

The Corporation of the Township of Huron-Kinloss



BY-LAW

2020-94

Being a By-Law to Authorize the Signing of a Land Use Agreement
with the Huron Shores ATV Club in the Township of Huron-Kinloss

WHEREAS the *Municipal Act S.O. 2001, c 25, Section 5(1)*, as amended, provides that the powers of a municipal corporation are to be exercised by its council;

AND WHEREAS the *Municipal Act S.O. 2001, c 25, Section 5(3)*, as amended, provides that a municipal power, including a municipality's capacity rights, powers and privileges under section 9; shall be exercised by by-law;

AND WHEREAS the Council for the Corporation of the Township of Huron-Kinloss deems it expedient to enter into a land use agreement with the Huron Shores ATV Club in the Township of Huron-Kinloss.

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 enter into a land use agreement with the Huron-Shores ATV Club which is attached as Schedule "A" and forms part of this by-law.
- 2.0 That the Deputy 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 upon final passage.
- 4.0 This by-law may be cited as the "Huron Shores ATV Club Land Use Agreement By-Law".

READ a FIRST and SECOND TIME this 21st day of September 2020.

READ a THIRD TIME and FINALLY PASSED this 21st day of September, 2020.

A handwritten signature in black ink, appearing to be "Mitch Twolan", written over a horizontal line.

Mitch Twolan, Mayor

A handwritten signature in black ink, appearing to be "Emily Dance", written over a horizontal line.

Emily Dance, Clerk

OFF-ROAD VEHICLE AGREEMENT

THIS AGREEMENT dated the 21st day of September, 2020.

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF HURON-KINLOSS

(hereinafter the "Township")

- and -

HURON SHORES ATV CLUB INC.

(hereinafter the "Club")

WHEREAS the Township finds it desirable to permit the members of the Club to use Off-Road Vehicles on the highways or trails outlined in **Schedule "A"** (the "**Subject Lands**"), subject to the provisions of this Agreement;

AND WHEREAS the Township owns the Subject Lands;

AND WHEREAS the Club acknowledges and agrees that the operation of Off-Road Vehicles is an inherently dangerous activity and that its members bear their own risk if they choose to utilize the Subject Lands;

AND WHEREAS Council authorized the execution of this Agreement by by-law;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by each of the parties hereto to each of the other parties hereto, the receipt whereof is hereby acknowledged, the parties hereto hereby covenant, promise and agree with each other as follows:

1. DEFINITIONS

1.1 In this Agreement, the following terms shall have the meanings set out below, unless otherwise internally redefined or where the subject matter or context requires under meaning to be ascribed:

- (a) "**Agreement**" means this Off-Road Vehicle Agreement and includes the schedules attached hereto and as amended from time to time;
- (b) "**By-law**" means the Township's Off-Road Vehicle By-law, being By-law 2015-89, as amended;
- (c) "**Council**" means the council of the Township;
- (d) "**Off-Road Vehicle**" has the same meaning as found in the By-law;

(e) **"Subject Lands"** means the lands and premises described in **Schedule "A"**; and,

(f) **"Township"** means The Corporation of the Township of Huron-Kinloss.

2. SCHEDULES

2.1 The following schedules are attached hereto and form part of this Agreement:

(a) **Schedule "A"** — The Subject Lands

3. GENERAL PROVISIONS

Term

3.1 The term of this Agreement shall be from the date of its execution until January 1, 2031 (the **"Term"**).

Termination

3.2 The Township or the Club may terminate this Agreement upon seven (7) days written notice provided to the other.

3.3 Upon the expiration or earlier termination of this Agreement, the Club shall be required to restrict or prohibit access to the Subject Lands, if so desired and in a manner acceptable to the Township, and shall remove all buildings, structures or signage from the Subject Lands, as required by the Township, at the Club's sole cost.

4. TOWNSHIP RESPONSIBILITIES

4.1 The Township agrees to permit the Club and its members the non-exclusive right to use and maintain the Subject Lands between April 1st and November 30th each year, between the hours of 7:00 a.m. and 11:00 p.m. each day (the **"Season"**). If the Club and its members wish to use and maintain the Subject Lands beyond the Season, they must obtain written permission to do so from the Township and such usage shall be on the same terms and conditions as outlined in this Agreement.

4.2 The Club agrees and understands that there may be other, non-motored users of the Subject Lands and that this Agreement does not grant exclusive use of the Subject Lands to the Club. The range of uses permitted on the Subject Lands is at the sole discretion of the Township.

