



Staff Report

Planning & Development Services – Planning Division

Report To: Committee of the Whole Meeting
Meeting Date: March 29, 2022
Report Number: PDS.22.049
Title: Recommendation Report – NEC Application 22-708 – Part Lot 18, Concession 5 being Part 2 on Plan 16R4184
Prepared by: Natalya Garrod, Planner I

A. Recommendations

THAT Council receive Staff Report PDS.22.049, entitled “Recommendation Report – NEC Application 22-708 – Part Lot 18, Concession 5 being Part 2 on Plan 16R4184”;

AND THAT Council direct staff to issue the comments and concerns identified in this Staff Report to the NEC and identify that the Town objects (at this time) to the proposed development until such a time that the Owners enter into a Municipal Land Use and Maintenance Agreement with the Town;

AND THAT Council recommends that the NEC consider siting the proposed new dwelling closer to the 5th Line (western section of the lot) to encourage the potential continued use of agricultural Class 1A soils;

AND THAT Council direct staff to continue to monitor this NEC Application, and to return and report back to Council as may be necessary, as this NEC application advances through the Niagara Escarpment Commission development review process.

B. Overview

This report provides information and a recommendation to Council regarding the Town’s response to a Niagara Escarpment Commission Request for comments related to NEC Application 22-664 for Part Lot 18, Concession 5, being Part 2, Reference Plan 16R-4184.

The proposed development that is the subject matter of this staff report has not yet demonstrated conformity with the Town of The Blue Mountains Official Plan policies that relate to development on a Town seasonal road.

C. Background

The Town received a Request for Comments from the Niagara Escarpment Commission (NEC) on February 4, 2022, regarding NEC File G/R/2021-2022/708.

Section 13(1) of the *Niagara Escarpment Planning and Development Act* (NEPDA) states that no municipality has jurisdiction in the NEC Area of Development Control, and as such the NEC has the authority to issue Development Permits on those lands. Through the Development Permit Application process NEC staff circulate a Notice of Application to the municipality in accordance with Section 25(1) of the NEPDA. In this case, the NEC process provides the Town of The Blue Mountains with the opportunity to comment with regards to the conformity with the Town's Official Plan policies and the Town's Zoning By-law (as if the Town's Zoning By-law had been in full force and effect).

Any NEC Application that would otherwise not be in conformity with Town's planning policies are to be reviewed by Council as per the Town's Delegation By-law. Town Planning staff (in consultation with other Town Departments) have reviewed this NEC application and have determined that this application does not yet conform with the Town's Official Plan policies. It is therefore being brought to Council for information and consideration.

Basic Information

Municipal Address: N/A (a vacant lot on the 5th Line)

Legal Description: Part Lot 18, Concession 5, being Part 2, Reference Plan 16R-4184

Related Report: Staff Report CSOPS.20.044 & Staff Report CSOPS-20-067

Water Access: Proposed Private Services

Sewer Access: Proposed Private Services

Road Access: Opened and seasonal road

Surrounding Uses: Agricultural uses.

The Development Permit Application as circulated by the NEC (see Attachment 1) proposes to undertake the following development on an existing vacant 3.2 ha (8 ac) lot:

- To construct a two-story $\pm 390.2 \text{ m}^2$ ($\pm 4200 \text{ ft}^2$) single-family dwelling including walkout, having a maximum height of $\pm 12 \text{ m}$ ($\pm 39.5 \text{ ft}$).
- Construct a stone patio 441.9 m^2 ($1,450 \text{ ft}^2$)
- Install an on-site sewage disposal system and drilled well,
- Construct an in-ground geothermal system.
- Install a fixed, base-mounted solar panel measuring 16 ft high by 24 ft wide,
- Install a buried hydro power line,
- Construct 1300.6 m^2 ($\pm 14000 \text{ ft}^2$) gravel driveway and parking area, and
- Install a new culvert at the entrance as per the design standards of the municipality.

The subject lands are approximately 3.2 hectares in area and located outside the settlement area of Banks and fronts along the 5th Line, a seasonal Town road located between Sideroads 15 and 18. This particular section of Town road is Classified as a Seasonal 6 road meaning that no winter maintenance is performed by the Town. The surrounding uses generally include agricultural lands.

