

# The Corporation of the Township of Huron-Kinloss



## BY-LAW

### 2020-124

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Being a By-law to Appoint the Ausable Bayfield Conservation Authority as an Agent of the Township of Huron-Kinloss with respect to the Enforcement and Jurisdictional Rights under Part IV of the *Clean Water Act*, 2006

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**WHEREAS** The Council for The Corporation of the Township of Huron-Kinloss deems it expedient to enter into an agreement with the Ausable Bayfield Conservation Authority and the Maitland Valley Conservation Authority to serve as the Source Protection Authorities for our area;

**AND WHEREAS** the *Clean Water Act* provides that a municipality may enter into an agreement for the enforcement of Part IV by a Source Protection Authority;

**NOW THEREFORE** the Council of The Corporation of the Township of Huron-Kinloss enacts as follows:

- 1.0 That The Corporation of the Township of Huron-Kinloss Council hereby enter into an agreement with the Ausable Bayfield Conservation Authority for the purpose of appointing them as an agent of the Township to carry out enforcement under Part IV of the *Clean Water Act* which is attached as Schedule "A" and forms part of this By-Law.
- 2.0 That the Mayor and Clerk are hereby authorized and directed to fully execute the agreement and to affix the corporate seal of the Township of Huron-Kinloss.
- 3.0 This By-Law shall come into full force and effect on January 1, 2021.
- 4.0 This by-law may be cited as the "Ausable Bayfield Conservation Authority Part IV Enforcement Agreement By-Law 2020".

**READ a FIRST and SECOND TIME this 16<sup>th</sup> day of November, 2020.**

**READ a THIRD TIME and FINALLY PASSED this 16<sup>th</sup> day of November, 2020.**

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Mitch Twolan, Mayor

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Emily Dance, Clerk

SOURCE PROTECTION PLAN PART IV ENFORCEMENT TRANSFER AGREEMENT

THIS AGREEMENT made effective the first day of January 2021.

BETWEEN:

- THE MUNICIPALITY OF BLUEWATER

-and-

THE MUNICIPALITY OF CENTRAL HURON

-and-

THE MUNICIPALITY OF HURON EAST

-and-

THE MUNICIPALITY OF MORRIS-TURNBERRY

-and-

THE MUNICIPALITY OF NORTH PERTH

-and-

THE TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH

-and-

THE TOWNSHIP OF HURON-KINLOSS

-and-

THE TOWNSHIP OF NORTH HURON

OF THE FIRST PART

OF THE SECOND PART

OF THE THIRD PART

OF THE FORTH PART

OF THE FIFTH PART

OF THE SIXTH PART

OF THE SEVENTH PART

OF THE EIGHTH PART
- (hereinafter called “the Municipalities”)
- and -
- AUSABLE BAYFIELD CONSERVATION AUTHORITY

(hereinafter called “the Authority”)
- OF THE NINTH PART

## **PREAMBLE:**

**WHEREAS** this Agreement is being entered into pursuant to the *Clean Water Act*, 2006 (hereinafter called the “*Act*”) for the purpose of appointing the Authorities as agents of the Municipalities with respect to the enforcement and jurisdictional rights under Part IV of the *Act* as part of implementation of the Ausable Bayfield Source Protection Plan and the Maitland Valley Source Protection Plan.

And Whereas the Authority is a Source Protection Authority for purposes of the *Act* and of this Agreement;

And Whereas the Municipalities are located within the Ausable Bayfield Maitland Valley Source Protection Region as set out in Ontario Regulation 284/07.

**IN CONSIDERATION** of the mutual covenants herein contained, the parties hereby agree as follows:

## **ARTICLE ONE GENERAL**

### **Section 1.01: Source Protection Authorities**

Under section 4 of the *Act*, the Ausable Bayfield Conservation Authority (ABCA) and the Maitland Valley Conservation Authority (MVCA) serve as the Source Protection Authorities for the Ausable Bayfield Source Protection Area and the Maitland Valley Source Protection Area respectively. Ontario Regulation 284/07 under the *Act* designates the participating municipalities for ABCA and MVCA when they act as the Source Protection Authorities under the *Act*.

