

**Applicants:** Robert and Norman Bush  
**File No.:** 60-C-217846  
**Municipality/Twp:** Unincorporated Township of  
Pettypiece, in the District of Kenora  
**Subject Lands:** PIN 42133-0089, Part 1 of Plan 23R11060,  
and Part of Broken Lot 4 and Lot 5,  
Concession 1, in the Unincorporated  
Township of Pettypiece, in North East Bay  
of Black Sturgeon Lake, in the District of  
Kenora

**Date of Decision:** October 20, 2023  
**Date of Notice:** October 20, 2023  
**Last Date of Appeal:** November 9, 2023

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## NOTICE OF DECISION

### On Application for Consent Subsection 53(17) of the Planning Act

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On **the above noted date**, the Minister of Municipal Affairs and Housing (MMAH) gave a provisional consent to Application No. **60-C-217846** (proposed Lot 1) for the creation of a new resource-based recreational lot, as water access only, in respect of the land described as PIN 42133-0089, in the unincorporated Township of Pettypiece, in the District of Kenora. A copy of the decision is attached.

#### **Who Has Appeal Rights**

Other than the applicant, only a “specified person” or “public body”, as defined in s. 1(1) of the *Planning Act*, has the ability to appeal the decision to the Ontario Land Tribunal.

#### **When and How to File a Notice of Appeal**

Notice to appeal the decision to the Ontario Land Tribunal must be filed with the Minister of Municipal Affairs and Housing on or before the last date of appeal as noted above.

The notice of appeal should be sent to the attention of Sylvie Oulton, Senior Planner at the address shown below and it must,

- (1) set out the reasons for the appeal, and
- (2) be accompanied by the fee prescribed under the Ontario Land Tribunal Act in the amount of \$400.00, payable to the Minister of Finance, Province of Ontario.

#### **What Name Can a Notice of Appeal be Filed in**

Only individuals, corporations or public bodies may appeal decisions in respect of applications for consent to the Ontario Land Tribunal. A notice of appeal may not be filed by an unincorporated association or group. However, a notice of appeal may be filed in the name of an individual who is a member of the association or group.

#### **Effect of Written and Oral Submissions**

There were no written or oral submissions for this application.

#### **How to Receive Notice of Changed Conditions**

The conditions of a provisional consent may be changed at any time before the consent is given.

You will be entitled to receive notice of any changes to the conditions of the provisional consent if you make a written request to be notified of changes to the conditions of approval of the provisional consent.

#### **Other Related Applications**

60-C-235558 and 60-C-235866

#### **Getting Additional Information**

Additional information about the application is available for public inspection during regular office hours at the address shown below.

#### **Mail Address for Notice of Appeal**

Ministry of Municipal Affairs and Housing  
Municipal Services Office North (Thunder Bay)  
435 James Street South, Suite 223  
Thunder Bay, ON. P7E 6S7  
Attention: Sylvie Oulton, Senior Planner  
Telephone: (807) 630-3486



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Victoria Kosny, Manager  
Community Planning and Development

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The Minister's conditions to the granting of consent for this transaction **which must be fulfilled within two years from the date of this letter** are set out below. These conditions must be fulfilled prior to the granting of consent.

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No. Conditions

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1. That this approval applies to the creation of one new water access parcel of land (proposed Lot 1) of approximately 13 hectares in size, for resource-based recreational use, while a 26-hectare parcel would be retained.

That this approval also applies to permit the creation of a right-of-way / easement over the retained and severed Lot 3 and Lot 2 for access to Lot 1; and for an easement over Lot 1 for access to the remainder of Lot 5, PIN 42133-0088 (see **APPENDIX A** to the Decision).