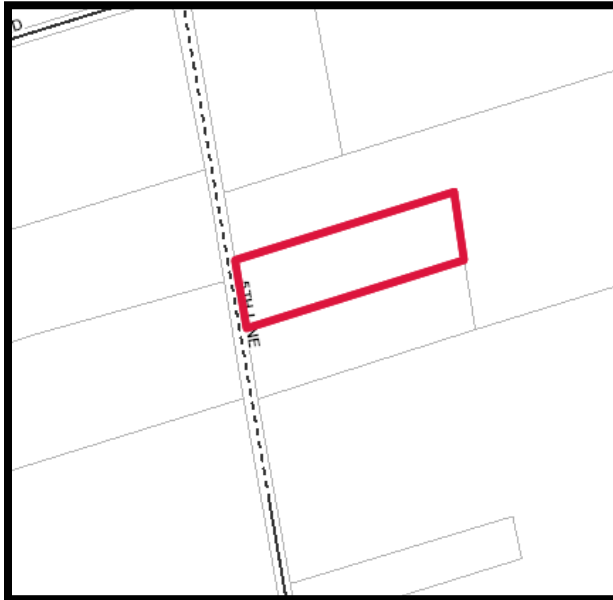


Figure 1: Key Map



Figure 2: Aerial Photo

The subject lands were severed from an original parcel that was part of Part Lot 5, Concession 18. This parcel was subject to Consent application B766/89 which was granted by severance by the then County of Grey Planning Approval Committee on September 7th, 1989. The Consent application was granted (subject to conditions) for the creation of this lot by the County.

On June 15th, 2020 the previous property owner of this lot (and the other “severed” lot abutting to the south) Mr. Doug Lowe undertook a deputation before the Council requesting the Town provide winter maintenance along this portion of the 5th Line as it is an opened seasonal road. In response the Town’s Operation Department submitted Staff Report CSOPS.20.044, entitled “Request for Winter Maintenance Services at the then Doug Lowe properties along the 5th Line” in September 2020 (see Attachment 2). Council directed staff to provide a follow-up report with additional details that includes cost sharing that would be required to upgrade a road, the status of the conditions of approval for the creation of the lots, whether the improvement of 5th Line could be a local improvement area charge that includes communication with the neighbouring property owners and the Town’s liability.

In December 2020 the Operations Department Staff submitted a follow-up report CSOPS.20.067 entitled “Request for Winter Maintenance Services at Lowe Properties – Follow Up” to Council (see Attachment 3). Upon review of this follow-up report Council directed Town staff to pursue the use of a winter maintenance agreement subject to, but not limited to, posting of adequate securities and insurance liability coverage; indemnity clauses; winter maintenance equivalent for a Class 6 road; and consultation with the local snowmobile club.

The Town's Legal Department drafted a Municipal Land Use and Maintenance Agreement which included a number of provisions to address concerns related to liability and lack of municipal infrastructure and services available to the property (see Attachment 4). This Agreement was never executed by the previous property owner (Mr. Doug Lowe), and this property have since been sold to new owners (the same persons who have submitted this NEC Development Permit Application).

D. Analysis

This section provides the staff analysis based on relevant legislation and policies. Summaries of policies are provided in the following sections.

Planning Act 1990

The *Planning Act* sets the framework for Planning Policy that is used as the basis for decisions on development applications. The *Planning Act* requires that decisions rendered under the *Act* must be consistent with the Provincial Policy Statement (PPS); conform or not conflict with the Niagara Plan; and conform with the policies of the Official Plan which apply to the lands.

Provincial Policy Statement 2020

The Provincial Policy Statement (PPS) 2020, provides policy direction on matters of Provincial Interest related to land use planning and development and applies province-wide except where this policy statement or another provincial plan provides otherwise. Provincial plans such as the Niagara Escarpment Plan build upon the policy foundation provided by the PPS and provide additional land use planning policies to address issues facing specific geographic areas in Ontario such as the Escarpment.

Section 1.0 Building Strong and Healthy Communities

Section 1.0 of the PPS promotes Building Strong Healthy Communities through the management and directing of land use to achieve efficient and resilient development and land use patterns. These communities are sustained by avoiding development and land use patterns which may cause environmental or public health and safety concerns and ensuring that necessary infrastructure and public service facilities are or will be available to meet current and projected needs.

