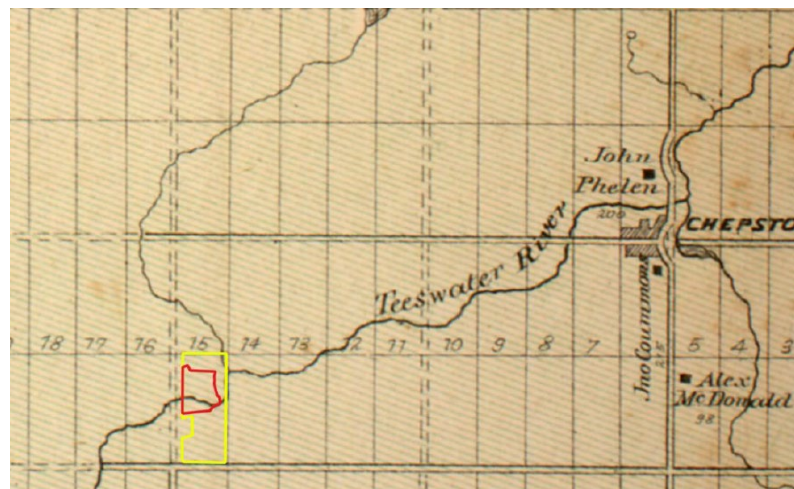


Figure 5: 1880 Map of Greenock Township

In addition to the ability for the river to reasonably support water travel at time of crown grant, another component of determining navigability includes whether the river has been used for industry, commerce or by the public. The Teeswater River was dammed in Teeswater, Chepstow, Cargill, Pinkerton and three times in Paisley for the

purpose of sawmills, gristmills, and textile mills and early Bruce County settlers used the Teeswater River to float logs or other raw materials to these mills.

While there are no dedicated public river access sites for canoeing on the Teeswater River at the present time, the river does support canoeing and the Dales have noted several paddlers enter the river from the bridge at Bruce Road 20, south of the subject lands. Thorncrest Outfitters notes on their website “The Teeswater and the North Saugeen are great tributaries to paddle in the high water of spring” ([Source](#)). It is noted that in the [Canoe Ontario vs. Reed decision](#), it does not matter that a River unnavigable during the summer months for a navigability claim.



Figure 6: Bridge over the Teeswater River on Bruce Road 20

Finally, the navigability of the river on the subject lands is further supported by the archaeological assessment finds- the Stage Two and Three Assessments revealed 14 Indigenous artifacts with origin from between 9000 BC–AD 1650. While we cannot say for certain, it is most likely that Indigenous people used the river to access the subject lands and camped for short periods in this area. This further indicates navigability of the Teeswater River, potentially back several millennia.

Abuse of the Beds of Navigable Waters Act:

In the case of Municipality of Middlesex Centre v. MacMillan et al., 2015, in the initial decision, wherein the creek was determined to be navigable, the Judge’s verdict includes the following:

[49] As a preliminary matter, I will address the Crown’s position that the respondents have acted improperly in filing the Reference Plan

claiming a natural severance of the property. The respondents cannot be criticized for using the natural characteristics of the property for their own commercial gain. Motive is irrelevant for purposes of the analysis of the issue of navigability.

Upon appeal, wherein the creek was determined to not be navigable the Judges' verdict expands on this and offers the following:

[8] Before addressing the question of navigability, I will briefly refer to two other issues that were raised on the application, but have now fallen by the wayside. The first issue arises out of the Province's argument on the application that the respondents were "abusing" the Act by using it to circumvent the Planning Act. There can be no doubt that the respondents were attempting to use the Act, and in particular s. 1, to avoid the limits on severance imposed by the Planning Act. It is equally clear that the Act was never intended as an alternative means to achieve severance.

[9] The application judge held, at para. 49, that the respondents' motive for advancing its claim was irrelevant to her determination of whether the Creek was a navigable stream. I agree. Navigability is essentially a factual question based upon an assessment of the capabilities of the waterway at the time of the Crown grant. **The answer to that question cannot turn on the motive of the party advancing or resisting the navigability claim over 100 years after the Crown grant. The Creek is or is not a navigable waterway. If s. 1 of the Act is having an unforeseen and unacceptable impact on effective land management in the Province, the Legislature can amend the Act** [emphasis added]. I observe that this is hardly the first case in which s. 1 has been relied on to achieve severance of a lot: see e.g. *Coleman v. Ontario (Attorney General)* (1983), 143 D.L.R. (3d) 608 (Ont. H.C.), at p. 611; *O'Donnell v. Ontario (Attorney General)*, 2013 ONSC 590, at para. 3. To date, there has been no legislative reaction.."

It is noted that that the Crown did not participate in the appeal, and the argument *The Navigable Waterways Act* circumvented the *Planning Act* was not made or accepted as part of the decision in the appeal and the final determination of the creek being not navigable.

