File No. CA 003-10

M. Orr	)	Thursday, the 21st day
Deputy Mining and Lands Commissioner	)	of June, 2012.

THE CONSERVATION AUTHORITIES ACT

IN THE MATTER OF

An appeal to the Minister of Natural Resources under subsection 28(15) of the **Conservation Authorities Act** against the refusal to grant permission for development within a regulated area of the Don River watershed to facilitate construction of a two-level wood deck structure located below top-of-bank on the wall of a well-defined valley, municipally known as 102 Banbury Road, City of Toronto, Province of Ontario;

AND IN THE MATTER OF

Ontario Regulation 166/06.

B E T W E E N:

MANOUSOS DOULAVERAKIS

Appellant

- and -

TORONTO AND REGION CONSERVATION AUTHORITY

Respondent

O R D E R

WHEREAS THIS APPEAL to the Minister of Natural Resources was received by the Mining and Lands Commissioner ("the tribunal") on the 28th day of May, 2010, having been assigned to the tribunal by virtue of Ontario Regulation 571/00;

AND WHEREAS a hearing was held in this matter on the 23rd, 24th, and 26th days of April, 2012, in the courtroom of this tribunal, in the city of Toronto, Province of Ontario;

1. **IT IS ORDERED** that the appeal be and is hereby dismissed.

2. **IT IS FURTHER ORDERED** that no costs shall be payable by either party to this appeal.

DATED this 21st day of June, 2012.

Original signed by M. Orr

M. Orr
DEPUTY MINING AND LANDS COMMISSIONER

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REASONS

Appearances:

Mr. H. Poch:	Counsel, appeared on behalf of the appellant.
Mr. J. Wigley:	Counsel, appeared on behalf of the respondent.

Introduction

A desire by the appellant and his spouse to sit among the trees on their property led to the building of a bi-level wood deck structure on their lands in September, 2009. The structure was located on a valley wall and below the top of the slope. The two decks are connected by wood steps. The structure was built without permission from the Toronto and Region Conservation Authority (the "TRCA" or the "Authority"). The TRCA is charged with regulating the area where the structure is located. The appellant made an application to the TRCA after the fact, in October, 2009 and permission was refused in May, 2010. The appellant appealed this refusal to the Minister of Natural Resources stating, amongst other things, that the structure could be considered the exception to any prohibition against construction.

The Issue

1. Do the applicable statute, regulations and policies allow for the placement of a deck structure on the subject valley wall?

Overview of Facts Not Disputed

The appellant's property is located on the east side of Wilket Creek, south of York Mills Road, west of Leslie Street, within the Don River Watershed. There are two lots directly to the north of the subject property and beyond them, a community centre which accommodates tennis courts, amongst other things.

The property also contains a house which was built in 2002 and 2003, after receiving clearance from the TRCA. The house is situated on a flat area of the property. The flat area then gives way to a valley wall which gradually drops to the creek bed below.

Aside from the fact that the deck structure had been built without the necessary TRCA permission, it was agreed that it was not located inside the "regulatory flood plain" and that the slopes in question are stable.

It is also a fact that the TRCA prosecuted the appellant for having built the deck structure without permission and had obtained a conviction. The probation order required removal of the deck structure. Sentencing by the court has been held in abeyance pending this tribunal's decision in this matter.

Analysis

(a) Statutory Context

The relevant legislation includes the **Conservation Authorities Act**, the **Ministry of Natural Resources Act**, and the **Mining Act**. Some reference was made to the Provincial Policy Statement (the "PPS") which takes its authority from the **Planning Act**. While the PPS is applied in planning matters under the **Planning Act**, this tribunal is primarily concerned with the question as to whether permission to build a two-tiered deck structure can be given pursuant to the **Conservation Authorities Act**, its regulations and relevant policies. However, it has become the practice of those involved even in these permission-seeking cases to resort to the PPS in support of their positions. As a minimum standard, the tribunal agrees that the PPS is helpful and it does no harm to consider it; however, as was emphasized at the hearing, the case either "for" or "against" has to be found within the ambit of the **Conservation Authorities Act**, its regulations and the relevant policies of the Authority.

Subsection 20(1) of the **Conservation Authorities Act** states that an authority's objectives are "to establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development and management of natural resources…."