### **Section 1.02: Part IV Requirements under the *Act***

The *Act*, provides that a municipality is responsible for Part IV enforcement of Source Protection Plans. The *Act* further provides that a municipality may enter into an agreement for the enforcement of Part IV by a board of health, a planning board, or a Source Protection Authority.

**The Municipalities hereby appoint the Ausable Bayfield Conservation Authority as agent of the Municipalities to carry out enforcement under Part IV of the *Act* within their respective Municipality.**

### **Section 1.03: Application**

This Agreement shall be applicable to all lands located in the Municipalities that are subject to Part IV of the *Act*.

**The Ausable Bayfield Conservation Authority hereby accepts the appointment and agrees to act as Agent of the Municipalities for the duties and enforcement responsibilities of Part IV of the *Act* for those lands located within the Municipalities that are situated within the Ausable Bayfield Maitland Valley Source Protection Region, with the exception of the Municipality of Huron-Kinloss in which the Ausable Bayfield Conservation Authority hereby accepts the appointment and agrees to act as Agent of the Municipalities for the duties and enforcement responsibilities of Part IV of the *Act* for all lands within the Municipality of Huron-Kinloss.**

### **Section 1.04: Duties**

The Authorities shall faithfully carry out their duties hereunder on a fee for service basis in accordance with the *Act*, the Ausable Bayfield Source Protection Plan (as amended from time to time) and the Maitland Valley Source Protection Plan (as amended from time to time), this Agreement, and any other applicable legislation.

## ARTICLE TWO DEFINITIONS

### Section 2.01: Definitions

Unless otherwise expressly provided in this Agreement, the words, phrases and expressions in this Agreement shall have the meanings attributed to them as follows:

1. In this Agreement:

- a) “*Act*” means the Ontario *Clean Water Act, 2006*, as amended;
- b) “Agreement” means this document;
- c) “Parties” means the Authorities and the Municipalities;
- d) “the Regulation” means *Clean Water Act Regulation 287/07*
- e) “Risk Management Inspector” means a Risk Management Inspector appointed under Part IV of the *Act*;
- f) “Risk Management Official” means the Risk Management Official appointed under Part IV of the *Act*;
- g) “Source Protection Authority” means a Conservation Authority or other person or body that, under subsection 4 (2) or section 5 of the *Act*, is required to exercise and perform the powers and duties of a drinking water Source Protection Authority under the *Act*;
- h) “Source Protection Plan” means a drinking water source protection plan prepared under the *Act*.

## ARTICLE THREE RESPONSIBILITIES

### Section 3.01: Responsibilities of the Authority

The Authority is responsible for all the powers and duties of an enforcement body under Part IV of the *Act*. The duties and powers **include but are not limited to** those listed in this Section.

The Authority shall:

- (i) Appoint such Risk Management Officials and Risk Management Inspectors as are necessary for the enforcement of Part IV of the *Act*.
- (ii) Provide mapping to the Municipalities and establish protocols in consultation with the Municipalities to ensure Part IV requirements are incorporated into the review of applications under the *Planning Act* and *Building Code Act*.
- (iii) Review applications under the *Planning Act* and *Building Code Act* as deemed necessary under the protocols referred to in (ii) and issue notices with respect to Restricted Land Use policies prior to those applications proceeding.
- (iv) Negotiate or, if negotiations fail, establish risk management plans with persons (business owners, landowners, tenants, and others) engaged or proposing to engage in an activity and at a location subject to the *Act*.
- (v) Review and accept risk assessments under the *Act*.
- (vi) Conduct inspections and use powers of entry on properties where reasonable and obtain inspection warrants from a court where required.
- (vii) Issue orders and notices, prosecute any offences under Part IV of the *Act* and exercise any other powers set out under Part IV of the *Act* to ensure compliance with the Part IV policies in the Ausable Bayfield Source Protection Plan and the Maitland Valley Source Protection Plan.
- (viii) Maintain records in accordance with the *Act* and make records available to the public when required to do so and to the Municipalities upon request.
- (ix) Prepare documentation and make provisions for staff to attend Environmental Review Tribunal Hearings.