In summary, while in the case of *Municipality of Middlesex Centre v. MacMillan et al.*, 2015, the Crown may have advanced an argument that the respondents were attempting to circumvent the *Planning Act*, it had no bearing in the decision of navigability. A natural severance is a legal implication of existing policy outside the scope of the *Planning Act*. The motives for determining navigability are irrelevant. A similar logic can be applied to planning applications as most, if not all, planning applications have an economic or personal gain to be made for the applicant with their approval.

Frustrating Sound Planning Principles:

As previously discussed, it is this author's opinion that if Mr. Dales had completed the natural severance and the formal recognition of the two properties on Lot 15, Concession 5, geographic Township of Greenock prior to the surplus farm dwelling severance (i.e. natural severance first, surplus farm dwelling severance second), that Mr. Dales could have easily achieved his goal of a surplus farm dwelling severance on Part 2, south of the river, and a primary residence on Part 1, north of the river.

Had the natural severance been completed first, a surplus farm dwelling severance would have been sought only on Part 2, south of the river. Recent amendments to the BCOP have made surplus farm dwelling severances exempt from minimum lot size requirement policies in the Agriculture designation (policy 6.5.3.3.3 b vi). Prior to these recent amendments, the application would have been required to complete a Bruce County Official Plan Amendment to address the retained lot size in Agricultural Areas (policy 5.5.6.1) if these retained lands were less than "generally 40 ha". Part 2, south of the river is 18.17 ha, and Bruce County has contemplated, supported, and approved amendments to facilitate surplus farm dwelling severances from lots less than 40 ha on lands designated Agriculture the past, this author has compiled a list of 15 such amendments in Appendix B, with retained lands as small as 11 ha. (27 ac.).

When ultimately the same result would have been achieved had the applications been undertaken in a different order, the consideration of the principles of sound planning should remain relatively similar. In fact, if Mr. and Mrs. Dales started fresh today with the natural severance and then a surplus farm dwelling severance on Part 2, south of the river, recent changes to the BCOP have made that theoretical severance of the surplus farm dwelling on the lands south of the river easier by avoiding the need for a Bruce County Official Plan Amendment than when the consent and zoning by-law amendment applications were originally approved in 2019.

8. CONCLUSIONS & PLANNING OPINION

This report and applications made on behalf of Mr. and Mrs. Dales do not consider or determine the navigability of the Teeswater River; this has been determined and confirmed by the appropriate experts and the legal transfer of the parcel has been completed. The purpose of the applications are to consider if the restrictive zoning to prohibit a house is appropriate to remain on the subject lands in the light of Lot 15, Concession 5, geographic Township of Greenock being made up of two distinct and separate parcels, and importantly, that these parcels were separate at the time of the 2019 applications for consent and zoning bylaw amendment to facilitate the surplus farm dwelling severance.

It is not the author's intention to advocate for the removal of the restrictive zoning that prohibits future residential dwellings on retained farmlands after surplus farm dwelling severances in general. The author wishes to highlight the unique set of circumstances that has necessitated these applications and makes them justifiable from a planning perspective.

In our opinion, the proposed Official Plan Amendment and Zoning By-law Amendment are justified and represent good planning for the following reasons:

1. The proposals are consistent with the Planning Act, Provincial Policy Statement and conform to the County of Bruce Official Plan;
2. PPS 2.3.4.1 and Bruce County Official Plan 6.5.3.3.3 b) iii) policies are not intended extend past property boundaries to limit the construction of residential dwellings on separate, adjacent lots;
3. The intent and requirements of PPS 2.3.4.1 and Bruce County Official Plan 6.5.3.3.3 b) iii) are satisfied by retaining the restrictive zoning prohibiting a residential dwelling on the parcel southeast of the Teeswater River, being the "true" retained parcel of the 2019 surplus farm dwelling severance application;
4. Primary and secondary residences are a permitted use in the Agricultural designation;
5. Outside of the small removal of agricultural lands from active production, the applications are unlikely to impact normal farming operations on the subject lands as the presence of the Teeswater River bisecting the lands has necessitated the parcels to be farmed separately already. A field entrance to the subject lands from Bruce Road 20 has always been in use;
6. The conditions of Holding requiring an Archaeological Assessment have been fulfilled and a partial removal of this Holding can advance; and

7. The Zoning By-law Amendment will properly implement the development concept.

Thank you for your consideration of the applications, please contact the undersigned with any questions pertaining to the contents of this report.

Sincerely,

Cobide Engineering Inc.



Dana Kieffer, M.Sc. (Planning), MCIP, RPP
Senior Development Planner,
Cobide Engineering Inc.