4.3 Notwithstanding any other provision in this Agreement, the Township may temporarily suspend the Club's usage of the Subject Lands, for any reason, upon providing seven (7) days written notice to the Club, and the Club shall ensure proper notices are posted on the Subject Lands, in a form and in locations satisfactory to the Township, at the Club's sole cost.

5. CLUB RESPONSIBILITIES

5.1 The Club agrees to:

Compliance with Laws

- (a) ensure that it, and its members, comply, at all times, with the By-law, the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended, Ontario Regulation 316/03 and the *Off-Road Vehicles Act*, R.S.O., c. O.4, as amended;

Maintenance

- (b) maintain the Subject Lands on an "as needed", or at least weekly, basis, at the Club's sole cost, and to the Township's satisfaction, which includes:
 - (i) clearing brush to ensure reasonable sightlines;
 - (ii) clearing all hazards, such as protruding sticks or stumps;
 - (iii) cutting and removing any downed trees or branches;
 - (iv) inspecting and repairing any bridges or other wood structures; and,
 - (v) having the Township, or an agent thereof, at least once per year, on the portion of the Subject Lands that are an open, public highway, apply a dust control product to limit adverse dust impacts;
 - (vi) provide the Township with a cheque to cover the cost for dust control yearly.
- (c) be completely responsible for maintaining the portion of the Subject Lands that are an unopened road allowance, as indicated on the attached **Schedule "A"**, to the Township's satisfaction, and at the Club's sole cost;

Signage

- (d) provide, install and maintain signage for the Subject Lands, at the Club's sole cost, in the manner and form approved by the Township and, at a minimum, shall install signage at the entrance points of the Subject Lands to indicate:
 - (i) that one must be a member of the Club to use Off-Road Vehicles on the Subject Lands and that non-Club members using Off-Road Vehicles on the Subject Lands are trespassing;
 - (ii) that the Subject Lands are shared use, that one should expect and respect other users of the Subject Lands;
 - (iii) the applicable speed limit for Off-Road Vehicles on the Subject Lands;
 - (iv) the Club's contact information;
 - (v) a general assumption of risk / warning / assumption of liability clause(s); and,
 - (vi) any other information requested or required by the Township.

Abutting Landowners

- (e) develop contacts with the owners of the lands abutting the Subject Lands and act as the first point of contact to resolve any issues, complains or disputes related to, or arising from, this Agreement;

Risk Management

- (f) develop and implement a risk management policy, to the satisfaction of the Township, which shall include, at a minimum, a zero tolerance alcohol policy, a trail etiquette policy and a list of all user obligations, as required by this Agreement or any applicable law, and shall provide the Township with a copy of its risk management policy;

Notifying the Township

- (g) notify the Township of any major concerns with the Subject Lands, including any potholes, obstructions or washouts;

Inspection Reports

- (h) provide bi-weekly inspection reports on the Subject Lands to the Township, specifically the Township's Director of Public Works, in a form and with content satisfactory to the Township; and,

Unauthorized Trails

- (i) work with the Township to close and rehabilitate any unauthorized trails that may be located on the Subject Lands.

6. INSURANCE

- 6.1 The Club agrees to acquire and maintain its own third party liability insurance coverage in the amount of 15 million dollars in relation to its usage and maintenance of the Subject Lands, in a form satisfactory to the Township (the "**Policy**"). The Township shall be named as an "additional insured" by the Club's insurance policy holder.
- 6.2 The Club shall provide the Township with a copy of the Policy immediately upon request.
- 6.3 The Club agrees to maintain the Policy at all times during the Term but, should the Policy ever lapse, the Club shall notify the Township immediately. Upon such notification, this Agreement shall be immediately terminated.

7. INDEMNITY

- 7.1 The Club agrees to indemnify the Township, its Councillors, employees, servants, agents, successors or assigns from and against all actions, suits, claims or demands and from all loss, liability, judgements, costs, damages, charges and expenses that may arise or result from this Agreement including, but not limited to, the Club's fulfillment of its obligations under this Agreement or the use of the Subject Lands by the Club and/or any of its members.

8. FURTHER ASSURANCES

- 8.1 The Parties hereto covenant and agree that at all times and from time to time hereafter upon every reasonable written request so to do, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required for more effectively implementing and carrying out the true intent and meaning of this Agreement.