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An authority's powers are described in section 21 of the **Act** and they are intended to empower an authority to accomplish its objectives. The powers include, among other things, the power to "study and investigate the watershed and to determine a program whereby the natural resources of the watershed may be conserved, restored, developed and managed". They also include the power to "use lands owned or controlled by the authority for park or other recreational purposes…."

Authorities are given the power to make regulations under subsection 28(1) of the **Act**, and these can include regulations "prohibiting, regulating or requiring the permission of the authority for development if, in the opinion of the authority, the control of flooding, erosion, … or pollution or the conservation of land may be affected by the development". The required "permission" can be conditional and can also be cancelled should the conditions not be met. The various defined words and phrases that apply within the context of this matter will be dealt with as they become relevant.

Subsection 28(16) sets out the offence for contravention of an authority's regulation and the related penalties or remedies, which include removing the offending development.

Ontario Regulation 97/04 speaks to the requirements for content of the regulations that authorities can make pursuant to subsection 28(1) of the **Act**. It contains a number of necessary inclusions in an authority's regulation including when a regulation shall prohibit development; the fact that development can occur with permission; that permission can come with conditions and so on. It also describes the hearing process to be followed for those occasions when permission is not granted.

The TRCA has made a regulation in accordance with the **Act** and the aforementioned Ontario Regulation 97/04. The version applicable to these proceedings is Ontario Regulation 166/06, which came into effect on May 4, 2006. In it, the prohibition against development is counter-balanced by the discretion which can be exercised by the Authority (to grant permission) where "if, in the [A]uthority's opinion, the control of flooding, erosion … pollution or the conservation of land will not be affected by the development".

The regulation provides for a hearing process. Under the **Act** an appeal from a refusal of permission (or an objection to conditions), can be made to the Minister of Natural Resources (the "Minister") who may, in turn, refuse the permission or grant the permission with or without conditions. The Mining and Lands Commissioner has been assigned the powers and duties of the Minister for the purpose of hearing and determining appeals under subsection 28(15) of the **Act** by virtue of Ontario Regulation 571/00. The **Ministry of Natural Resources Act** and the **Mining Act** deal with the administrative and procedural aspects of this matter.

An analysis of the statutory regime that applies to conservation authority matters would not be complete without reference to the fact that clause 21(1)(a) of the **Act** gives authorities the power to determine a program "whereby the natural resources of the watershed may be conserved, restored, developed and managed". To this end, on October 28, 1994, the

TRCA adopted what is known as the "Valley and Stream Corridor Management Program" (the "VSCM Program" or "Program"). In the words of the document itself, it "advances [the TRCA's] policies for the protection and rehabilitation of the valley and stream corridors within its jurisdiction". The VSCM Program is the TRCA's "tool" when it comes to carrying out its functions under Ontario Regulation 166/06. The regulation itself allows the TRCA to form an opinion as to proposed development and to grant permission where appropriate. The TRCA's "opinion" is the product, in part, of the application of the Program.

Valley and stream corridors are "landscape units" that were formed by natural forces and perform a particular natural function within watersheds. As the Program states, they "are recognized as the foundation or backbone of the greenspace system." Briefly, the Program provides "direction" in terms of accomplishing the goal of preventing future environmental degradation and rehabilitating and regenerating areas that may have been damaged.

The Program utilizes various diagrams in order to better understand how these terms are defined. Valley corridor boundaries and stream corridor boundaries are defined and described in section 3.0 of the Program's policies. Section 4.0 sets out the policies and criteria for land use planning and development projects – the emphasis being on the "need to protect and rehabilitate valley and stream corridor landforms, features and functions." The Program policies consider both new development in valley and stream corridors and existing development within the corridors. It should be noted that the corridors are measured to include an area past the top of bank by about 15 metres. In the case at hand, the appellant's home is located roughly that distance from the top of bank.

The Evidence

The hearing opened with testimony from the appellant, Mr. Doulaverakis. The home on his property was built during 2002 and 2003, after receiving clearance from the TRCA (the TRCA noted that it issued a "letter clearing the construction of the dwelling as the proposed dwelling was located just outside of the former "Fill Regulated" area."). The tribunal notes that residences in the area of the subject property vary in terms of age. Older, smaller homes are slowly being replaced with newer, larger residences. It would not be unusual to find homes that pre-date the current applicable regulation (2006). The tribunal also notes that there are older homes still in existence in the area (along with their ancillary appurtenances).