Appendix A

**SURVEY
SURVEYOR'S REPORT
LEGAL TRANSFER**

D. CULBERT LTD.

ONTARIO LAND SURVEYOR
50 NORTH STREET
GODERICH, ONTARIO N7A 2T4

Phone: (519) 524-5321 or 1-800-265-5594; E-mail: dculb@cabletv.on.ca

REPORT

TEESWATER RIVER
LOT 15, CONCESSION 5
GEOGRAPHIC TOWNSHIP OF MORRIS

1. Original Township Plan

- shows double line, well over sixty-six feet in width, essentially as it currently appears at the road allowance

2. Original Township Survey Notes

<u>LOCATION</u>	<u>DEPTH</u>
Concession A, Lots 28/29	3 feet
South Outline	4 feet
Concession 6/7, Lot 7	2 feet
Concession A, Lot 2	2 feet
Lots 15/16, Concession 5	8 feet
Lots 20/21, Concession 2	8 feet
West Limit, Concession A	18 inches; 2.5 inches; 5 inches; 2 inches; 2.5 inches; 3 inches; 2.5 inches, 2 inches

3. 1879 Belden Atlas

- heavy dark line
- documented mills/dams at Chepstow, Cargill, Paisley, Pinkerton, Teeswater

4. Crown Patent

- excludes navigable water and no express grant of navigable water

5. Public and commercial use

- numerous mill sites

- Page 2 -

6. Precedence

- | | |
|-------------|--|
| A. 3R-10581 | R. Dore (2022) Lots 12/13, Concession 6 |
| B. 3R-8256 | R. Dore (2006) Lot 22, Concession 6 |
| C. 3R-9069 | R. Dore (2009) Lot 23, Concession 6 |
| D. 3R-8786 | R. Dore (2008) Lots 23-25, Concession 9/10 |
| E. 3R-9404 | R. Dore (2012) Lots 23-24, Concession 10 |
| F. 3R-937 | MTO (1974) River not depicted as navigable |
| G. M-66 | H. Gibson (1978) Instrument 5434 on river |
| H. Plan 144 | (1875) Subdivision ambiguous |

7. Conclusion

This part of the Teeswater River, at Lots 14 and 15 of Concession 5 in Greenock Township, was navigable at the time of Crown Patent and the bed of said river remains Crown land, by virtue of the Beds of Navigable Waters Act (R.S.O. 1990, Ch.B.4).

July 5, 2023



Douglas A. Culbert, O.L.S.
D. CULBERT LTD.

Properties

PIN 33232 - 0121 LT Interest/Estate Fee Simple Split
Description PT LOT 15 AND PART LOT 14 CONCESSION 5 GREENOCK PART 1 PLAN 3R10757;
MUNICIPALITY OF BROCKTON
Address CARGILL

Consideration

Consideration \$0.00

Transferor(s)

The transferor(s) hereby transfers the land to the transferee(s).

Name DALES, THOMAS BRENDAN
Address for Service 1047 County Road 20
RR 1
Cargill ON N0G 1J0

I am at least 18 years of age.
My spouse is a party to this document.
This document is not authorized under Power of Attorney by this party.

Name DALES, DONNA MARIE
Address for Service 1047 County Road 20
RR 1
Cargill ON N0G 1J0

I am at least 18 years of age.
My spouse is a party to this document.
This document is not authorized under Power of Attorney by this party.

Transferee(s)

	<i>Capacity</i>	<i>Share</i>
Name DALES, THOMAS BRENDAN	Registered Owner	
Date of Birth 1961 03 09		
Address for Service 1047 County Road 20 RR 1 Cargill ON N0G 1J0		

Signed By

Peter Edwin Loucks 84 First Avenue South, Box 430 acting for Signed 2023 12 06
Chesley Transferor(s)
N0G 1L0

Tel 519-363-3223
Fax 519-363-2133

I am the solicitor for the transferor(s) and the transferee(s) and this transfer is being completed in accordance with my professional standards.
I have the authority to sign and register the document on behalf of all parties to the document.

Peter Edwin Loucks 84 First Avenue South, Box 430 acting for Signed 2023 12 06
Chesley Transferee(s)
N0G 1L0

Tel 519-363-3223
Fax 519-363-2133

I am the solicitor for the transferor(s) and the transferee(s) and this transfer is being completed in accordance with my professional standards.
I have the authority to sign and register the document on behalf of all parties to the document.

Submitted By

LOUCKS & LOUCKS LLP 84 First Avenue South, Box 430 2023 12 08
Chesley
N0G 1L0

Tel 519-363-3223
Fax 519-363-2133

The applicant(s) hereby applies to the Land Registrar.

Fees/Taxes/Payment

<i>Statutory Registration Fee</i>	\$69.95
<i>Provincial Land Transfer Tax</i>	\$0.00
<i>Total Paid</i>	\$69.95

File Number

Transferor Client File Number : 23995

LAND TRANSFER TAX STATEMENTS

In the matter of the conveyance of: 33232 - 0121 PT LOT 15 AND PART LOT 14 CONCESSION 5 GREENOCK PART 1 PLAN 3R10757; MUNICIPALITY OF BROCKTON

BY: DALES, THOMAS BRENDAN
DALES, DONNA MARIE
TO: DALES, THOMAS BRENDAN Registered Owner

1. DALES, THOMAS BRENDAN

I am

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance;
- (d) The authorized agent or solicitor acting in this transaction for _____ described in paragraph(s) () above.
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for _____ described in paragraph(s) () above.
- (f) A transferee described in paragraph () and am making these statements on my own behalf and on behalf of _____ who is my spouse described in paragraph () and as such, I have personal knowledge of the facts herein deposed to.