- (x) Report annually on activities as required under the *Act* and provide a copy of the annual report to the Municipalities.

### **Section 3.02: Responsibilities of the Municipalities**

The Municipalities shall adhere to agreed upon protocols (including circulating certain applications to the Risk Management Official) to ensure Part IV requirements are incorporated into the review of:

- (i) building permit applications;
- (ii) applications under provisions of the Planning Act that are prescribed in section 62 of the Regulation; and
- (iii) generally cooperate with and assist the Authority with the protection of safe drinking water.

### **Section 3.03: Information and Data Sharing**

To facilitate implementation of this Agreement:

- (i) The Municipalities shall provide information and data required by the Authority to carry out its powers and duties under Part IV of the *Act*.
- (ii) The Authority shall provide records related to its powers and duties under Part IV of the *Act* to the Municipalities, upon request. In the event of termination of this Agreement, records will be transferred to their respective Municipalities.

## **ARTICLE FOUR COSTS**

### **Section 4.01: Responsibility for Cost of Service Delivery**

The Municipalities are responsible for the costs of the enforcement of Part IV of the *Act*. The Municipalities shall pay the Authority as per Schedule A of this Agreement.

### **Section 4.02: Recovery of Extraordinary Costs**

The Authority, through consultation with the Municipalities will recover from the Municipalities costs incurred as a result of legal actions initiated by or against the Authority associated with executing its duties and powers under this Agreement and for costs associated with non-routine work including but not limited to enforcement orders, warrants, Environmental Review Tribunal Hearings and retention of third party experts. These costs are in addition to those outlined in Schedule A and are identified as ‘extraordinary costs’.

## **ARTICLE FIVE OFFICIALS AND INSPECTORS**

### **Section 5.01: Appointment**

The Authority will appoint such Risk Management Officials and Risk Management Inspectors as are necessary pursuant to subsection 48 (2) of the *Act* and shall issue a certificate of appointment to the Risk Management Officials and Risk Management Inspectors as per subsection 48 (3) of the *Act*.

### **Section 5.02: Qualifications**

The Risk Management Officials and Risk Management Inspectors will be qualified as prescribed by the Regulation.

## **ARTICLE SIX LIABILITIES AND INSURANCE**

### **Section 6.01: Insurance**

The Authority shall provide and maintain Commercial/Comprehensive General Liability insurance subject to limits of not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence for

bodily injury, death and damage to property including loss of use thereof.

The Authority shall provide and maintain Errors and Omissions insurance subject to limits of not less than an annual aggregate of Two Million Dollars (\$2,000,000.00). Such insurance shall provide coverage for all errors and omissions made by the Authority, its officers, directors and employees in regard to the obligations of the Authority under this Agreement.

Such insurance shall be kept in force for the two years following termination of this Agreement.

Such insurance shall be in the name of the Authority and shall name the Municipalities as additional insured there under. Evidence of insurance satisfactory to the Municipalities shall be provided to the Municipalities prior to the commencement of work. The Authority shall annually provide the Municipalities with Certificate(s) of Insurance confirming that the said insurance policies are in good standing.

#### **Section 6.02: Workplace Safety and Insurance Board (WSIB)**

The Authority will provide upon request, verification of WSIB coverage.

#### **Section 6.03 Indemnification**

The Municipalities agree to save harmless and indemnify the Authority, and its employees, agents, assigns, directors and officers (collectively, the 'Indemnified Parties') from and against any claims, costs, fees, losses, damages or expenses of every nature and kind whatsoever, including but not limited to governmental inquiries, administrative or judicial proceedings, which the Authority Indemnified Parties, might suffer, have imposed on, or incur in connection with or arising out of: this Agreement; any enforcement duties or responsibilities; or otherwise in connection with the *Act* or any regulations thereunder.

The Authority agrees to save harmless and indemnify the Municipalities, and its employees, agents, assigns, directors and officers (collectively, the 'Indemnified Parties') from and against any claims, costs, fees, losses, damages or expenses of every nature and kind whatsoever, including but not limited to governmental inquiries, administrative or judicial proceedings, which the Municipal Indemnified Parties, might suffer, have imposed on, or incur in connection with or arising out of the Authority failing to perform its duties or responsibilities under this Agreement.