The appellant claimed that he sought information from municipal authorities regarding building permits, hired certain individuals and based on his efforts, built his two-tiered deck structure. While some trees were removed at the time, no trees that were inside the footprint of the deck structure itself were affected. Posts measuring six by six inches were used but they were not set in concrete. Instead, screenings were compacted and the posts placed into this compacted material. This was done by hand. The actual deck structure sits on the posts and not on the ground of the slope. The upper deck sits on the valley wall approximately three metres from the top of slope.

Upon hearing from the TRCA that his structure had been built without a permit, the appellant hired certain professionals and called upon them to investigate the structure with a view to addressing the concerns of the Authority and making an application after the fact. Those

individuals made presentations to the tribunal and their evidence follows. It can be noted at this point that while the appellant was prepared to have a fluvial geomorphologist and a senior water resources engineer, only the latter was required to provide limited testimony regarding an exhibit dealing with contours and the regulatory floodline.

Mr. Larry Galimanis, a geotechnical engineer, testified that he had been retained after the structure had been built. His retainer required him to examine the impact (if any) of the deck structure on the slope, examine slope stability and provide a recommendation regarding erosion control. As far as Mr. Galimanis was concerned, the slope was stable in the "long term" and any impact on the slope was minimal as the deck was comprised of lightweight material, namely wood. He also recommended that vegetation was needed under the deck to maintain slope stability. He had found erosion underneath the deck structure, but felt that once it had been "properly looked after by an arborist" then he "[would not] see any potential issues out of that". He agreed under cross-examination, that the slopes were subject to erosion naturally and that it was important to maintain the structure given its having been built on a slope as opposed to flat ground. In response to the tribunal, he recommended that the slope stability should be checked twice a year, more if there was any excessive rainfall.

Mr. Paul Villard, a fluvial geomorphologist, was also called; however, his testimony had more to do with the meander belts of Wilket Creek – a point that really did not raise an issue. Another witness (Mr. Ken Chow, a water resources engineer) who was to speak to flooding issues, was similarly relieved of testifying on that point as flooding was not an issue. He did describe the slopes of the valley with the help of a TRCA floodplain map and his own observations. He agreed with counsel for the TRCA that there was no development at the bottom of the subject property, but did point out that there was at least one house located on the regional floodline. He did not know the age of the house.

Mr. Steve Mann, a certified arborist, testified that he was retained to provide an inspection and inventory of trees "immediately adjacent" to the deck. He considered a six metre area around the deck specifically and the entire property generally (excluding the floodplain). He found that "24 trees that were existing after the deck was built could be impacted by the deck", and that eight "cut stems" were found within the vicinity of the deck. The term "affected" related to the position of a tree's "root zone" vis-à-vis the deck. His concerns were with respect to loss of root zone due to the presence of deck posts, and compaction due to construction foot traffic. He spoke to slowing down water flow down the slope with plant material. His main concern was not with the existence of the deck and how it might affect the root zone but with the "risk of a large tree uprooting through a wind storm and peeling up 500 square feet of root zone [the approximate square footage of the structure] which is quite common in these valley zones…."

Mr. Paul Heydon, a biologist/ecologist, also testified as to the removal of trees and the surrounding vegetation. He had surveyed the trees and vegetation and provided the results of his survey to the appellant and in turn, the tribunal. Under cross-examination he agreed that "taking out trees and 500 square feet of vegetative area that could contribute to forest cover" is tantamount to "going the wrong way", at least as far as the City of Toronto is concerned. He countered with the argument that since the deck had already been built, the owners could act as stewards of the ravine. As for removing the deck, he said it could be done in

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the wintertime to minimize impact on slope vegetation and compaction. The posts could be sawed off and left in the ground, thereby minimizing disturbance of the site.

The appellant's planner, Ms. Wendy Nott, took all of the studies and reports that had been produced for the appellant's "after the fact" application, and reviewed them in terms of various regulatory and statutory criteria including the Authority's policy document which is entitled the "Valley and Stream Corridor Program" (the "Program"). She had conducted a site visit both on the property and in parts of the valley where the appellant's property is located roughly from Post Road north to a small community centre (referred to earlier) which accommodates tennis courts. She saw both a dirt path and hard surfaced trail and people walking and riding bicycles. Post Road is a dead end and has a set of concrete steps down to the valley. The hard surfaced trail comes down from the tennis courts into the valley and meanders north. It does not head into the valley where the appellant's property is located. She produced photographs which depicted the deck structure, one of which looked towards the deck structure from the valley. In her words, "…it's very difficult to see the deck at all even in the unleafed tree condition. But I didn't zoom in because that would not be a representative view". She described the appearance of the valley to the north as being more open ("meadow" was the word she used), and that it had the appearance "more like a lawn or grass than …[a] forest."