The proposed development raises public health and safety concerns as a result of frontage on a seasonal road which is inaccessible in the Winter months by Fire and Emergency Services. As well, necessary public infrastructure is unavailable to the property as it is not serviced by water, garbage collection, wastewater, or hydro. These concerns could be addressed within a Municipal Land Use and Maintenance Agreement which has yet to be executed by a property Owner.

Section 2.0 Wise Use and Management of Resources

Section 2.0 of the PPS promotes long-term prosperity, environmental health, and social well-being of the province through the conservation of biodiversity, protection of the Great Lakes, and the protecting of natural heritage, water, agricultural, mineral and cultural heritage and

archaeological resources. No natural heritage features have been identified on the subject property and therefore no adverse impacts are anticipated.

Part 2.3 refers to the protection of prime agricultural area for the long-term. The Canada Land Inventory identifies the subject property as Class 1 Prime Agricultural soil. Planning authorities are encouraged to maintain and enhance the geographic continuity of the agricultural land base. The size of these lots within the prime agricultural area would not have been supported by the policies of the current PPS as they facilitate non-farm uses within agricultural areas however, the Consent that created this lot was granted 1989, and therefore residential uses are being contemplated at this time.

In conclusion, Planning Staff find that the concerns related to the current PPS could be addressed provided the applicant provides additional information to the satisfaction of the Town, and furthermore that the owner enter into a Municipal Land Use and Maintenance Agreement with the Town.

Niagara Escarpment Plan 2017

The NEP is not intended to limit the ability of municipal official plans, secondary plans and by-laws to set standards and policies that are more stringent than the requirements of the Niagara Escarpment Plan, unless doing so would conflict with the Niagara Escarpment Plan.

The subject lands are located within the Niagara Escarpment Commission's (NEC) Area of Development Control and as such the NEC has the jurisdiction to issue Development Permit Approval. Through the Development Permit Application process the NEC Staff undertake an in-depth review of Niagara Escarpment Plan (NEP) policies.

The subject property is designated Escarpment Rural Area within the NEP (see Figure 3 below). The intent of the Escarpment Rural Area is to provide for compatible Rural land uses and encourage and protect agricultural lands and prime agricultural area. The Permitted Uses of Part 1.4 of the NEP permits a single detached dwelling.

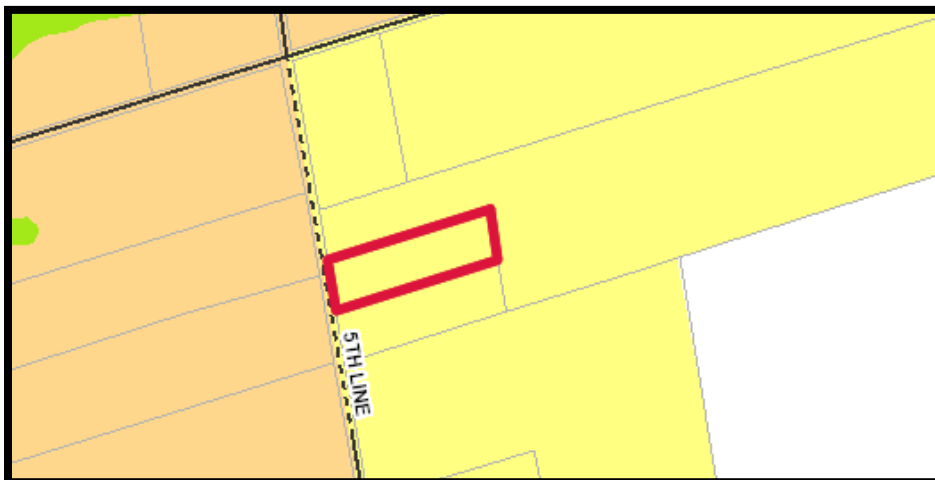


Figure 3: Niagara Escarpment Commission Land Use Designation

The NEP Development Criteria would not have permitted the creation of this lot today. The Development Criteria states that new lots created by Consent shall front onto an existing public road that is of reasonable standard of construction and generally maintained all year round. Additionally, lot creation in prime agricultural areas is discouraged and may only be permitted for specific uses identified within the plan.

However, the lot has already been created through the County of Grey Planning Approval Committee in September 1989. Planning Staff recognize that this 1989 severance was the mechanism which provided the opportunity for a non-farm land use to be considered for development on this subject property.

