

THE CORPORATION OF THE MUNICIPALITY OF KILLARNEY

BY-LAW NO. 2018-43

BEING A BY-LAW TO AUTHORIZE THE ENTERING INTO AN AGREEMENT WITH THE BRODER-DILL SNOWMOBILERS' ASSOCIATION

WHEREAS pursuant to section 9 of the *Municipal Act*, 2001, S.O. 2001, chapter 25, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS pursuant to section 8(1) of the *Municipal Act*, 2001 S.O. 2001, chapter 25, the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS Broder-Dill Snowmobilers' Association carries on recreational activities as a snowmobile club in and around the Corporation of the Municipality of Killarney;

AND WHEREAS the Corporation of the Municipality of Killarney is the owner of certain lands where the Broder-Dill Snowmobilers' Association wishes to utilize as part of their snowmobile operations;

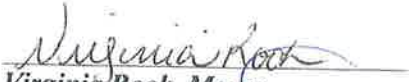
AND WHEREAS the Council of the Corporation of the Municipality of Killarney deems it advisable to enter into an agreement with the Broder-Dill Snowmobile Association attached hereto as Schedule "A" to By-Law 2018-43;

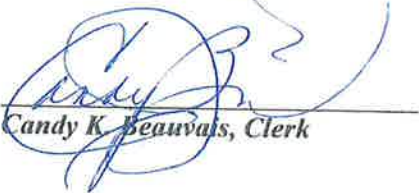
AND WHEREAS the map depicting the various roads, highways and lands within municipal boundaries that will be used for snowmobile trails forms part of this By-law as Schedule "B";

NOW THEREFORE the Council of the Corporation of the Municipality of Killarney enacts as follows:

1. That the Corporation of the Municipality of Killarney initiates an agreement with the Broder-Dill Snowmobilers' Association for the utilization of certain municipal property for the purposes of the operation of snowmobiles in accordance with the terms of the agreement attached hereto and marked as Schedules "A" and "B".
2. That the Mayor and Clerk, on behalf of the Corporation of the Municipality of Killarney are hereby authorized to enter into the said agreement with the Broder-Dill Snowmobilers' Association substantially attached hereto as Schedules "A" and "B" to this By-law and to sign all documents and take all action necessary to carry out the intent of this By-law.
3. That this By-law shall be in force and effect from December 5, 2018 until December 5, 2023.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED IN
OPEN COUNCIL THIS 5th DAY OF DECEMBER, 2018.**


Virginia Rook, Mayor


Candy K. Beauvais, Clerk

Schedule "A"
to
By-Law 2018-43

**Being a By-law to Authorize the Entering into an Agreement with the
Broder-Dill Snowmobilers' Association**

THIS AGREEMENT made this 5th day of December, 2018

BETWEEN:

The Corporation of the Municipality of Killarney
(hereinafter called "the Corporation")

OF THE FIRST PART

AND

Broder-Dill Snowmobilers' Association
(hereinafter called the "Association")

OF THE SECOND PART

RECITAL OF FACT

WHEREAS the Corporation is the owner of certain land appropriate for use of snowmobile trails.

AND WHEREAS the parties hereto agree that this Agreement be entered into for the purposes of permitting the Association to utilize certain municipal lands for the Association's operation of snowmobile trails as described and depicted on the Snowmobile Trail Plan Map attached hereto, as Schedule "B".

NOW THEREFORE this Agreement witness that in consideration of the premises and valuable consideration passing between and among the parties hereto, it is hereby agreed as follows:

TERMS OF AGREEMENT

1. The Corporation agreed to grant its permission for the use of the municipal lands as described and depicted on the Ontario Federation of Snowmobile Clubs (OFSC) Trail Map, attached hereto as Schedule "B" to this Agreement, for the purposes of establishing, grooming, maintaining and using snowmobile trails for valid permitted OFSC individual trail permit members, under the following terms and conditions.
2. For the purpose of this Agreement, a snowmobile is a motorized snow vehicle as defined by the *Motorized Snow Vehicle Act*, R.S.O. 1990, c. M. 44.
3. The Association agrees to mark the snowmobile trail at its own expense in accordance with the maps attached hereto.
4. The Association agrees that the said snowmobile trail will be a minimum of ten (10) feet in width with a preference of twelve (12) feet in width.
5. The Association agrees to post signs indicating a maximum speed by snowmobilers to be twenty (20) kilometres per hour. The Association agrees to post all other signage as required by the Ontario Federation of Snowmobile Clubs (OFSC) guidelines (i.e. stop signs, directional signs, etc.).
6. The Association shall remain a member in good standing of the OFSC for the term of this Agreement and shall be party to the OFSC's third party Liability Insurance of no less than Fifteen (\$15,000,000.00) Million Dollars per occurrence to cover land uses specified herein by the Association and OFSC individual trail permit members on the designated Municipality-owned land, which coverage is confirmed to the Corporation by signing this Agreement. The Association agrees to provide the Corporation a Certificate of Insurance noting the Corporation as additional insured. Said Certificate of Insurance is to be submitted to the Corporation upon the execution of this Agreement and prior to the trail being used by the Association.
7. The Association agrees to request police presence to enforce the trail system rules and the Ontario Motorized Snow Vehicles Act.
8. The Association agrees to reimburse the Corporation for any and all damages done to Municipal property resulting from the Association's use of and its activities relating to all activities undertaken in this Agreement.
9. The Association shall maintain the municipal property in reasonably good condition for snowmobiling, undertake to post appropriate signage, remove any litter caused by individual trail permit members, and repair or replace property damaged by individual trail permit members.
10. The Association agrees to abide by all applicable municipal, provincial and federal laws, by-laws, rules and regulations regarding the safe and proper use of snowmobiles.
11. It is understood and agreed that in the event the Association fails to fulfill one or more of the terms and conditions of the Agreement, the Corporation shall be entitled, with thirty (30) days' notice and without any other actions, to declare this Agreement null and void and of no affect, and to revoke the privilege herein granted to the Association.
12. The Association agrees to indemnify and save harmless the Corporation from and against any and all claims, actions, damages, costs and expense (including legal expenses) which arise by reason of the exercise of the rights and privileges granted herein by this Agreement or as a result of any breach of the terms of this Agreement by the Association

or by any act or emission of the Association or those to whom the Association is at law responsible, including all legal costs and expenses reasonably incurred by the Corporation in connection with the defence or settlement of any such claim.

- 13. The Association shall waive against the Corporation, its officers, employees, agents or contractors any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Agreement and for any injury to, or death of any person or for any lost of or damage to any property belonging to the Association or its employees, servants, agents, invitees, licensees, contractors or visitors unless caused by the negligent act or omission of the Corporation, its servants, employees, officers, agents, contractors or those for whom it is in law responsible.
- 14. The rights contained in this Agreement may not be transferred, assigned or disposed of in any manner whatsoever without the Corporation's prior written consent.
- 15. The parties agree that this Agreement shall come into effect the 5th day of December, 2018 and shall expire on the 5th day of December, 2023.
- 16. Each party on sixty (60) days written notice, can terminate this Agreement by personal delivery or registered mail, postage pre-paid addressed or delivered to the other party as follows:

a) to the Corporation:

The Corporation of the Municipality of Killarney
32 Commissioner Street Killarney, Ontario P0M 2A0

b) to the Association:

The Broder-Dill Snowmobilers' Association
2015 Long Lake Road P.O. Box 40052 Sudbury, Ontario P3E 3G6


Any notice, demand or thereto communication shall, if delivered, be deemed to have been received on the day on which it is delivered or, if mailed, the fifth (5th) day following the day of mailing thereof.

Subject to any execution clause herein, this Agreement may be amended only by written agreement between the parties.