Ms. Nott was able to provide some sense of the history of residential development in the area, which dates to the 1950's and 1960's. Older smaller homes on large lots are being replaced with larger homes, the appellant's home being an example of that residential evolution.

In addition to the PPS, Ms. Nott considered the City Official Plan, Regulation 166/06, made under the **Conservation Authorities Act**, and the aforementioned TRCA Program. Ms. Nott's interpretation of the Program's policies under section 4.0 was such that she looked at the application as being for development in an area of "existing development". Indeed, she described this area as a "highly urbanized environment", reflective of the City of Toronto's "highly urbanized environment". The tribunal had the distinct impression that Ms. Nott was casting her eye over much of the housing located outside the valley corridor when she gave her interpretation. The Program, in her words, "recognizes that these highly urbanized environments where development has historically occurred within or near valleys may require a different approach to consideration and development". Her view of the Program guidelines was that they did not work to prohibit development. Property improvements and ancillary structures (she included decks) could be permitted subject to compliance with certain criteria. Based on the studies carried out by consultants for the appellant, she was comfortable giving an opinion that a "rear yard deck accessory to a detached dwelling" was permitted under the Program guidelines.

Ms. Nott was confident that granting permission for the deck structure would not create an "adverse precedent" for the TRCA as it has control over future applications. Applications could be dealt with on a site specific basis. This development had been preceded by other development in the area (both pre and post 2006) and that development had not been prohibited by the TRCA. In short, the structure conformed to all applicable policies, had no adverse impacts and there was nothing that could suggest its approval should be refused.

The Respondent, TRCA, presented two witnesses who gave evidence regarding ecology and natural heritage systems and planning. The first witness Ms. Dena Lewis, testified as to the importance of the "Terrestrial Natural Heritage System Strategy" which is intended to track trends in biodiversity in the various watersheds. Diversity is a product of habitat size. The bigger the habitat, the more diversity one sees. The more insulated the habitat from external factors, the better it is able to maintain its function. Matrix influence is another term for the study of what goes on when habitat "patches" are surrounded by other (usually human in origin) land uses. From the throwing of grass clippings into a forested area, to the introduction of noise and other human activity, all of these form negative effects for species diversity. The natural heritage system plays a role in the maintenance of watershed health. Natural systems handle natural events better (e.g., storm water run-off). Also, the Authority was not only interested in the protection of rare species, but also in the species that are "part of our native biodiversity". Ms. Lewis emphasized the importance of the valley and stream corridors and characterized them as a "finite land base" that provides a "natural cover" within the Don River watershed. In her estimation, the Don watershed has about eight percent forest cover, "but the Wilket Creek sub-watershed, which is part of the lower west Don sub-watershed, has about 10 percent forest cover." She indicated that work carried out regarding "the science of landscape ecology and conservation biology suggests that a landscape should have at least 30 percent forest cover if you are to maintain a healthy system or a functioning system". As far as the appellant's property was concerned, while the forest area had a long shape, with convoluted edges and was surrounded by an "urban matrix" and therefore scored "poorly", it also contained a "forest interior" – "an area of forest that's at least 100 metres from any edge".

With regards to the deck structure, this development introduced a new "edge" into the picture and "we have taken what is an urban matrix influence and inserted it further into the forest." She pointed to light, noise and human presence as factors that make habitat less valuable to a species. Her work at the Authority led her to believe that other landowners (not just in this valley) would make similar applications. In her words, "protection of the land base, the valley and stream corridor and natural heritage system, as it exists today, is really paramount." Introducing the deck structure into the natural heritage system has a "negative effect on the conservation land of this part of the Don watershed."

The Authority's Senior Manager of Planning and Development, Mr. Steven Heuchert, testified that he, along with his team of planners, are responsible for development application review for the City of Toronto and parts of the Durham region. His planners handle hundreds of permit applications a year and on average deal with one inquiry per week seeking to develop over the top of bank.

