

F. Attached

1. Staff Report DOR 08 46 Snowmobile Trails
2. Tom Baulke- Solicitor – Letter Dated January 20, 2009

Respectfully submitted,

Reg Russwurm
Director, Engineering and Public Works

For more information, please contact:

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STAFF REPORT: Recreation



REPORT TO: Council
MEETING DATE: December 8, 2008
REPORT NO.: DOR 08 46
SUBJECT: Snowmobile Trails
PREPARED BY: Shawn Everitt, Director of Recreation

A. Recommendations

THAT Council receive Staff Report DOR.08.46 “Snowmobile Trails” for information purposes and supports the reopening of the 12th side road to snowmobile traffic for the 2009/10 season.

B. Background

This report is requesting the removal of the prohibition of snowmobile use on the 12th side road. The prohibition was implemented in 2000 after several complaints of local residents of the noise from snowmobiles at both day and night and dangers posed by snowmobilers to motorists, horses and riders, and pedestrians on the narrow winding side road.

The County of Grey also made notice to the Collingwood snowmobile club that the use of County Road 19 as a portion of the connecting link trail into Collingwood and Clearview would not be renewed past the 2007/2008 winter season with the agreement ending March 2008.

Snowmobiling is a significant aspect of local and regional tourism and continues to have a strong presence within the Town and its neighbouring Communities. The Town in the past has allowed the use of portions of opened and unopened road allowances. The Town and the Ontario Federation of Snowmobile Clubs enter into land use agreements on Town lands including roads to ensure the Town is held harmless in the event of snowmobile trail use resulting in damages, injury or death.

Staff has worked with a group of representatives of local stakeholders regarding the future strategic planning of sustainable snowmobile trails. The Committee consists of representatives from the County of Grey, The Blue Mountains, Ontario Provincial Police, Blue Mountain Snow Drifters Snowmobile Club, Meaford and District Ridge Runners Snowmobile Club, The Blue Mountains Council, The Blue Mountains Engineering Department and The Blue Mountains Recreation Department.

The Committee has reviewed in depth the Trails that historically have been used as well as trails that have been closed for a number of reasons, including changes in land ownership as well as developers removing usage and have highlighted all aspects to the existing trail used during the 2007/2008 winter season.

As a result of these discussions it was determined that the trails from The Blue Mountains – Meaford Townline through Grey Road 19 west of Banks are relatively static. The existing Gas Trail from Grey Road 40 along Grey Road 13 into the Town of Thornbury continues to be a struggle each year, in particular with removal of gasoline services at the former Thornbury Mini Mart. This forced snowmobilers to travel along Highway 26 to go into the only remaining gas bar. The main focus of strategic trail planning became the need for sustainable trail use from the Banks area to connect with Grey Road 21 for the Collingwood connection as well as the Grey Highlands and Clearview connections.

As a result of the County of Grey giving notice that agreement for use of County Road 19 not being renewed, the Committee agreed that with the preliminary planning of a sustainable trail system underway, a request be made by the Blue Mountain Snow Drifters Snowmobile Club to the County of Grey for a 1 year extension for the use of County Road 19 for the 2008/2009 winter season. This request was granted at the May 8th 2008 TAPS Committee meeting with a requirement being the provision of insurance in the amount of \$5,000,000.00 naming the County of Grey as an additional insured by the Ontario Federation of Snowmobile Clubs.

At these strategic planning sessions a number of possible run routes were reviewed using aerial mapping, as well as actual site visits. The owners of privately owned lands in the area that had historic trail use and have since had privileges removed have also have been contacted by Town staff has again denied access of these lands. Each of these routes all provide obstacles, however the preference to reopening the 12th side road requires the use of only town owned road allowances both open and closed while easily connecting to the existing trail system. The reopening of the 12th side road to snowmobile use is not without obstacles, however the obstacles are more easily remedied and once again the use of existing town open and unopened road allowances allow for a more sustainable trail system. The Town partnering with the Ontario Federation of Snowmobile Clubs as well as the local snowmobile clubs could offer funding possibilities through the clubs, provided that appropriate timing of application periods is achieved.

The Snowmobile Committee invited the residents of the 12th side road to a meeting in March 2008 and requested that concerns that they may have of reopening the 12th side road to snowmobile use be brought forward. The concerns that were brought forward were the following:

NOTE: Residents in attendance – Leslie Worts, John Worts, Vera Svoboda, Georgina Schurman, Clive Turnock, Cathy Lane, Norm Griffiths, David Roffey.

The delegations of 6 homeowners from the 12th side road were in attendance at the meeting. They all have similar concerns. There was surprise expressed by the group that the issue of opening up the 12th side road was coming up again as it was noted that this road had snowmobile use prohibited on 2 previous occasions by Council. Since that time there are more residents using the road, walkers, bikers, horses, dogs, children combined with the blind corners of the road which would make snowmobile use a dangerous situation.