The Niagara Escarpment Plan does not contain specific policies limiting permitted uses within its applicable land use designation because an existing lot of record has lot frontage on a seasonal road. However the Niagara Escarpment Plan recognizes that Municipal Official Plans can contain more restrictive policies than that of the NEP, and that those Municipal Official Plan policies apply unless doing so would conflict with the NEP. In this case, the Town's Official Plan policy is more restrictive than the NEP and it does not conflict with the NEP, and as such the Town's Official Plan policy is therefore applicable within the Niagara Escarpment Planning Area. This will be covered in greater detail below as part of the Town Official Plan policy review.

Town of The Blue Mountains Official Plan 2018

The lands are designated Rural in the Town of The Blue Mountains Official Plan (see Figure 4 below). The Rural designation permits a single detached dwelling.

The intent of the Rural designation is to protect land suitable for agricultural production from development and land uses unrelated to agriculture and to protect the rural character of the Town and the maintenance of those elements which contribute to the open space character of the countryside. The proposed use is unrelated to agriculture, it is a residential use.

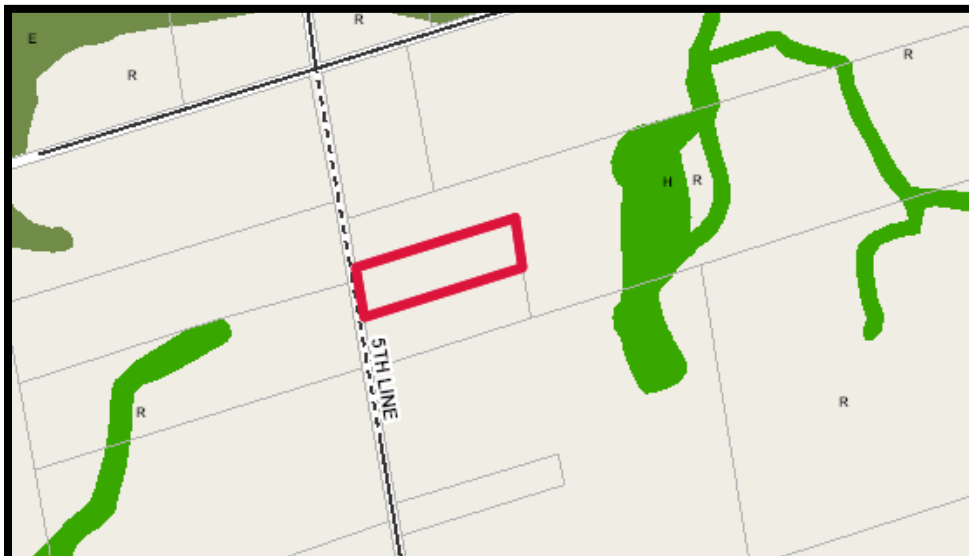


Figure 4: Town Official Plan Land Use Designation

For non-farmland uses within the Rural designation all of the policies of Section B4.4.4.1 apply.

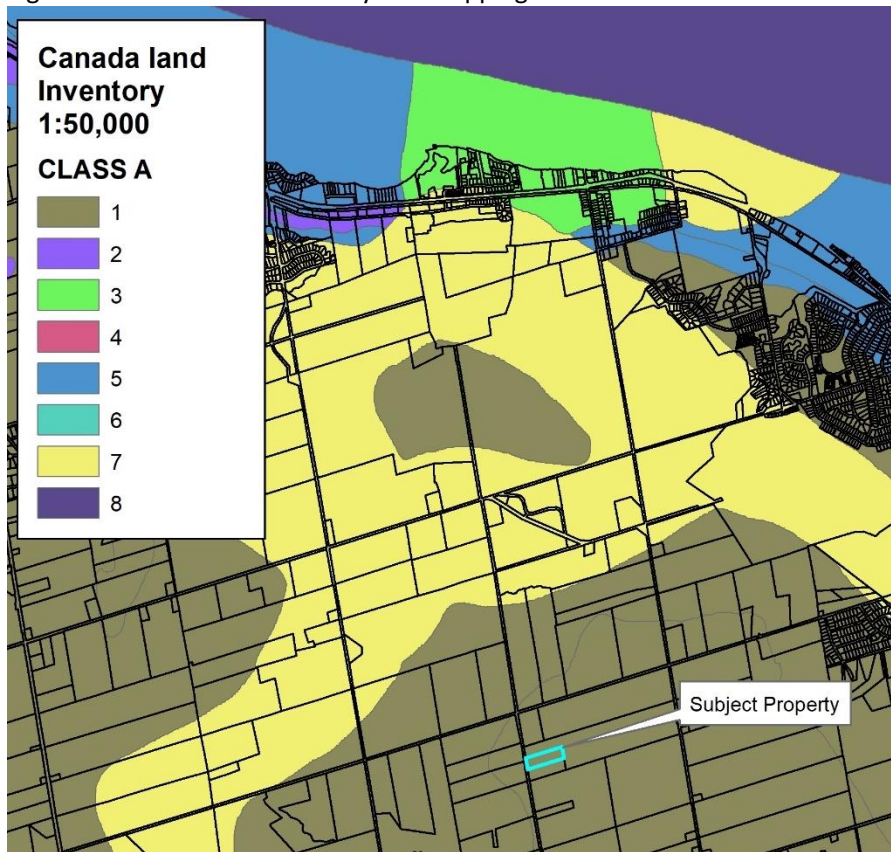
That *development* on improved agricultural land (i.e. land that is currently or has been previously used for farm purposes) shall be discouraged. Where *development* is proposed on improved agricultural land it must be demonstrated that no reasonable alternative exists. The investigation for a reasonable alternative shall be limited to the lot to be developed.