9. NOTICE

- 9.1 The Parties agree that if any notice is required to be given by any party to the other with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission:

- (a) To the Club:

Huron Shores ATV Club Inc.
P.O. Box 1264
Walkerton ON N0G 2V0

E-mail pres@hsatv.ca

Attention: Tyler Johnston, President

- (b) To the Township:

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

Fax: 519-395-4107

Attention: Township Clerk

or such other address or contact of which the Parties have notified the other parties, in writing, and any such notice mailed, delivered or faxed shall be deemed good and sufficient notice under the terms of this Agreement.

- 9.2 The Parties agree to notify each other immediately, in writing, of any changes of address or of facsimile number from those set out above.

10. DEFAULT

- 10.1 If the Township, in its sole discretion, is of the opinion that the Club has neglected or refused to perform any of its obligations as set out in this Agreement, the Township may, in addition to any of its other legal or equitable remedies, serve on the Club a notice setting out the particulars of the breach and the Township's estimated maximum costs of remedying the breach. The Club shall have thirty (30) days from receipt of such notice to remedy the breach or make arrangements satisfactory to the Township for remedying the breach. If the Club has not remedied the breach or made arrangements satisfactory to the Township for remedying the breach, or if the Club does not carry out the said arrangements within a reasonable period of time, of which the Township shall be the sole and final judge, the Township may enter upon the Subject Lands and carry out the

Club's obligations and the Club shall reimburse the Township for all expenses incurred thereby. Such expenses incurred by the Township shall, until paid to it by the Club, be a debt owed by the Club and recoverable by the Township by action in a court of law.

- 10.2 In the event that the Club fails to make any payments specified hereunto or fails to pay any invoice or statement issued pursuant to this Agreement within thirty (30) days, the Club shall be declared to be in default under this Agreement, and the said amount payable thereunder shall bear interest at the rate of one and one-half percent (1.5%) per month, calculated monthly and payable monthly (effective interest 19.56% per annum).

11. REMEDIES AND WAIVER

- 11.1 It is expressly understood and agreed that the remedies of the Township under this Agreement are cumulative and the exercise by the Township of any right or remedy for the default or breach of any term, condition, covenant or Agreement herein contained, shall not be deemed to be a waiver of or alter, affect or prejudice any other right or remedy or other rights or remedies to which the Township may be lawfully entitled for the same default or breach; and any waiver by the Township of the strict observance, performance or compliance by the Club with any term, condition, covenant or Agreement herein contained, or any indulgence granted by the Township to the Club, shall not be deemed to be a waiver of any subsequent default or breach by the Club or to entitle the Club to any similar indulgence heretofore granted.

12. INSPECTIONS

- 12.1 The Township or its representatives and agents shall be permitted at all reasonable times to enter upon and inspect the Subject Lands to ensure proper compliance with any of the terms of this Agreement.

13. FORCE MAJEURE

- 13.1 Notwithstanding anything in this Agreement to the contrary, if the Club or the Township is *bona fide* delayed in or prevented from performing any obligation arising under this Agreement by reason of strikes or other labour disturbances, civil disturbance, restrictive government laws, regulations or directives, acts of public enemy, war, riots, sabotage, crime, lightning, earthquake, hurricane, tornado, flood, explosion or other act of God, and not caused by its default and not avoidable by exercise of reasonable effort or foresight, then performance of such obligation is excused for so long as such cause exists, and the party so delayed shall and is entitled, without being in breach of this Agreement, to carry out such obligation within the appropriate time period after the cessation of such cause.

14. INTERPRETATION OF AGREEMENT

- 14.1 The Parties agree that:
- (a) the part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
 - (b) all changes in number and gender shall be construed as may be required by the context;

- (c) every provision of this Agreement by which the Club is obligated in any way shall be deemed to include the words "at the expense of the Club" unless the context otherwise requires, including the payment of any applicable taxes (including HST);
- (d) references herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto;
- (e) all obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants;
- (f) whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference;
- (g) all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby; and
- (h) time shall be of the essence in this Agreement.

15. ENTIRE AGREEMENT

This Agreement embodies the entire agreement of the Parties with regard to the matters dealt with herein, and no understandings or agreements, verbal or otherwise, exist between the parties except as herein set out. No amendment, supplement, waiver or consent provided for by the provisions of this Agreement shall be effective unless in writing and signed by the party against whom enforcement of the amendment, supplement, waiver or consent is sought.

16. GOVERNING LAW

16.1 This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

Tyler Johnston

HURON SHORES ATV CLUB INC.

Tyler Johnston

 Name: *Tyler Johnston*
 Title: *HSATV President*

Name:

Title:

**THE CORPORATION OF THE
TOWNSHIP OF HURON-KINLOSS**



Mayor Mitch Twolan



Emily Dance, Township Clerk