His opinion regarding the deck structure was, as follows. It is located on an "undeveloped and on a forested valley slope." In terms of the PPS, it is in a "significant area" as it is a "significant valleyland" as well as a "significant woodland". He indicated that the Authority's objective was to preserve valley systems, not degrade them; to enhance them, and to not permit development where there is no "compelling public interest" to do so. He was concerned about the precedent value were this structure to be approved. The effects could be felt in the rest of the Authority's watershed and would not be confined to just this one.

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Mr. Heuchert pointed out that there had been no attempt to minimize the deck structure's effect on the significant area. Had an effort been made to minimize the effect, the structure would have been located somewhere else, especially in an open, undeveloped back yard above the top of bank. As he put it, "[t]he only reason it's on the slope is because the owner wishes it there."

Mr. Heuchert took the tribunal to the applicable policies and unlike Ms. Nott, the appellant's planner, he viewed the application as one being for new development on the slope. He pointed to section 4.1.1, as support for his position that new urban development should not be permitted within valley and stream corridors except in areas of "existing development". The deck was not replacing anything; there was no existing development. It should not be permitted. An example of "existing development" could be found in places like Rosedale, where houses have been built over the top of bank, swimming pools have been located on the valley floor and there are decks that "overhang the valley". Even if one were to apply section 4.2.2 E as Ms. Nott had done, Mr. Heuchert could not agree that the deck met the necessary criteria. He saw impacts that had not been minimized; there were opportunities to place the deck elsewhere and not on the valley wall; there was no apparent reason to locate the deck on the valley wall. Permitting a deck in the location at issue would open the door to further development on the valley wall in this particular area. Mr. Heuchert counted at least 60 lots in this location that could "potentially develop in a similar way." He took the square footage of the present structure, multiplied it by 60 and postulated that "30,000 square feet of impact or degradation to the natural heritage system and the valley system in this location" could occur. He explained how the Authority took a "holistic" approach to applications (as opposed to a site-by-site approach) and projected potential impacts across their jurisdiction. He was concerned that the continual "nibbling" away at the roughly eight percent natural heritage system in the City of Toronto (most of which lies in the valleys) was "completely antithetical to the objectives of the Conservation Authority through its policies."

Mr. Heuchert also addressed the application in terms of the PPS and took note of the fact that the PPS describes itself as representing minimum standards. His opinion was that building below the top of valley bank is not compatible with the Policy that says natural features and areas are to be protected for the long term. Negative impact on "natural features and their ecological functions" could be avoided by simply locating the deck structure elsewhere on the property.

The Authority's main objection to the application was that it affected the "conservation of land". To that end, Mr. Heuchert described the Authority's understanding of that phrase. The phrase "represents the whole ecosystem". It consists of the "landform", as well as "the ecological features and functions that are associated with that natural heritage system." The ecosystem is comprised of land, air, water, flora and fauna. He concluded by saying that the application did not meet applicable policies, that it was "antithetical" to the Authority's protection efforts and that its precedential nature and the resulting cumulative impacts would have an adverse impact on the conservation of land.

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(c) The Parties' Positions

The appellant's position is that his deck complies with all applicable policies and planning laws. As well, he lives in a highly urbanized environment and the two-tiered deck structure has such a minimal impact on the conservation of land that he should be allowed to keep it. The TRCA's policies acknowledge that in such an environment, there are bound to be applications for such minor appurtenances as decks and they can be allowed as exceptions to the general rule against development.

The TRCA's position is that the valley corridor lands are not highly urbanized; they have an important natural connective function within watersheds; erosion of their natural qualities will set an undesirable precedent across their jurisdiction; and there will be a negative impact on the conservation of land if the deck structure is allowed. The structure does not comply with applicable policies and will set the stage for many other similar applications that will erode the natural watershed systems.

(d) Findings and Conclusions

A two-tiered deck structure was built without conservation authority permission on a valley wall in an area regulated by the TRCA. The tribunal has been asked by the owners to grant permission after the fact. The tribunal can find no satisfactory basis in any of the applicable policies that would lead it to conclude that such permission should be granted. The fact that the structure exists has been relied on by the appellant to justify its "fit" within the relevant policies. The appellant argues that it has had no impact that cannot be mitigated in some way (according to the appellant's consultants); it's being permitted will not set a precedent; and it is located within an already highly urbanized environment.