- 17. The Association and executives, are hereby authorized to be the undersigned owner/occupier's agent(s) to supervise and enforce the defined uses with respect to the designated premises in accordance with the *Trespass to Property Act*, R.S.O. 1990, c. T. 21, the *Motorized Snow Vehicle Act*, R.S.O. 1990, c. M.44 and the *Occupier's Liability Act*, R.S.O. 1990, c. O.2.
- 18. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision and any such invalid or unenforceable provision shall be deemed to be severable.
- 19. This Agreement shall constitute the entire agreement between the parties and the parties further acknowledge that there is no representation, warranty, collateral agreement or adverse condition affecting this Agreement other than as expressed in writing.
- 20. The effective date of this Agreement is December 5th, 2018.

IN WITNESS WHEREOF the parties hereto have therefore affixed their respective corporate seal attested by their respective officers duly authorized.

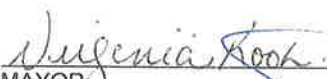
BRODER-DILL SNOWMOBILERS' ASSOCIATION



(having authority to bind the Association)

(having authority to bind the Association)

THE CORPORATION OF THE MUNICIPALITY OF KILLARNEY

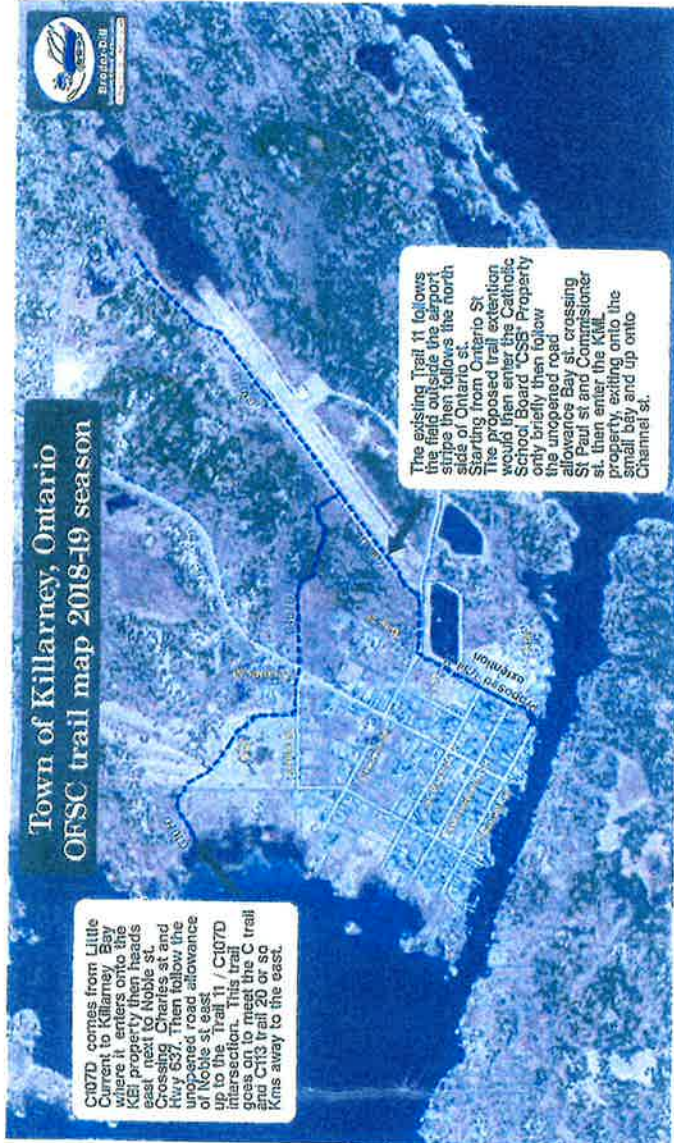


MAYOR



CLERK

Schedule "B" to By-Law 2018-43



REVISED Dec 15, 2018
Town of Killarney, Ontario
OFSC trail map 2018-19 season



A change in plans was required due to underground sump lines coming from the KML structures. We propose that we move the trail over to the other side of the small creek.

This was the original trail going back to the 1970's. We will be on township property for approximately 120' then cross onto the frozen bay and come up on shore at the walking bridge.



proposed Trail 11 extension

KML

179m