The committee was told that it was felt the 12th side road was part of the Bruce Trail and that the Bruce Trail has banned the use of motorized vehicles from all the trails. The feeling also was that members of the snowmobile clubs cannot be controlled now so if the road is opened up it will be an accident waiting to happen. The road has very deep ditches on either side so when driving on the road everything is in the middle of the road and that there is no room on either side of the road for snowmobile trails. The fact that there was an idea that the Snowmobile Clubs would police this activity was shown not to work as there has been consistent use of the road throughout the ban.

The residents further noted their concern as taxpayers would be increased, with type of situation there is increased liability both for the taxpayers and the Town. It is understood that if the snowmobile trail groomer could not groom particular areas of the trail the OFSC insurance coverage would not be applicable.

Mrs. Georgina Schurman informed the committee that she and her husband, Mr. Clive Turnock are residents of the 12th side road. She presented a map showing the layout of the road. She drives the road daily and says that it is a dangerous road. In her opinion there are 6 places where this road is dangerous beginning at the one lane bridge, blind curves, steep hills and ravines. She also had concerns that guests visit the Scott Mission and sometimes they travel in a school bus up the hill. Mrs. Schurman recounted an incident where she was driving down the road and came around a sharp bend only to find 6 snowmobiles abreast across the road. She indicated that she was lucky to get her vehicle stopped. Mrs. Schurman then thanked the members of the Committee and then Mr. David Roffey addressed the committee. Mr. Roffey voiced similar concerns as other residents. He noted that perhaps a ban on either snowmobiles or a ban on uses other than automobiles should be considered.

The Committee has also received correspondence from 12th side road residents The Scott Mission, Carla Hanisch, John and Leslie Worts, Sally John, Neil Harris and Katie Taylor, Vera Svoboda, Norm Griffiths, and Georgina Schurman and Clive Turnock, noting their concerns with the possibility of the snowmobile ban being removed.

12TH SIDE ROAD REMEDIES & IMPROVEMENTS

Staff feels confident that remedies to all issues could be reasonably provided by creating additional travel areas along ditch lines, creation of landscaping buffers, appropriate signage, reduced speed limits and a commitment of increased enforcements patrolling by Ontario Provincial Police as well as increased numbers of STOP Officers in the two local snowmobile clubs. Snowmobile Trail Officer Patrol (S.T.O.P.) is a partnership between the Ontario Provincial Police and the Ontario Federation of Snowmobile Clubs. This community based enforcement program uses the assistance of Special Constables to better the sport of snowmobiling. The goals of the S.T.O.P. program are to;

- Increase public awareness of snowmobile safety and the dangers of drinking and riding a snowmobile
- Educate snowmobilers on safety and nuisance concerns and promoting voluntary compliance with the snowmobile laws.
- Enforce the Motorized Snow Vehicles Act (M.S.V.A.) and, where applicable, municipal snowmobile bylaws.

This group also assist police in sobriety enforcement. For MSVA enforcement purposes, S.T.O.P. Officers have the same authority as police officers. This authority comes from the Police Services Act and is granted by the government. This gives a S.T.O.P. Officer special powers for the Province of Ontario only to enforce the Motorized Snow Vehicles Act (M.S.V.A.) only for a set period of time.

The power to issue tickets comes from the Provincial Offences Act Section 1(3) and the designation of Special Constables is signed by the Solicitor General. This permits the Commissioner of the O.P.P. to appoint the S.T.O.P. Officers as Special Constables. The O.P.P. Provincial Coordinator holds the signed designation in Orillia empowering the S.T.O.P. Officers to be appointed as Special Constables to enforce the M.S.V.A.

Therefore under the M.S.V.A. a S.T.O.P. Officer can carry out the same duties as a Police Officer by definition (Sec. 53 (3) Police Services Act) and may even make an arrest under Sec. 16(5) of the M.S.V.A..

The Ontario Federation of Snowmobile Clubs will also provide a land use agreement with the Town providing \$14,000,000.00 insurance coverage for each occurrence and also include holding the town harmless in case of incident. It is suggested Town Staff that all town road allowances require land use agreements when motorized vehicles are being used for recreational purposes by any groups, businesses, or individuals on a regular basis.