3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	\$0.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	\$0.00
(ii) Given Back to Vendor	\$0.00
(c) Property transferred in exchange (detail below)	\$0.00
(d) Fair market value of the land(s)	\$0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	\$0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	\$0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	\$0.00
(h) VALUE OF ALL CHATTELS -items of tangible personal property	\$0.00
(i) Other considerations for transaction not included in (g) or (h) above	\$0.00
(j) Total consideration	\$0.00

4.

Explanation for nominal considerations:

- m) Inter-spousal transfer for natural love and affection

5. The land is not subject to an encumbrance

6. Other remarks and explanations, if necessary.

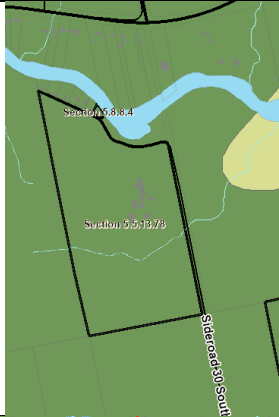


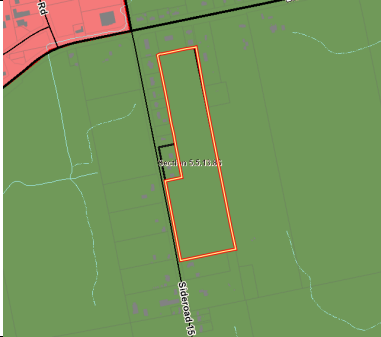
- 1. The information prescribed for purposes of section 5.0.1 of the Land Transfer Tax Act is not required to be provided for this conveyance.
- 2. The transferee(s) has read and considered the definitions of "designated land", "foreign corporation", "foreign entity", "foreign national", "Greater Golden Horseshoe Region", "specified region", "spouse" and "taxable trustee" as set out in subsection 1(1) of the Land Transfer Tax Act and O. Reg 182/17. The transferee(s) declare that this conveyance is not subject to additional tax as set out in subsection 2(2.1) of the Act because:
- 3. (b) This is not a conveyance of "designated land".
- 4. The transferee(s) declare that they will keep at their place of residence in Ontario (or at their principal place of business in Ontario) such documents, records and accounts in such form and containing such information as will enable an accurate determination of the taxes payable under the Land Transfer Tax Act for a period of at least seven years.
- 5. The transferee(s) agree that they or the designated custodian will provide such documents, records and accounts in such form and containing such information as will enable an accurate determination of the taxes payable under the Land Transfer Tax Act, to the Ministry of Finance upon request.


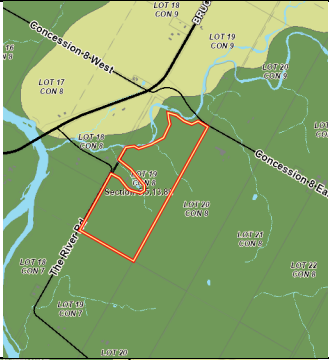
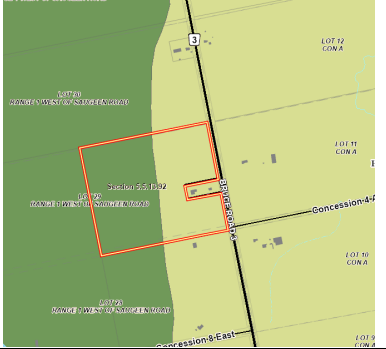
PROPERTY Information Record