2. That the following documents be provided for the transaction described in Condition 1:
  - a. A copy of the application to transfer documents;
  - b. A schedule to application to transfer on which is set out the entire legal description of the parcel(s) in question. This Schedule must also contain the names of the parties indicated on application to transfer;
  - c. A reference plan of survey, which bears the Land Registry Office registration number and signature as evidence of its deposit therein, illustrating the parcel(s) to which the consent approval relates; and/or a legal description of the lands to be severed (and retained if requested) which is acceptable to the land registrar.
3. That prior to final approval, this Ministry must receive a letter from the Northwestern Health Unit (NWHU) which states that both the severed and retained parcels have been inspected by the NWHU and are suitable for the installation of a subsurface sewage system or that the existing systems meet their requirements.
4. That prior to final approval, a letter is received from a parking and docking facility or marina that they have four available parking and docking spaces for the owners of the severed and retained parcels.
5. That prior to final approval, and pursuant to subsections 53(12) and 51(25) and 51(26) or (27) of the Planning Act, the applicants shall enter into a Consent Agreement for the severed and retained parcels with the Ministry of Municipal Affairs and Housing (MMAH), to its satisfaction, addressing the potential development of the lands, including:
  - a) the parcels can only be used for resource-based recreational uses (including a recreational dwelling) and is not to be used for permanent residential, commercial or

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industrial uses;

b) a restrictive covenant, prepared to the satisfaction of the Ministry of Municipal Affairs and Housing, prohibiting the use of the parcels for permanent residential, commercial or industrial uses will be registered on title;

c) the Consent Agreement will be registered on title;

d) provisions to obtain undertakings from the applicants and/or the applicants' lawyer to implement conditions and requirements (e.g. registering the restrictive covenant and Consent Agreement on title); and,

e) certain standard and site-specific requirements and notification provisions be identified, including those in **SCHEDULE 1** to the Decision.

f) provisions relating to the enforcement of the Consent Agreement and compliance with the restrictive covenant.

6. To ensure no adverse negative impacts to the ecological integrity and functions to adjacent natural features outlined in the Environmental Impact Study completed by PINCHIN in January 2023, the following should be provided prior to final approval:

a) A Tree Inventory Plan to minimize or avoid impacts to breeding birds prior to any site alteration or construction taking place.

b) A Site Plan with Erosion and Sediment Control measures with protection measures of the surrounding features for the construction on the site.

c) A formal written undertaking by the proponents indicating that works as a result of recommendations noted in the Tree Inventory Plan and Erosion and Sediment Control measures (from 6 a) and b) above) shall be carried out.

7. That prior to final approval, the applicants shall cause a restriction to be registered on Lots 1 and 2, as shown on the attached sketch identified hereto as **APPENDIX A** to the Decision, in wording acceptable to the Ministry of Municipal Affairs and Housing, having the effect that:

a. To protect fish habitat, removal of shoreline vegetation in the riparian area 30 metres back from the high-water mark will not be permitted along identified fish spawning area shown in red on the shoreline in **APPENDIX A** to the Decision.

b. To protect fish habitat, no in-water work between April 1<sup>st</sup> and June 20<sup>th</sup> shall be permitted.

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8. This Ministry is to be advised in writing by the transferor that the Offer of Purchase and Sale agreement, or alternatively an acknowledgment by the transferors and transferees if the transaction is between family members, contains the following clause:

- a. That the Province of Ontario does not guarantee road access to the properties and that private owners who rely on the Crown road for access may need to assume costs and responsibility for upkeep and maintenance of the access road.
- b. That mitigation measures to protect fish habitat from the Fish Habitat Review prepared by NorthWinds Environmental Services in July 2023 as outlined in **APPENDIX B** to the Decision be read and followed during the development of the properties.

The following NOTES are for your information:

NOTES:

1. The required Transfer/Deed of Land form and Schedule page shall contain a complete and accurate legal description. The Minister's certificate of consent will be affixed to the completed Schedule page. For this reason, the names of the parties also must be set out on the Schedule page, so that the consent may be properly related to the intended conveyance.