REQUIREMENTS FOR USE OF THE 12TH SIDE ROAD

The overall goal of reopening the 12th side road would be to provide as much of the trail off the travelled portion of the road as possible while still staying within the 66 foot road allowance. Additional ditching and some road widening already planned for by engineering and public works could achieve the majority of these works. An area of concern is the deviation curve in the road that currently creates a blind spot for motorists and pedestrians, cyclists and horseback riders. It has been suggested that trail works provide a route of passage using the town owned road allowance that has an existing rough trail, making the trail go straight rather than taking the deviation curve, additional signage would then be required to warn all uses of upcoming curves and oncoming traffic. The trail would then continue along the 12th side road to the 2nd line allowing for a new connection using the existing 2nd line unopened road allowance South and crossing at County Road 19 and continuing along the existing trail. This section of new trail requires three new watercourse crossing two of which would be the replacement of two significant pedestrian bridges as well as 1 new bridge across a small creek.

The main trail using the 12th side road from the 2nd line West would continue along the 12th side road to between the 5th line and 6th line, connecting to the existing trail. This trail that currently leads to the 6th line requires approximately 8 kilometres of road running and this trail would ultimately be closed.

C. The Blue Mountains' Strategic Plan

Preserving and enhancing natural and environmental features, and cultural heritage of the community.

Supporting the development of social and recreational programs to meet the broad range of needs in the community.

D. Budget Impact

Road Works as projected in the 2008 Engineering and Public Works operational budget for spot repair

Clearing of pathway approximately 6 meters wide completed by OFSC volunteers and providing proof of insurance that the Town will be held harmless during work

Partnership with Town and OFSC of Construction of 3 Watercourse crossings for both pedestrian and snowmobile travel, a capital project sheet has been prepared for 2nd line pedestrian trail and snowmobile trail enhancements for water crossings and trail surface enhancements in the amount of \$146,000.00

with to be funded partially by the Ontario Federation of Snowmobile Clubs, Bruce Trail and the Town.

E. Environmental Impacts

To ensure sustainable use of snowmobile trails while ensuring appropriate use of town property and environmentally significant lands and watercourses.