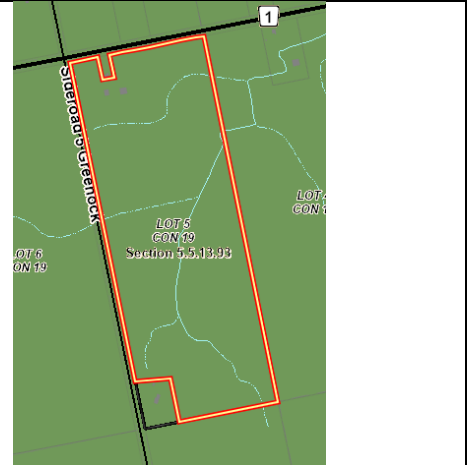

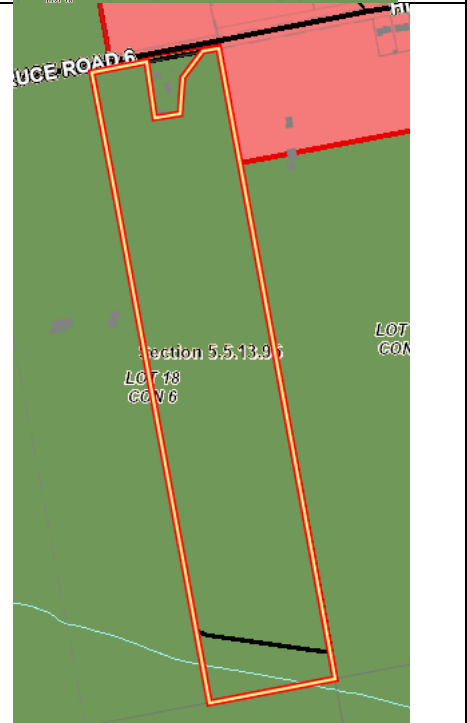
A. Nature of Instrument: Transfer
LRO 3 Registration No. BR200523 Date: 2023/12/08
B. Property(s): PIN 33232 - 0121 Address CARGILL Assessment -
Roll No
C. Address for Service: 1047 County Road 20
RR 1
Cargill ON N0G 1J0
D. (i) Last Conveyance(s): PIN 33232 - 0121 Registration No. BR143614
(ii) Legal Description for Property Conveyed: Same as in last conveyance? Yes No Not known
E. Tax Statements Prepared By: Peter Edwin Loucks
84 First Avenue South, Box 430
Chesley N0G 1L0

Appendix B


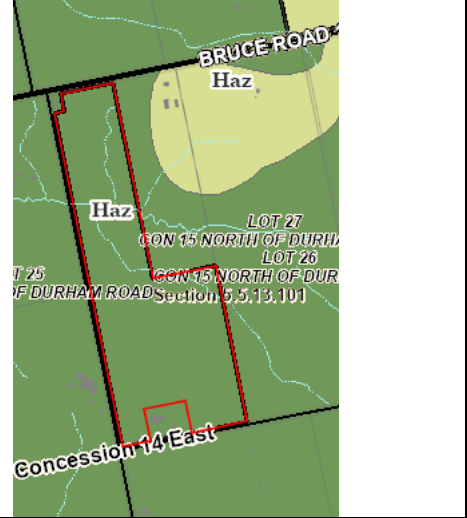
A COMPILATION OF BRUCE COUNTY OFFICIAL PLAN AMENDMENTS

OPA No.	Location	Retained Farm Size	Picture
BCOPA#224-17.34	Part of Lot 64 and Lot 65, Concession 1 SDR, geographic Township of Brant	28.3 ha	
BCOPA 227	Part of East ½ Lot 10 and West Part of Lot 10, Concession 13 (being parts 1 and 2, 3R-596), geographic Township of Carrick	32.82 ha	
BCOPA 234	ARRAN CON 3 PT LOTS 11 AND;12 RP 3R10215 PARTS 1 AND 2	23.95 ha	
BCOPA241-19.34	CON 1 SDR PT LOT 36 RP; 3R3882 PART 1, Geographic Township of Brant, Municipality of Brockton	11.77 ha	

<p>BCOPA 247</p>	<p>Concession 6, East Part of Lot 23 (497 Concession 7), Geographic Township of Bruce, Municipality of Kincardine</p>	<p>19.13 ha</p>	
<p>BCOPA 248</p>	<p>Part Lot 19, Concession 8, Geographic Township of Saugeen, Town of Saugeen Shores</p>	<p>31.6 ha</p>	
<p>COPA 2020-13</p>	<p>RANGE WSR E PT LOT 29, geographic Township of Saugeen, Town of Saugeen Shores</p>	<p>19.34 ha</p>	

<p>COPA 2020-14</p>	<p>CON 19 PT LOT 5 (Greenock), Municipality of Brockton</p>	<p>34.57 ha</p>	
<p>(C-2020-016)</p>	<p>CON 4 PT LOT 18 LESS RP3R: 327 PART 4 AND RP3R 1002 PARTS; 3 AND 4 (Bruce),</p>	<p>27.86 ha</p>	
<p>C-2020-019</p>	<p>CON 6 E PT LOT 18 (Culross), Municipality of South Bruce</p>	<p>19.74 ha</p>	

<p>COPA 2021-3</p>	<p>CON 12 S PT LT 10 (Kinloss)</p>	<p>16.46 ha</p>	
<p>COPA 2021-11</p>	<p>CON 2 PT LT 30 (Arran)</p>	<p>33.47 ha</p>	
<p>COPA 2021-009</p>	<p>CON 1 SDR S PT LOTS 17 & 18</p>	<p>14.52 ha</p>	

<p>COPA 2021-16</p>	<p>CON 10 PT LOT 27 [2056 CONCESSION 10]; and HURON CON 10 PT LOT 28 (Huron), Township of Huron-Kinloss</p>	<p>34.6 ha</p>	
<p>COPA 2021-22</p>	<p>BRANT CON 15 PT LOT 26</p>	<p>31.54 ha</p>	

Appendix C

CORRESPONDENCE

From: [Jessica Smale](#)
To: [Dana Kieffer](#)
Cc: [Peter Loucks](#)
Subject: RE: 2024-02-05 Dales 442 Brockton 13005
Date: February 7, 2024 8:56:46 AM

Hi Dana

If the river is navigable, then the bed is owned by the Crown unless the Crown Patent for the lot conveyed it to the original owner.