If the applicant(s), in making the application for consent,

- (a) requested that the certificate be given;
- (b) provided a registrable legal description of the retained land; and
- (c) provided a statement from an Ontario solicitor in good standing that there is no land abutting the subject land that is owned by the owner of the subject land other than land that could be conveyed without contravening section 50 of the Planning Act.

then the Minister will give the applicant a certificate for the retained land.

Inaccuracies or omissions with regard to the legal description in the Transfer/Deed of Land form, the Schedule page or the survey plan will result in the documents being returned without consent.

2. All Buildings, including those in unorganized territories, have been required to comply with the Ontario Building Code since December 31, 1975. At this time in unorganized territory, building permits and the payment of permit fees are not required. Inquiries about the Building Code should be made to:

Buildings and Development Branch  
Ministry of Municipal Affairs and Housing  
17<sup>th</sup> Floor, 777 Bay St.  
Toronto, ON M5G 2E5  
Telephone: (416) 585-7041  
[codeinfo@ontario.ca](mailto:codeinfo@ontario.ca)

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3. Owners and prospective buyers should contact the Northwestern Health Unit for all sewage systems that require a permit, including greywater systems but excluding pit privies. The importation of suitable fill may be required to construct sewage treatment systems to the satisfaction of the Health Unit. The Health Unit can also provide information on construction requirements, including minimum distances required between sewage systems and sources of potable water.
4. Please notify the Ministry of Citizenship and Multiculturalism (MCM) (at [archaeology@ontario.ca](mailto:archaeology@ontario.ca) or 416-314-7620) if archaeological resources are impacted by any ground disturbing work. All activities impacting archaeological resources must cease immediately, and a licensed archaeologist is required to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.

If human remains are encountered, all activities must cease immediately and the local police as well as the Registrar, Burials of the Ministry of Government and Consumer Services (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, MCM should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act.

5. New wells must be installed in accordance with the requirements of Ontario Regulation 903 (Wells). Water quality and quantity testing should be completed for each new parcel in accordance with MECP's "Technical Guideline for Private Wells" (1996) and conducted by a qualified professional. If water from test wells exhibit values for health and aesthetic parameters that are above the Ontario Drinking Water Standards, the water must be treated prior to consumption. Upon well installation, a qualified professional should also demonstrate that there is an adequate quantity of groundwater available to meet the requirements of the residence without interference to adjacent properties.
6. It is the applicant's and/or agent's responsibility to fulfill the conditions of consent approval within **two years of the date** of this letter pursuant to Section 53 of the *Planning Act*. **We will issue no further notice or warning of the expiration of the two-year period.**

If the conditions to consent approval are not fulfilled within two years of the date of this letter and the applicant is still interested in pursuing the proposal, a new application will be required. All documentation required for final approval should be provided to the Ministry of Municipal Affairs and Housing a **minimum of one month prior to the lapsing date.**

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## **SCHEDULE 1**

Preliminary list of standard and site-specific requirements and notification provisions.