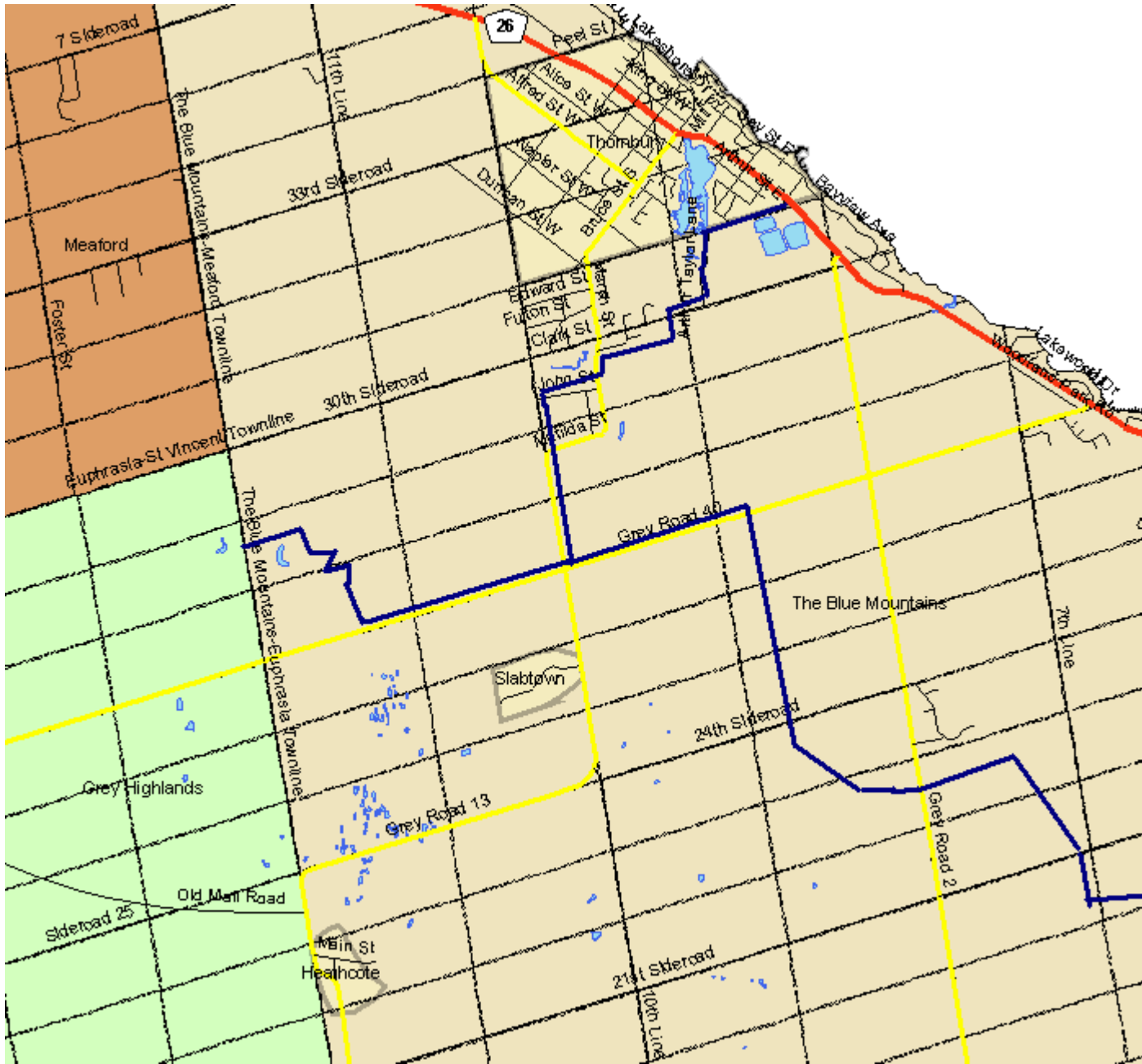
F. Attached

1. Westerly snowmobile trails
2. Central snowmobile trails
3. Kolapore Area snowmobile trails
4. Southerly snowmobile trails
5. Optimum Trail system
6. Remedies on 12th Side Road required