The original Crown Patent generally refers to the 100 acre lot but excluding the river beds. The river bed remains in the name of the Crown but not separately identity as a separate parcel.

To create the natural severance, the surveyor reviews the Crown Patent and then determines if it is navigable. If so, he/she then surveys the entire lot showing three parts being the river bed and the land on either side.

Answers to your questions:

Paragraph 2: the parcel has always existed as it was excluded from the original Crown Patent. When the farm lots were laid out, they did not, in most cases, identify the river beds as being owned by the Crown.

Paragraph 3: The surveyor has to determine that:

- (i) the river is navigable; and,
- (ii) if the river bed was excluded when the Crown Patent was granted.

As a result, the surveyor has survey the lot to shown the river bed as Crown Land and the surveyed the parcels on either side. The river bed creates two separate parcels.

Peter Loucks

Dictated by the writer and sent on his behalf.

Loucks & Loucks LLP
phone 519.363.3223 | fax 519.363.2133 | jsmale@louckslaw.onmicrosoft.com
84 First Ave S | Box 430 | Chesley, ON N0G 1L0

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-----Original Message-----

From: Dana Kieffer <dkieffer@cobideeng.com>
Sent: Monday, February 5, 2024 9:49 AM
To: Jessica Smale <jsmale@louckslaw.onmicrosoft.com>
Subject: 2024-02-05 Dales 442 Brockton 13005

Hi Jessica,

Just wondering if I could have a quick conversation with you or Peter or you + Peter about the Dales application.

My main question is: in the instances of natural severances, has the parcel on one side of the river always existed, despite it not having a deed or survey (ie the new deed and survey recognizes an existing parcel) or does the parcel come into existence with the deed and survey?

In my report I currently have the statement "A survey, and legal title to these lands has been drafted and registered (are these the right words?). It is noted, that despite these lands just being surveyed and given a title, the lands would or could have been considered a separate parcel since the 1911 Beds of Navigable Water Act."

Just wanted to make sure I articulate the situation properly. Please feel free to give me a call if its easier, number is below.

Thank you!
dk

Dana Kieffer, M.Sc.(Planning), MCIP, RPP Cobide Engineering Inc.
517 10th Street
Hanover, ON N4N 1R4
T +1 519-506-5959 ext. 106
E dkieffer@cobideeng.com

www.cobideeng.com

From: [Benito Russo](#)
To: [Dana Kieffer](#)
Cc: [Monica Walker Bolton](#)
Subject: RE: 99000- 442 Bruce Road 20
Date: July 13, 2023 4:29:57 PM
Attachments: [image001.png](#)
[cob_logo_482ea6ae-463f-4d00-8147-f4e02eda1e3e.png](#)

Good Afternoon Dana,

I am writing to follow up with your inquiry regarding the possibility of rezoning your client's property to permit a new dwelling.

To confirm, the subject property is located at: 442 Bruce Road 20, Brockton, ON with the Municipal Roll Number of 410431000206100.

The subject property is designated as Agriculture, Rural, and Hazard Land Areas under the Bruce County Official Plan and Zoned General Agriculture Special (A1-107), General Agricultural Special (A1-1), General Agricultural Special Holding (A1-1-H1), Environmental Protection (EP), and Environmental Protection Special (EP-1) under the Zoning By-law of the Municipality of Brockton.

These various Zonings detail the following:

A1-107 – Recognizing the lands as a non-farm lot, limiting the number of nutrient units, and recognizing the existing buildings to be compliant with the Zoning By-law.

A1-1 – An agricultural lot where a 'Dwelling, – Accessory Detached' shall be prohibited.

A1-1-H1 - An agricultural lot where a 'Dwelling, – Accessory Detached' shall be prohibited. A holding for high archaeological potential.

EP – Permits agriculture, cross country ski facility, conservation area, public park, boat launching and docking, does not permit any residential uses.

EP-1 – Areas of provincially significant wetland that shall only be used for existing agricultural uses and 'forestry/silviculture' and outdoor recreational activities which are non-intensive in nature and are compatible with the surrounding natural environment.

In September of 2019 the subject property owner applied for, and was approved, a surplus farm residence severance and associated Zoning By-law Amendment. This application severed the surplus farm dwelling and rezoned the subject property to apply an archaeological holding, as well as restrict the future development of a new dwelling on the retained agricultural lands. Further, the application as submitted the applicant at that time, describes the retained agricultural lands as having an area of 93.26 acres. This is entirety of the parcel excluding the area containing surplus farm residence severance.

The associated report for this application evaluated the subject property, and concluded that it was one parcel, as indicated by the A1-1 Zoning that was applied on the other side of the water feature.

As such the entirety of the retained lands were zoned to prohibit a residential dwelling.

This is consistent with the Provincial Policy Statement and Bruce County Official Plan requirements that all new residential dwellings are prohibited on any remnant parcel of farmland created by the severance.

The subject property was at the time of the previous surplus farm dwelling severance and rezoning, and currently is, identified by County mapping resources to be one singular parcel.