The tribunal agrees with TRCA witness Mr. Heuchert that the fact that the deck has already been built should not be a determining factor. However, in some way, its existence actually helps bolster the Authority's case in that it represents what could happen were the phrase "conservation of land" ignored or treated casually. The deck structure sits on the valley wall and its presence is in stark contrast to the natural qualities of the valley wall itself. It takes up space (approximately 500 square feet); it cuts out light underneath it; it facilitates easier access by people on to the valley wall and it allows them to spend time there. Much was made of the fact that the public already has access to the valley floor (dirt and paved pathways) and this structure is no different. However, the simple truth is that the structure represents more than just another means of access; it is a large structure that invites people (in various size groupings) to sit (figuratively and literally) on the valley wall. They are not being invited to pass down the wall by way of a pathway (which under the policies is a passive use), they are being invited to stay on the wall and perhaps have a drink, or eat, or listen to music, or have a party. These are all hypotheticals; however, the appeal of the structure as a place to stay and socialize cannot be ignored.

The structure's presence also demands that a new approach to the natural environment be taken – one that lies outside the bounds of simply letting the forest look after itself. The owner has already felt it necessary to takes steps to protect his newly built home by attaching cables to nearby trees to prevent them from falling on the house. What efforts would

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be needed to protect the deck and its users from the trees that surround it? Trees fall, even when slopes are stable. Instead of the natural environment being protected, it would be seen as something that had to be manipulated or controlled to protect the man-made feature.

The appellant argued that granting permission would not set a precedent. The tribunal disagrees with this view. The word "precedent" means that something (a previous decision for example) acts as a guide for subsequent cases. It becomes a rule for deciding a similar set of facts. Being the first deck structure in this part of the valley corridor of Wilket Creek, the feature would set the standards for exemptions to the Authority's rules. The example would be used in other jurisdictions as well, as long as a similar set of facts existed - never mind the Authority's fear that there is the potential for sixty similar applications in the immediate area. The tribunal agrees with the Authority that granting permission for this structure will very likely act as a springboard for other applications.

How should the phrase "highly urbanized environment" be dealt with? This phrase was used by the appellant's planner to justify the proposed development as an exception to the rule against development. She maintained that one had to take the existence of residences (including those located outside the valley corridor) and existing ancillary structures such as pools and steps into consideration when interpreting the Program's policies. Looking at the area this way, she characterized it as "highly urbanized" thus allowing her to apply the policies dealing with "existing development". On the other hand, the respondent's planner focused on the valley corridor itself and said that it was not developed in this area. He referred to the Rosedale area as an example where there is existing development ("there are swimming pools on the valley floor" and "decks that overhang the valley"). In his view, the Program's policies – specifically those dealing with "new development" in a valley and stream corridor that had not been developed should be interpreted to prohibit what was being proposed.

The tribunal agrees with the Authority's interpretation of the Program's policies and disagrees with the appellant's planner that a wide net should be cast when trying to discern the area in question. It is apparent when reading the document as a whole that there is a deliberate focus on the preservation of valley corridors and that these are very clearly defined through words and drawings. There is a distinction between valley corridors that contain historical development and those that are undeveloped. In areas of "existing development", the Program correctly acknowledges that development has occurred on valley walls in the past and that the policies have to work with that fact. However, the imposition of new development on valley walls that have retained their natural qualities is not permitted. This is the tone set throughout the Program's policies. The appellant's argument would have the effect of allowing development anywhere that housing is present (even housing located outside the valley corridor), thereby making the Program's wording illogical. The Authority's interpretation is both logical and reasonable, given the Program's purpose, vision and objectives.

In conclusion and despite the valiant attempt by the appellant's counsel to persuade the tribunal to grant permission, the tribunal finds no support for such a decision. The conservation of land in these valley corridors is a key component of the Authority's objectives. The Program reflects this fact. The evidence depicts a structure that intrudes into the valley corridor and takes up space that would normally be used by plants, animals and the like. With a deck structure sitting in the midst of large trees on a valley wall, nature will have to be made to

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work around human activity. Indeed, the activity itself could lead to further impact on the natural environment. The quiet reflective reading of a book on a pleasant summer's day could just as easily be replaced by a more boisterous party with all its attendant characteristics and consequences. The precedent for further intrusion on to the valley wall would be set.

This appeal will be dismissed.

There will be no costs awarded in this matter.