Staff Comments: The application has proposed a residential use on located on improved agricultural land (see Figures 5 and 6 below). While the residential use is “discouraged”, it is still a permitted use within this land use designation, and the 1989 severance facilitated the creation of this “non-farm land” lot size. The Application proposes the new dwelling to be located at the very rear of the property. Planning Staff recommend that the NEC consider siting the proposed new dwelling closer to the 5th Line (western section of the lot) to encourage the potential continued use of agricultural Class 1A soils.



Figure 5: Aerial Photo

Figure 6: Canada Land Inventory Soil Mapping



- a) If municipal services are not available, on existing lots of record or new lots, evidence of the site's suitability to provide an adequate *quality and quantity of water* supply and that the site can accommodate an approved sanitary sewage disposal system. Evidence of the site's suitability to accommodate an approved sewage disposal system shall be provided in the form of an evaluation conducted in accordance with Ministry of the Environment Guidelines or the Ontario Building Code, where applicable.

Staff Comment: The subject property is not serviced by municipal water or wastewater services. The Application proposes to install a private sewage disposal system and private well. NEC Staff will need to satisfy themselves that the site can provide adequate private sewage disposal system and water supply. A private sewage disposal system would also require a permit from the Town's Building Department under the Building Code.

- b) That adequate drainage and outlets are available for storm water runoff. Approval of drainage provisions may be required from the Town, the County, the Ministry of Transportation and/or the Conservation Authority having jurisdiction.

Staff Comment: The development of the lot for residential purposes will require the submission and approval of the Grading Plan (which will address storm water runoff around the dwelling) at the time of issuance of any Building permit. As for the 5th Line it currently has no defined or managed ditches to properly convey surface water run-off. This

“Seasonal” section of the 5th Line is currently a narrow and gravel-surfaced road that follows the topography (i.e. no embankments) with generally no ditching. Adequate road platform drainage and outlets for stormwater runoff for adjacent private property is not provided. Recognition of these deficiencies may be addressed within the Municipal Land Use and Maintenance Agreement.

- c) That access to the site is from a public highway of reasonable construction and open and maintained on a year-round basis and is appropriate for the use proposed. Access must not result in traffic hazards due to poor sight lines or proximity to an intersection.

Staff Comment: The subject property has frontage on the portion of the 5th Line that is not maintained on a year-round basis. Reasonable construction of the 5th Line would need to meet the Town’s Engineering Standard for rural roads. The road requires at a minimum of:

- i. 20m right-of-way
- ii. Platform width of 6m
- iii. 1.5m shoulders
- iv. 150mm of Granular A
- v. 450mm of Granular B
- vi. Minimum & maximum grade of 0.5% & 8% respectively

In order to upgrade the road to the Town’s Engineering Standards for Rural Roads, this portion of the 5th Line roadway would have required a number of improvements. These improvements were outlined in detailed in the Town’s Operation Department Staff Report CSOPS.20.044, which has been included as Attachment 2.