### **ARTICLE SEVEN**

#### **TERM, RENEWAL, TERMINATION AND AMENDMENT OF AGREEMENT**

##### **Section 7.01: Initial Term**

This Agreement shall continue in force for a period of 3 years, commencing on the 1<sup>st</sup> day of January 1<sup>st</sup>, and ending the 31<sup>st</sup> day of December, 2023.

##### **Section 7.02: Deemed Renewal**

This Agreement will automatically continue following the expiry of the term set out in Section 7.01 until it is:

- a. Superseded or replaced by a subsequent agreement; or
- b. Terminated in its entirety by either party by giving 90 days written notice.

##### **Section 7.03: Termination**

The Agreement may be terminated by either party with a minimum of 180 days written notice.

##### **Section 7.04: Amendment**

This Agreement may be amended by mutual agreement from time to time to reflect changes in programs, funding and personnel in both parties, or changes in provincial policy.

## **ARTICLE EIGHT MISCELLANEOUS**

### **Section 8.01: Preamble**

The preamble hereto shall be deemed to form an integral part hereof.

### **Section 8.02: Instrument in Writing**

This Agreement shall not be changed, modified, terminated or discharged in whole or in part except by instrument in writing signed by the parties hereto, or their respective successors or permitted assigns, or otherwise as provided herein.

### **Section 8.03: Assignment**

This Agreement shall not be assignable by either party.

### **Section 8.04: Force Majeure**

Any delay or failure of either party to perform its obligations under this Agreement shall be excused and this Agreement is suspended if, and to the extent that, a delay or failure is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, fires, floods, wind storms, riots, labour problems (including lock-outs, strikes and slow-downs) or court injunction or order.

### **Section 8.05: Notices**

Any notice, report or other communication required or permitted to be given hereunder shall be in writing unless some other method of giving such notice, report or other communication is expressly accepted by the party to whom it is given and shall be given by being delivered or mailed to the following addresses of the parties respectively:

(a) To the Authority:

Brian Horner, General Manager / Secretary-Treasurer

Ausable Bayfield Conservation Authority  
71108 Morrison Line  
R.R. # 3  
Exeter, ON N0M 1S5

(b) To the Municipalities:

Municipality of Bluewater  
PO Box 250, 14 Mill Avenue  
Zurich, ON N0M 2T0  
*Attention: Municipal Clerk / Chief Administrative Officer*

Municipality of Central Huron  
PO Box 400, 23 Albert Street  
Clinton, ON N0M 1L0  
*Attention: Municipal Clerk / Chief Administrative Officer*

Municipality of Huron East  
PO Box 610, 72 Main Street  
Seaforth, ON N0K 1W0  
*Attention: Municipal Clerk / Chief Administrative Officer*

Municipality of Morris-Turnberry  
PO Box 310, 41342 Morris Road  
Brussels, ON N0G 1H0

*Attention: Municipal Clerk / Chief Administrative Officer*

Municipality of North Perth  
330 Wallace Ave. N.  
Listowel ON N4W 1L3

*Attention: Municipal Clerk / Chief Administrative Officer*

Township of Ashfield-Colborne-Wawanosh  
82133 Council Line  
R.R.#5  
Goderich, ON N7A 3Y2

*Attention: Municipal Clerk / Chief Administrative Officer*

Township of Huron-Kinloss  
21 Queen Street, P.O. Box 130  
Ripley, ON N0G 2R0

*Attention: Municipal Clerk / Chief Administrative Officer*

Township of North Huron  
Box 90, 274 Josephine Street  
Wingham, ON N0G 2W0

*Attention: Municipal Clerk / Chief Administrative Officer*

Any notice, report or other written communication, if delivered, shall be deemed to have been given or made on the date on which it was delivered to any employee of such party, or if mailed, postage prepaid, shall be deemed to have been given or made on the third business day following the day on which it was mailed (unless at the time of mailing or within forty-eight hours thereof there shall be a strike, interruption or lock-out in the Canadian postal service in which case service shall be by way of delivery only). Either party may at any time give notice in writing to the other party of the change of its address for the purpose of this Agreement.

