

## Judge grants preliminary injunction limiting work on Carleton Island project

Times staff report  
May 21, 2024

1 of 3



TILT says that many trees and 90-95% of the understory and 30-35% of trees on the property were cleared. Provided photo

CAPE VINCENT — A judge has granted a preliminary injunction preventing any additional clearing or excavation work on property surrounding Carleton Villa on Carleton Island, but limited the order to include only land within 100 feet of the St. Lawrence River shoreline.

The Thousand Islands Land Trust is seeking a permanent injunction in state Supreme Court preventing Ronald Clapp, owner of the 6.9 acre Carleton Villa property, from clearing or excavating land as he works toward his intended plan to build 12 cabins and a bath house for camping, several hundred feet of docks and later restore the villa.

The trust, which owns an adjacent property, claims that a conservation easement and declaration of restrictions it was granted in 1986 encumbers the villa property, limiting its development and preserving its natural environment. The easements and restrictions were developed by the former St. Lawrence-Eastern Ontario Commission in 1986 as Patten Development planned to subdivide the island for low-impact, single-family residents on minimum lots of five acres.

Clapp disagreed with TILT's interpretation of the property restrictions and in April workers began clearing trees and other vegetation with an excavator, prompting TILT to bring its legal action. Clapp then contended that, as the work had already been completed, no controversy existed. However, he would not assure that more work would not take place. Photos of the work show several piles of tree trunks and limbs piled high along TILT's property line beneath the ruins of historic Fort Haldimand.

In an order issued Monday, Judge James P. McClusky said TILT's reading of the easement was too broad as it pertains to the entire villa parcel, but that there are significant limitations contained in the easement regarding development within 100 feet of the shoreline. Clapp first cleared shoreline in South Bay in October without permission from TILT nor the Department of Environmental Conservation, which has also investigated the clearing.

Among the restrictions are the inclusion of a 10-acre buffer zone around Fort Haldimand, the ruins of a British fort built in 1778 which TILT owns. Fort Haldimand has been on the National Register of Historic places since 1978.

Judge McClusky wrote in his decision that TILT presented witnesses and evidence "that demonstrate a likelihood that those restrictions have been violated."

The judge said the violations included excavating within the Fort Haldimand buffer zone without providing TILT the requisite 30-days' notice for such work called for under the declaration of restrictions. The judge noted that it did not appear that the excavating itself was a violation, only that proper notice was not given.

TILT had also argued that Clapp's project is a commercial activity allowing no excavation. Judge McClusky said the easement does not prohibit all excavation, only "commercial excavation."

"No proof has been presented that commercial excavation has occurred," the judge wrote in his ruling.

The judge further considered whether TILT could suffer "irreparable injury" absent the granting of a preliminary injunction. He said that an injunction is not available if a litigant can be fully compensated by a monetary award for any claimed damages. He said TILT's property agreements anticipated violations and state that any violator "must restore the lands."

"Though this suggests that a monetary award is available money would not make (TILT) whole; there is no guarantee that the vegetation growth would return or that the fauna would rebound," Judge McClusky wrote.

He ruled that the "balance of equities" tipped in TILT's favor. He said Clapp and his development company, Carleton Villa Inc., are still in the process of getting approval for the project through the town of Cape Vincent and "are not now in the position to be able to complete their development."

Island residents have reported to the Times the disruption of habitat of beaver, migratory waterfowl and white tail deer related to the clearing within the buffer zone.

The judge ruled that Clapp is enjoined from doing any work on the property within 100 feet of the shoreline without written approval from TILT or further order of the court.

The project has drawn severe opposition from the owners of the remainder of the 1,400 acre island. A group, the Friends of Carleton Island formed in December to discourage the Town of Cape Vincent from approving special use permits and zoning variances to allow for commercial development on the island. The group has grown to include members of the Cape Vincent community who reside on mainland.