- a. That the Province of Ontario does not guarantee road access to the property and that private owners who rely on this road for access may need to assume costs and responsibility for upkeep and maintenance of the roadway access.
- b. Prior to any development taking place on the proposed severed and retained lands, mitigative measures to protect fish habitat recommended by NorthWinds Environmental Services should be followed, including avoiding in-water work between April 1<sup>st</sup> and June 20<sup>th</sup> during the walleye and northern pike spawning window; and preserving a 30 metre vegetated buffer zone along the shoreline.
- c. That no assessment has been undertaken for groundwater quality or quantity. Groundwater supplies may not be adequate to support the use of individual private wells, should this source of water be used in future.
- d. Should wells be considered as drinking water sources, they must be constructed in accordance with Regulation 903 - Wells, under the Ontario Water Resources Act.
- e. Water from Black Sturgeon Lake should not be used for human consumption unless it is disinfected and/or treated to meet the Ontario Drinking Water Quality Standards, as stipulated in O. Reg. 169/03 of the Safe Drinking Water Act.
- f. Small private sewage disposal facilities which have a daily sewage flow of 10,000 litres or less per day must be certified by the Northwestern Health Unit. Large private sewage disposal facilities which have a daily sewage flow of >10,000 litres, or communal systems, must be approved by the Ministry of the Environment, Conservation and Parks. The Northwestern Health Unit should be contacted for information on the proper installation and operation of Class IV septic systems and Class I (pit privy) sewage systems.
- g. Domestic waste must be appropriately handled and disposed of at an approved waste disposal facility.
- h. The use of Best Management Practices for shoreline development is strongly recommended. Best Management Practices such as shoreline naturalization and vegetated buffer strips can reduce the adverse effects of shoreline development on inland lakes. It is recommended that sewage systems be located where native soils are deepest, and at the furthest distance possible from the shoreline. Additional resources regarding Best Management Practices are listed in Appendix B of the Lakeshore Capacity Assessment Handbook, 2010, available at: <http://www.ontario.ca/environment-and-energy/lakeshore-capacity-assessmenthandbook-protecting-water-quality-inland-lakes>.

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- i. Public participation in the Lake Partner Program to assist in understanding the health of Ontario's Lakes is encouraged. For more information on the Lake Partner Program please see the following website (<https://desc.ca/programs/LPP>).
- j. A total of 22 Species at Risk (SAR) were identified as having potential occurrence on the site, resulting from the background review of the Natural Heritage Information Centre (NHIC) records and other available sources for the Study Area. Based on the background and field assessments, 12 SAR were determined to have suitable habitat on the site but none of the listed species were observed or recorded on the site.

#### Recommended Mitigation Measures

If wildlife is encountered during construction, work should cease immediately and allow the animal to naturally move out of the construction zone. If the animal does not leave the area for a prolonged period of time, a qualified biologist should be consulted for response or mitigation measures. If an animal is injured or deceased or if a Species at Risk is found on the site, Ministry of the Environment, Conservation and Parks (MECP) SAR Ontario Branch ([SAROntario@ontario.ca](mailto:SAROntario@ontario.ca)) should be contacted for guidance and handling.

Please visit "How to avoid authorization" and "Permit types" (<https://www.ontario.ca/page/how-get-endangered-species-act-permit-or-authorization>) for more information.



# SKETCH FOR SEVERANCE APPLICATION

APPENDIX A

SCALE - 1:5000  
 0m 50m 100m

fish spawning area



BLACK STURGEON LAKE

CONCESSION 2

23R-11060

LOT 1  
60-C-217846

LOT 2  
60-C-235558

LOT 3  
60-C-235866



(ROW 1110m<sup>2</sup>)  
185m  
PROPOSED

CONCESSION

TO BE SEVERED  
13ha

TO BE SEVERED  
12ha

TO BE SEVERED  
12ha

TO BE RETAINED  
26ha

BROKEN

LOT

4

LOT

934m

PART 1,  
TOWNSHIP

LIMIT BETWEEN BROKEN LOT 4 AND LOT 5

proposed easement

RIGHT-OF-WAY

845m  
(ROW 2130m<sup>2</sup>)  
ON EXISTING ACCESS ROAD

732m

805m

LIMIT BETWEEN LOTS 3 & 4

LOT

CROWN

OF  
(ROW 1770m<sup>2</sup>)  
295m

PETTYPIECE

proposed easement

(ROW 630m<sup>2</sup>)  
105m

355m

CROWN

80  
ACCESS FROM  
JONES ROAD

LOCATION

JES

PIN 42133-0088

**METRIC**  
 DISTANCES SHOWN ON THIS  
 PLAN ARE IN METRES AND  
 CAN BE CONVERTED TO FEET  
 BY DIVIDING BY 0.3048

|  |  |                  |  |
|--|--|------------------|--|
|  | <b>TBT ENGINEERING</b><br>CONSULTING GROUP<br><small>TBT SURVEYORS INC. - A WHOLLY OWNED SUBSIDIARY OF TBT ENGINEERING LIMITED</small> |                  |  |
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| DRAWN BY: PD   | CHECKED BY: PdeH   | DATED 2021/08/09 |  |
| DWG No.: Y:\Projects\P21-603 MENC PLANNING\Microsurvey\21-603sketch.dwg              |  |                  |  |