Respectfully submitted,

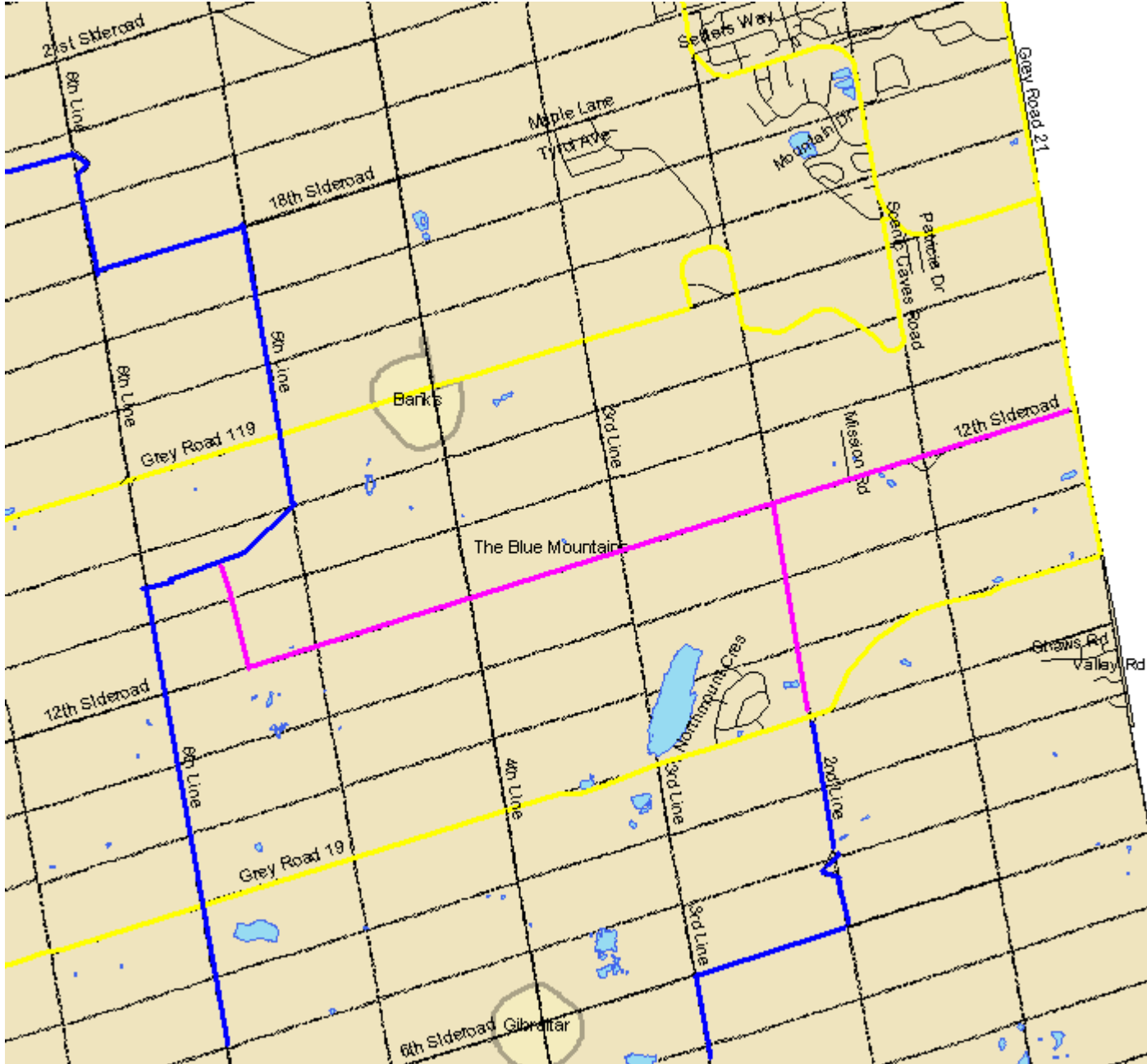
Shawn Everitt, Director of Recreation

1) Westerly snowmobile trails



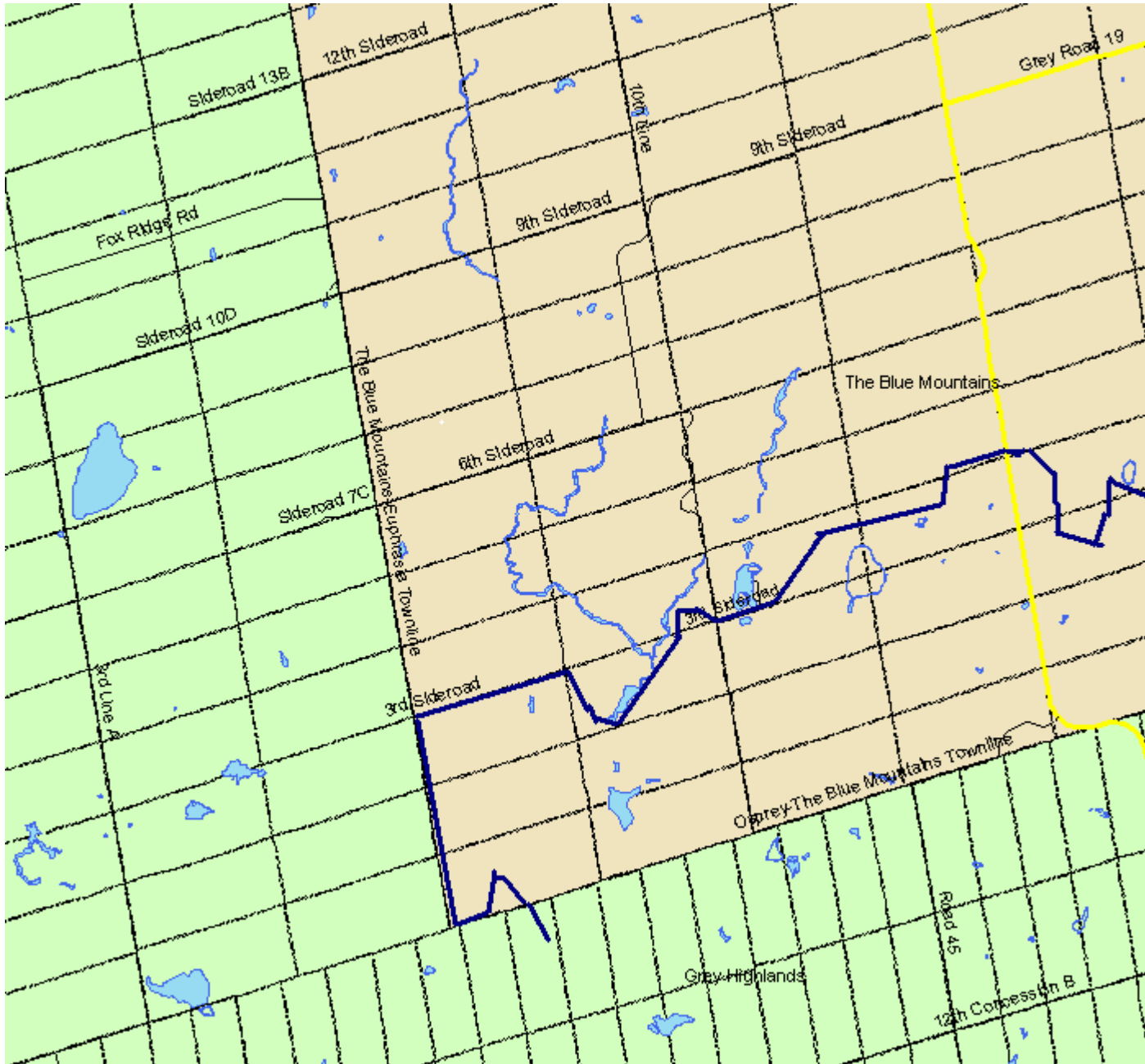