Applicable policies in the County of Bruce Official Plan include:

S. 6.5.3.3.2– In order to promote and maintain viable farming operations and generally minimize potential impacts on the farming community, the minimum lot area of

lands within the Agricultural designation shall be generally 40 hectares.

S.6.5.3.3.3 b) iii) - The remnant agricultural lands shall be rezoned to prohibit the future erection of a residential dwelling of any type on the agricultural lands provided that a residential dwelling does not exist at the time of severance.

It rests with your client the burden of proving that S. 6.5.3.3.2 is addressed through the Beds of Navigable Waters Act. Failing to do so requires a County Official Plan Amendment, which will not be supported by Bruce County Planning Staff.

It is the County opinion that S.6.5.3.3.3 b) iii) was correctly applied to the subject property to prevent the erection of a new dwelling on the remnant agricultural parcel. A County Official Plan Amendment is required to provide relief, which will not be supported by Bruce County Planning Staff.

This is further supported by the Ontario Superior Court & Ontario Court of Appeals between Municipality of Middlesex Centre (applicant) -and- David Ronald MacMillan, Janice Lynn McIntosh (respondent) [Municipality of Middlesex Centre v. MacMillan et al., 2015 ONSC 2988--re: Beds of Navigable Waters Act | Canadian Justice Review Board](#). The Crown argues that it is an abuse of the Beds of Navigable Waters Act to allow it to be used to frustrate sound planning principles embodied in the Planning Act. While this case was centered around to establishing navigability and a proposed Consent, the effect of using the Beds of Navigable Waters Act to refute sound planning principles embodied in the Planning Act remains the same.

Should the proponent still wish to proceed with the understanding of the above information they will need to submit the following:

- County Official Plan Amendment
- Zoning By-law Amendment

In order to lift the holding on the subject property, they will also need to submit an archaeological assessment in consultation with the Saugeen Ojibway Nation with the recommendations, if any, having been implemented. I have provided the contact information for the Saugeen Ojibway Nation below:

Saugeen Ojibway Nation - Dr. Robert Martin
Email: archaeology@saugeenojibwaynation.ca
Phone: (519) 534-5507 ex 112
Mail: 10129 Hwy 6, Georgian Bluffs, ON N0H 2T0

The subject property falls within lands regulated by the Saugeen Valley Conservation Authority (SVCA). Given the substantial area of land on the subject property that is regulated, prior to an application being submitted it is recommended that you consult with the SVCA.

Saugeen Valley Conservation Authority
Email: customerservice@svca.on.ca
Phone: (519) 364-1255
Mail: 1078 Bruce Rd. 12 Box 150 Formosa, Ontario N0G 1W0

Although this is not the response you were expecting I hope you find the information provided above helpful. Please feel free to reach out by E-mail or telephone to discuss your inquiry further.

Thank you,
Benito

Benito Russo
Planner
Planning and Development
Corporation of the County of Bruce

Office: 519-881-1782
Direct: 1-226-909-6254
www.brucecounty.on.ca



Appendix D

DRAFT ZONING BY-LAW AMENDMENT AND SCHEDULE

By-Law 2024-xx

Being a By-Law to amend Zoning Bylaw No. 2013-26 and Remove a Holding Symbol.

Whereas Section 34 and 36(1) of the *Planning Act, R.S.O. 1990*, as amended, permit bylaws to be amended by Councils of Municipalities and permit Holding Symbols to be removed.

And Whereas the Council of the Corporation of the Municipality of Brockton is desirous and it is in the public interest to amend bylaw No. 2013-26, as amended, being the Municipality Brockton Comprehensive Zoning Bylaw.

