

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

BETWEEN:

THE PHILOSOPHER'S WOOL ENVIRONMENTAL PRESERVE

Applicant



- and -

THE COUNTY OF BRUCE

Respondent

APPLICATION UNDER the *Judicial Review Procedure Act*,
R.S.O. 1990, J.1. and Rule 68 of the Rules of Civil Procedure

NOTICE OF APPLICATION FOR JUDICIAL REVIEW

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar at the place of hearing requested by the applicant. The applicant requests that this application be heard at the City of Toronto in the Province of Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or not later than 2 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: October 30, 2023

Issued by _____
Local Registrar

London Courthouse
80 Dundas Street
London, ON N6A 6A3

TO: **THE COUNTY OF BRUCE**
1243 MacKenzie Road
Port Elgin, ON N0H 2C7

AND TO: **ATTORNEY GENERAL OF ONTARIO**
Crown Law Office – Civil
720 Bay Street 8th Floor
Toronto, Ontario M7A 2S9
Email: attorneygeneral@ontario.ca

APPLICATION

THE APPLICANT MAKES APPLICATION FOR judicial review of the decision of the Approval Authority for the County of Bruce dated September 26, 2023 to approve a Draft Plan of Subdivision under Section 51 of the *Planning Act*, R.S.O. 1990, c. P.13, File Number S-2022-015 for JHT2INV Development Inc. c/o John Hood Tidman, in respect of PLAN INVERHURON LOTS 6 TO 10; E VICTORIA ST W ALBERT ST, Municipality of Kincardine (Bruce Township), Roll Number 410826000411900 (the “Decision”). The Applicant seeks:

- (a) An order setting aside the Decision;
- (b) The applicant’s costs; and
- (c) Such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE APPLICATION ARE:

- (d) The respondent erred in law by failing to properly consider and apply ss. 51(24) of the *Planning Act*, R.S.O. 1990, c. P.13, including but not limited to failing to properly consider:
 - (i) Damage to Natural Systems: Environmental concerns from the destruction of Significant Wildlife Habitat (“SWH”), bypassing the *Endangered Species Act* (the “ESA”) and Regulations, and long-term damage to the ecological function and biodiversity of natural heritage systems in the area;
 - (ii) Water Quality and Pollution: Concerns of pollution and sediment accrual affecting water quality, especially in the Little Sauble River;
 - (iii) Impacts on Fisheries: Damage to the Little Sauble River fishery, impacting feedstock fish, brown mussels, and the larger fish that feed on them;
 - (iv) Loss of Habitat: Clearing required for the proposed development resulting in the loss

of habitat for at-risk species;

- (v) Lack of Proper Infrastructure: Relating to services, sewers, storm water management and transportation;
 - (vi) Access to Services: Lack of transportation to essential services such as stores, schools, post office etc.;
 - (vii) Location Proximity: The development's closeness to the Bruce nuclear power generating station;
 - (viii) Lack of Public Engagement: The respondent has failed to provide adequate notice and/or consultation. In addition, hundreds of constituents oppose the development. The respondent failed to consider public input including a petition; and
 - (ix) Fettering: The respondent's Mayor indicated that any modifications to the project were "above his pay grade," indicating a fettering of the respondent's discretion.
- (e) Rules 63.02 and 68 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
 - (f) Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

- (g) The affidavit of Tessa Gerling;
- (h) The record of proceedings herein; and
- (i) Such further and other material as counsel may advise and this Court may permit.

October 18, 2023

**ERIC K. GILLESPIE
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Counsel for the Applicant

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(DIVISIONAL COURT)

Proceeding Commenced at London

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