Blue is existing Trail

2) Central snowmobile trails



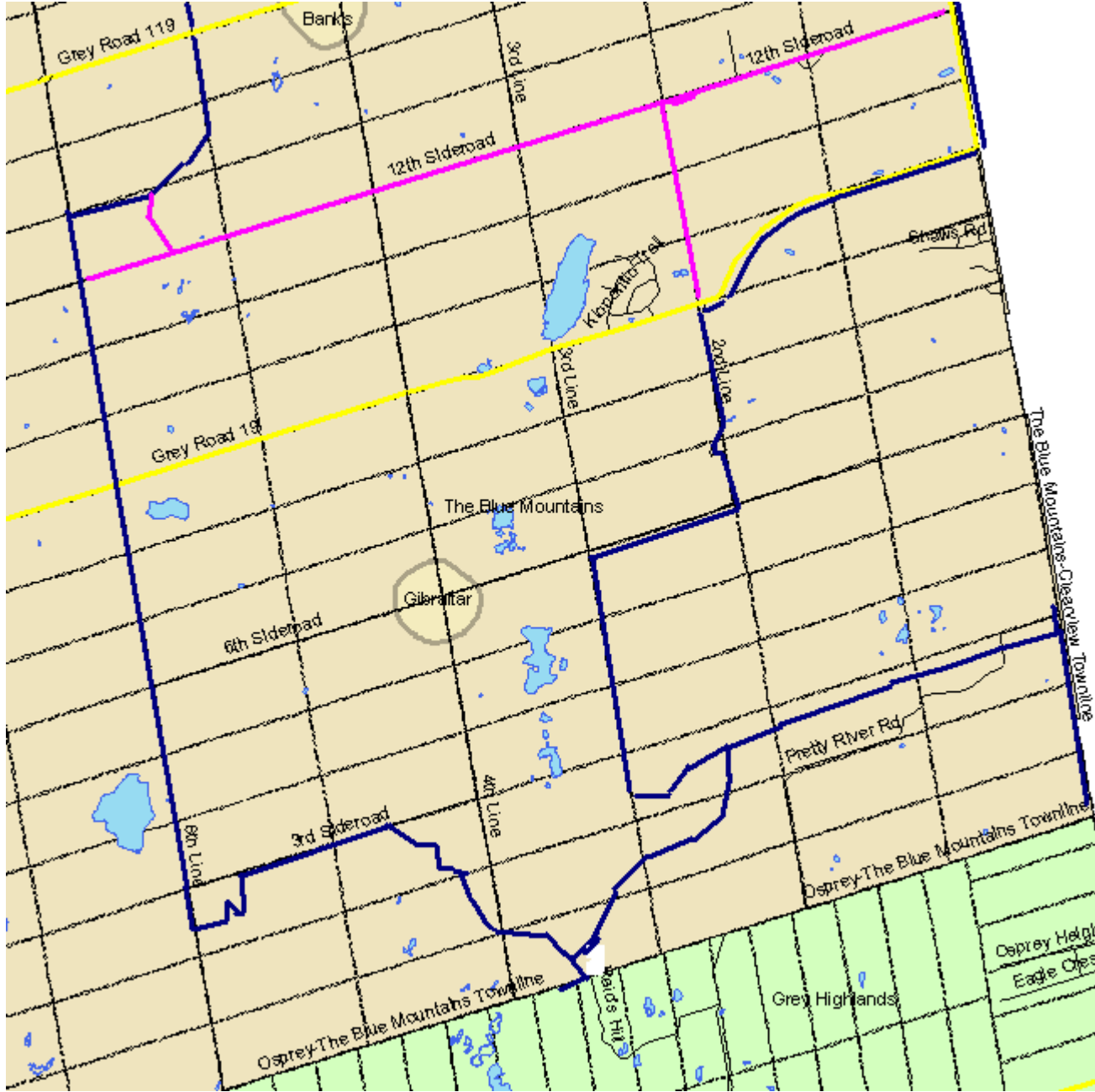
Blue is Existing Trail
Pink is Optimum proposed
Yellow are County Roads