## APPENDIX B – MEASURES TO PROTECT FISH HABITAT

|  | Mitigation Measures   |
|--|---|
| Prevent the death of fish                              | <ul style="list-style-type: none"> <li>• Avoid using explosives in or near water.</li> <li>• Avoid in-water work between April 1<sup>st</sup> and June 20<sup>th</sup> (walleye and northern pike spawning window in northwestern Ontario).</li> </ul>  |
| Maintain riparian vegetation                           | <ul style="list-style-type: none"> <li>• Preserve a vegetated buffer zone between areas of on-land work and the high-water marks of Black Sturgeon Lake, the small unnamed lake in Lot 5, and the unnamed stream connecting both waterbodies. The recommended minimum vegetated buffer by the Ontario Natural Heritage Reference Manual is 30 m.</li> <li>• Use existing trails, roads, and cut lines when possible.</li> <li>• Avoid tree removal to the extent possible.</li> <li>• If needed, use methods to prevent soil compaction (swamp mats or pads).</li> </ul>  |
| Carry out works, undertakings and activities on land   | <ul style="list-style-type: none"> <li>• Avoid in-water works.</li> <li>• Avoid placing fill or other temporary and permanent structures below the high-water mark.</li> <li>• Avoid fording watercourses.</li> <li>• Do not disturb or remove materials from the banks, shorelines, and bed of the lakes and the unnamed stream.</li> <li>• Avoid building structures in areas susceptible to erosion and unstable areas like bends, meanders, floodplains, alluvial fans, and braided streams.</li> </ul>   |
| Maintain fish passage                                  | <ul style="list-style-type: none"> <li>• Maintain fish passage by avoiding activities that may change water levels, interrupt water flow, and obstruct or interfere with the movement and migration of fish.</li> </ul>   |
| Ensure proper sediment control                         | <ul style="list-style-type: none"> <li>• Avoid introducing sediments in the water like silts, clays, and sands.</li> <li>• Install effective erosion and sediment control measures to stabilize all erodible and exposed areas during construction activities. Inspect and maintain the control measures regularly.</li> <li>• Dispose of and stabilize all excavated materials to prevent the runoff of sediments to the lakes and streams.</li> <li>• Avoid working under wet, windy, and rainy periods that may result in high flow volumes and increase erosion and sedimentation.</li> <li>• Regularly monitor the lakes and streams to identify signs of sedimentation during construction activities.</li> <li>• Use biodegradable erosion and sediment control materials whenever possible and remove non-biodegradable materials after stabilizing the site.</li> <li>• Operate machinery only on dry and stable land areas.</li> <li>• Stop working and contain sediment-laden water to prevent dispersal.</li> </ul> |
| Prevent entry of deleterious substances into the water | <ul style="list-style-type: none"> <li>• Avoid depositing any deleterious substances in the lakes and streams.</li> <li>• Keep an emergency spill kit on-site during construction activities.</li> <li>• Stop work and contain deleterious substances to prevent dispersal in the event of a spill.</li> <li>• Report any spills of sewage, oil, fuel or other deleterious substances near or into water.</li> <li>• Ensure adequate clean-up measures in the event of a spill.</li> <li>• Maintain all machinery on-site in a clean condition and free of leaks.</li> <li>• Refuel, wash, and service machinery and store fuel and oils to prevent the entry of deleterious substances into the water.</li> <li>• Dispose of all waste above the high-water mark of any waterbody.</li> <li>• Ensure that construction materials are handled and treated to prevent the release of deleterious substances into the water.</li> </ul>   |