In summary the subject property fronts along a portion of the 5th Line that is not maintained year-round. The Municipal Land Use and Maintenance Agreement would ensure the Owners acknowledgement that this road is not maintained year-round, and that winter maintenance and any resulting liability is the sole responsibility and risk of the Owner.

- d) That no ribbon development along roadways will result from the development. Ribbon development shall mean a strip of four or more contiguous non-farm lots, less than 20 hectares along an existing road.

Staff Comment: This NEC application does not contemplate the creation of any more non-farm lots.

Planning Staff conclude that the proposed development does not conform with Official Plan policy per Section B4.4.4.1. As a result the creation of this same lot today would require an Official Plan Amendment. However, the granting of a 1989 severance facilitated the creation of this non-farm sized property, and it is a lot of record. Moreover, Council has previously deliberated on this same property as recently as 2020, and at that time the direction provided to staff was to pursue a Municipal Land Use and Maintenance Agreement with then property owner (Mr. Doug Lowe).

An executed Municipal Land Use and Maintenance Agreement between the owner and the Town could address those issues identified within the Section B4.4.4.1 of the Official Plan.

Part B4.1.5 Minimum Distance Separation (MDS) Formulae of the Town's Official Plan states that MDS Formulae shall be used to determine appropriate separation distances for new or expanding non-farm uses. NEC staff have reviewed aerial photographs and no livestock operations appear to be located within 750m of the subject lands.

Conclusion

At this time Planning Staff would recommend to Council the following;

1. That the Town object (at this time) to NEC application 22-708 until such a time that the Owners enter into a Municipal Land Use and Maintenance Agreement with the Town.
2. That the Town recommends that the NEC consider siting the proposed new dwelling closer to the 5th Line (western section of the lot) to encourage the potential continued use of agricultural Class 1A soils.
3. And that Council direct Planning Staff to continue to monitor this NEC Application, and to return and report back to Council as may be necessary, as this NEC application advances through the Niagara Escarpment Commission development review process.

E. Strategic Priorities

3. Community

We will protect and enhance the community feel and the character of the Town, while ensuring the responsible use of resources and restoration of nature.

4. Quality of Life

We will foster a high quality of life for full-time and part-time residents of all ages and stages, while welcoming visitors.

F. Environmental Impacts

No known adverse environmental impacts are anticipated as a result of this application.

G. Financial Impacts

No financial impacts to the Municipality are anticipated as a result of this application at this time. If the NEC approves the application without addressing the issues outlined in the Town's comments, the Town could elect to appeal the NEC decision. An appeal of the Niagara Escarpment Commission decision to the Ontario Land Tribunal will require financial and legal resources.

H. In Consultation With

Will Thomson, Director of Legal Services

Jim McCannell, Manager of Roads and Drainage, Operations Department

Shawn Carey, Director of Operations

I. Public Engagement

The topic of this Staff Report has not been the subject of a Public Meeting because a Public meeting is not required. Any comments regarding this report should be submitted to Natalya Garrod, planning@thebluemountains.ca

J. Attached

1. Niagara Escarpment Commission Request for Comments
2. Staff Report CSOPS-20-044
3. Staff Report CSOPS-20-067
4. Draft Municipal Lane Use and Maintenance Agreement

Respectfully submitted,

Natalya Garrod
Planner

Trevor Houghton, RPP, MCIP
Manager of Community Planning

Nathan Westendorp, RPP, MCIP
Director of Planning and Development Services

For more information, please contact:
Natalya Garrod
Planning@thebluemountains.ca
519-599-3131 extension 288

Report Approval Details

Document Title:	PDS.22.049 NEC Application 22-708 - Part Lot 18, Concession 5 being Part 2 on Plan 16R4184.docx
Attachments:	<ul style="list-style-type: none">- 22-708.NEC.Request for Comments.pdf- CSOPS-20-044-Request-for-Winter-Maintenance-Services-at-Lowe-Properties.pdf- CSOPS-20-067-Request-for-Winter-Maintenance-at-Lowe-Properties-Update-Follow-Up.pdf- 03 07 22 - DRAFT Municipal Land Use and Maintenance Agreement amended.docx
Final Approval Date:	Mar 11, 2022

This report and all of its attachments were approved and signed as outlined below:

Trevor Houghton - Mar 10, 2022 - 4:17 PM

No Signature - Task assigned to Nathan Westendorp was completed by delegate Trevor Houghton

Nathan Westendorp - Mar 11, 2022 - 11:30 AM