3) Kolapore area snowmobile trails



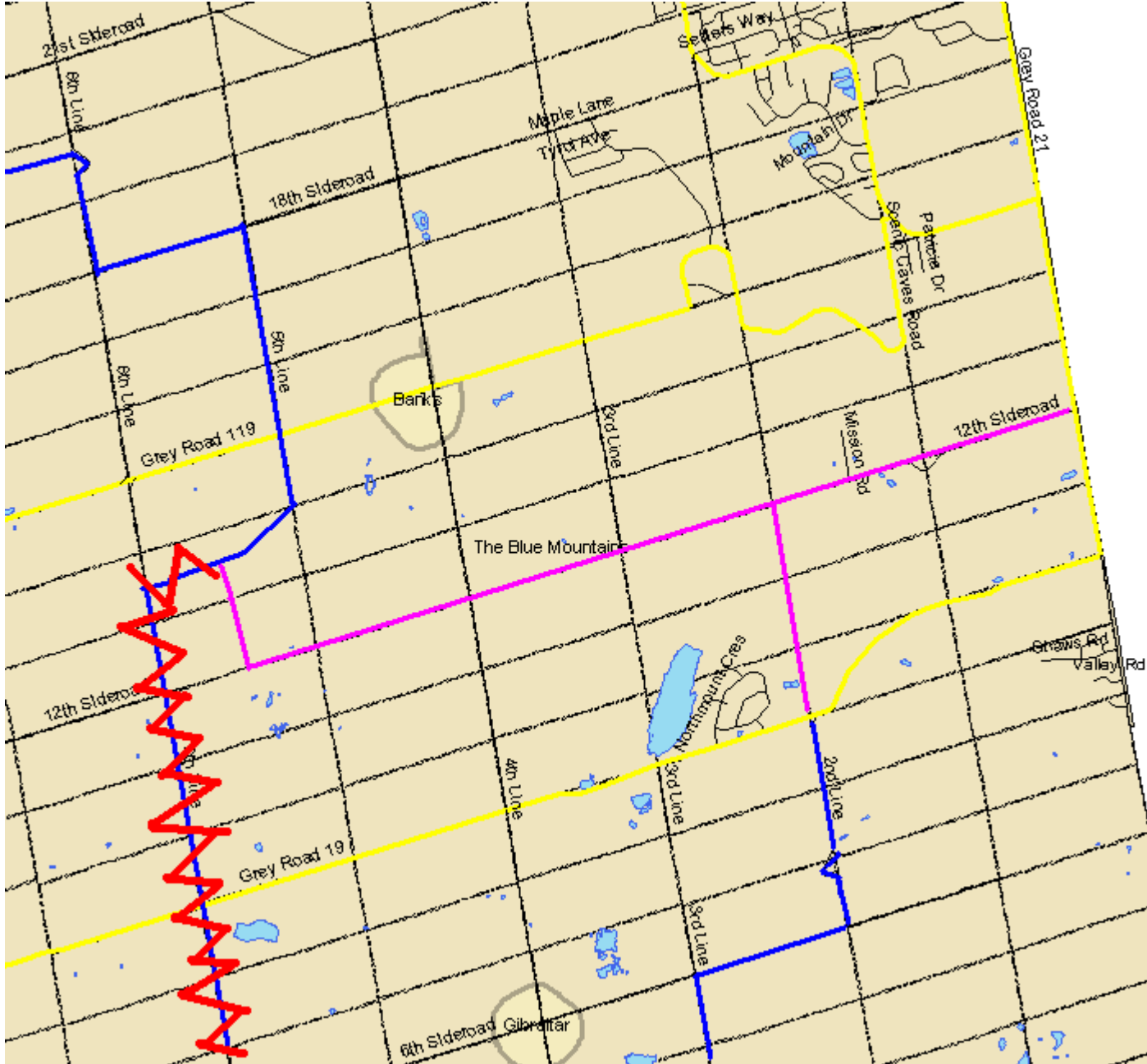
Blue is existing snowmobile trail

4) Southerly snowmobile trails



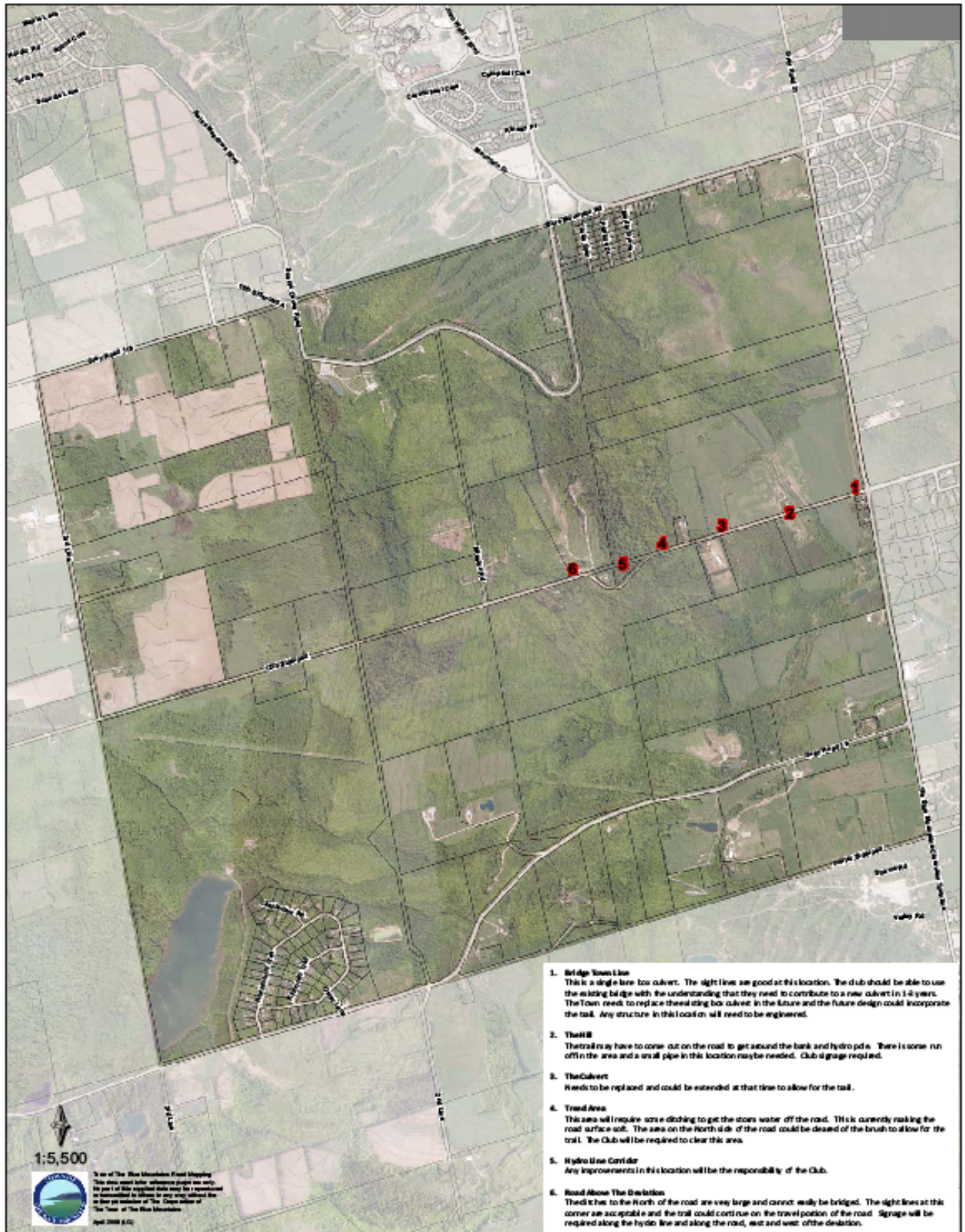
Blue is existing
Pink is optimum proposed route
Yellow are County Roads

5) Optimum Trail system 12th Side Road and 2nd Line



Blue is existing Trail
Pink is optimum proposed area
Red crossed is proposed removal of 6th Line road travel
Yellow are County Roads

6) Proposed 12th Side Road route and area remedies





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January 20, 2009

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Town of the Blue Mountains
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Attention: Shawn Everitt, Director of Recreation

Dear Sirs:

Re: 12th Side road Residents - Request by Snowmobile Clubs to reverse
ban on use of side road for snowmobiles

We act as legal counsel for a group of residents who own various properties which use the 12th side road as their sole means of access.

We have been retained in relation to a proposal which has been initiated by local snowmobile enthusiasts to have the 12th side road sanctioned as an approved snowmobile route. For some considerable period of time use of this side road by snowmobilers has been prohibited by the Town, recognizing the very significant safety concerns that such use presents. This matter has been considered by the Town on at least two (2) prior occasions and in each instance, the Town has recognized that use of this particular stretch of Municipal road is inappropriate and would result in significant concerns to public safety.