#### **Section 8.06: Headings**

The Section headings hereof have been inserted for the convenience of reference only and shall not be construed to affect the meaning, construction or effect of this Agreement.

#### **Section 8.07: Governing Law**

The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario as at the time in effect.



**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first written above.

**AUSABLE BAYFIELD CONSERVATION AUTHORITY**

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Chair	Date
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Brian Horner, General Manager and Secretary-Treasurer	Date
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**MUNICIPALITY OF BLUEWATER**

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Signature	Print Name	Title	Date
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Signature	Print Name	Title	Date
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I/We have authority to bind the Municipality.

**MUNICIPALITY OF CENTRAL HURON**

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Signature	Print Name	Title	Date
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Signature	Print Name	Title	Date
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I/We have authority to bind the Municipality.

**MUNICIPALITY OF HURON EAST**

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Signature	Print Name	Title	Date
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Signature	Print Name	Title	Date
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I/We have authority to bind the Municipality.

**MUNICIPALITY OF MORRIS-TURNBERRY**

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Signature	Print Name	Title	Date
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Signature	Print Name	Title	Date
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I/We have authority to bind the Municipality.

**MUNICIPALITY OF NORTH PERTH**

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Signature	Print Name	Title	Date
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Signature	Print Name	Title	Date
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I/We have authority to bind the Municipality.

**TOWNSHIP OF  ASHFIELD-COLBORNE-WAWANOSH**

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Signature	Print Name	Title	Date
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Signature	Print Name	Title	Date
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I/We have authority to bind the Township.

**TOWNSHIP OF HURON-KINLOSS**

Signature	Print Name	Title	Date
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Signature	Print Name	Title	Date
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I/We have authority to bind the Township.

**TOWNSHIP OF NORTH HURON**

Signature	Print Name	Title	Date
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Signature	Print Name	Title	Date
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I/We have authority to bind the Township.

SCHEDULE ‘A’

RMO Delivery Costs  
January 01, 2021 through December 31, 2023

Municipality	Fixed Program Costs (Yearly Cost)	"Transition Years" RMO service by complexity 2021 & 2022	RMO Services & Implementing New RMPs per New Rules 2023	Total Costs 2021	Total Cost 2022	Total Cost 2023	Total Costs 2021-2023
ACW	\$ 5,564.21	\$ 820.50	\$ 1,630.00	\$ 6,384.71	\$ 6,384.71	\$ 7,194.21	\$ 19,963.62
Bluewater	\$ 5,564.21	\$ 820.50	\$ 2,445.00	\$ 6,384.71	\$ 6,384.71	\$ 8,009.21	\$ 20,778.62
Central Huron	\$ 5,564.21	\$ 1,641.00	\$ 4,890.00	\$ 7,205.21	\$ 7,205.21	\$ 10,454.21	\$ 24,864.62
Huron East	\$ 5,564.21	\$ 1,641.00	\$ 4,890.00	\$ 7,205.21	\$ 7,205.21	\$ 10,454.21	\$ 24,864.62
Huron - Kinloss	\$ 5,564.21	\$ 1,641.00	\$ 7,742.50	\$ 7,205.21	\$ 7,205.21	\$ 13,306.71	\$ 27,717.12
Morris Turnberry	\$ 5,564.21	\$ 1,641.00	\$ 2,037.50	\$ 7,205.21	\$ 7,205.21	\$ 7,601.71	\$ 22,012.12
North Huron	\$ 5,564.21	\$ 1,641.00	\$ 6,520.00	\$ 7,205.21	\$ 7,205.21	\$ 12,084.21	\$ 26,494.62
North Perth	\$ 5,564.21	\$ 1,641.00	\$ 10,595.00	\$ 7,205.21	\$ 7,205.21	\$ 16,159.21	\$ 30,569.62
Total	\$ 44,513.64	\$ 11,487.00	\$ 40,750.00	\$ 56,000.64	\$ 56,000.64	\$ 85,263.64	\$ 197,264.92