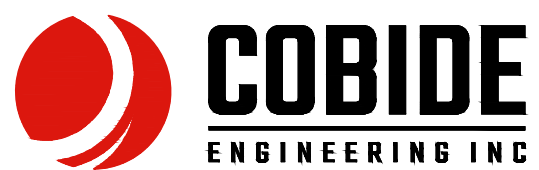
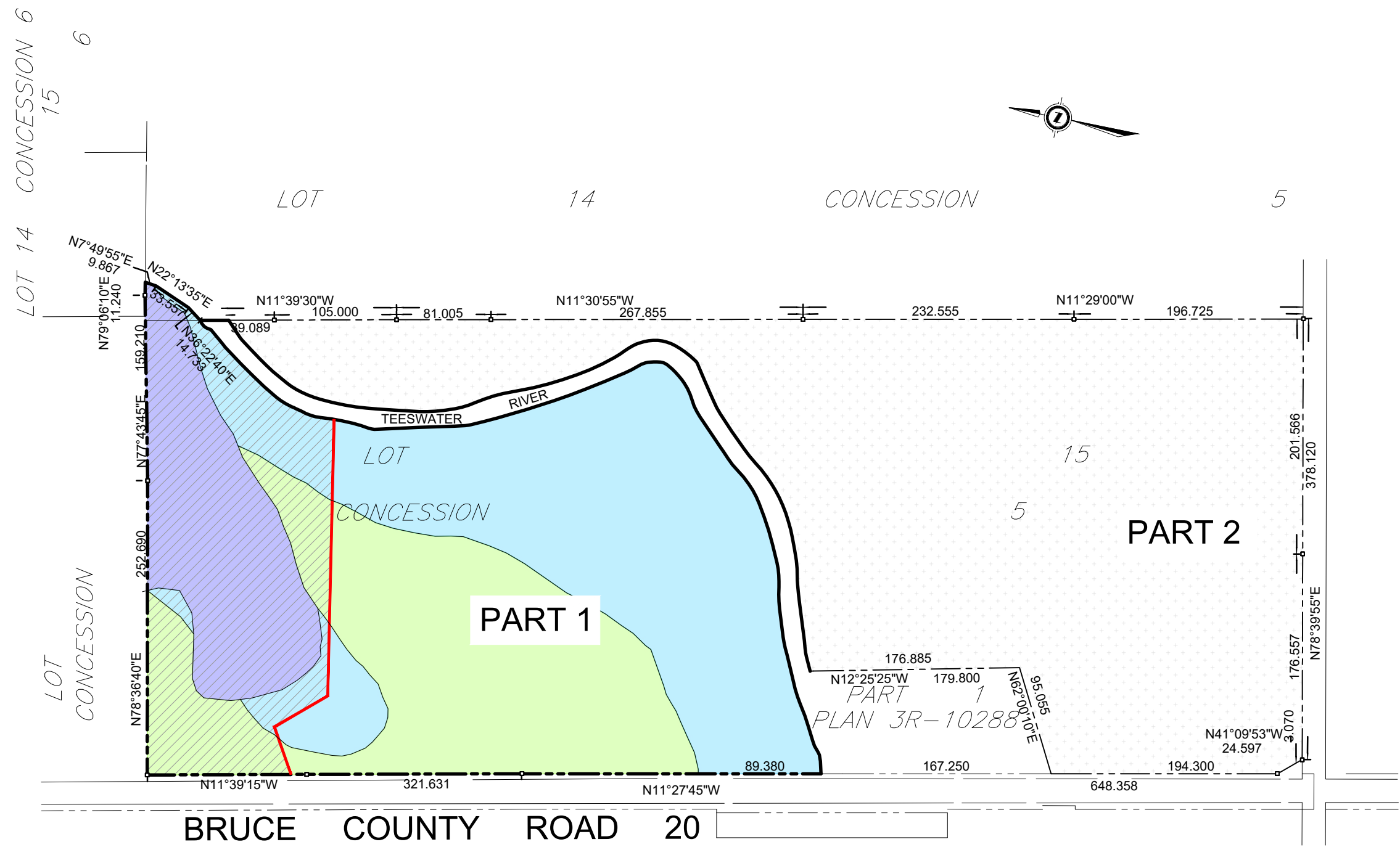
Now Therefore the Council of the Corporation of the Municipality of Brockton **Enacts as Follows:**

- 1.0 That Bylaw No. 2013-26 is hereby amended by changing the zone symbols on Part 1, Parts of Lots 14 & 15, Concession 5, geographic Township of Greenock, Municipality of Brockton, County of Bruce as identified on 3R-10757 from Environmental Protection Special (EP-1), Environmental Protection (EP), General Agriculture Special with Holding (A1-1-H1) and General Agriculture Special (A1-1) to Environmental Protection (EP), General Agriculture Special (A1-x) and Environmental Protection Special with Holding (EP-1-H1), Environmental Protection with Holding (EP-H1), General Agriculture Special with Holding(A1-x-H1).
- 2.0 That a Minimum Lot Size of 17.5 hectares be permitted in General Agriculture Special (A1-x).
- 3.0 That the H1 Holding Symbol on the subject lands be amended to be removed from the lands subject to the Stages 1, 2, and 3 Archaeological Assessment and remain on the lands not assessed, as shown in Scheule A and in accordance with Section 1.0.
- 4.0 This By-law takes effect from the date of passage by Council and comes into force and effect pursuant to the provisions of the Planning Act, R.S.O. 1990, as amended.
- 5.0 This By-Law may be cited as the “Dales By-Law”.

Read, Enacted, Signed and Sealed this _____, 2024.

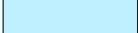

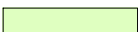


Mayor – Chris Peabody

Director of Legislative and Legal Services (Clerk)
– Fiona Hamilton



517 10th STREET, Hanover, Ontario N4N 1R4
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SCHEDULE A
 MUNICIPALITY OF BROCKTON
 OFFICIAL PLAN AMENDMENT
 442 BRUCE ROAD 20, BROCKTON
 FEBRUARY 08, 2024

-  ENVIRONMENTAL PROTECTION (EP)
-  ENVIRONMENTAL PROTECTION - SPECIAL (EP-1)
-  GENERAL AGRICULTURE (A1-X)
-  EXISTING TREE LINE
-  HOLDING (-H1)