In December of 2008, a staff report was submitted to Council which recommended the removal of the prohibition of snowmobile use on the 12th side road. That report was the result of a number of meetings of a committee whose objects were to study possible alternate routes to the top of the mountain to connect the Town of Collingwood to the upper trails. We understand that the committee was formed after overtures were made to Council by the snowmobile club from the Town of Collingwood to re-open the 12th side road to snowmobile use. Some urgency was placed upon the committee to formulate a plan as a result of the decision of the County of Grey to stop usage of County Road 19 after the 2008-2009 winter season.

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The committee was comprised of representatives of two (2) local snowmobile groups each of whom have a direct interest in the matter, representatives of the County of Grey who had banned use of County Road 19, the OPP and various representatives of the Town. Although an opportunity to make a presentation to the committee was afforded to the 12th side road residents, (those most dramatically impacted by the current proposal) no one from the group was given an opportunity to be part of the committee. Involvement in the committee of a representative of this group from the outset would have ensured that the prevalent safety concerns which are evident to them on a daily basis and the issues related to noise, policing and interference with passive recreational users, would be at the forefront of deliberations....

The staff report which was presented to Council deals exclusively with the 12th side road as the recommended route to access the top of the mountain. It provides no information or background to Council as to other alternatives which might have been considered by the committee, (and which should be considered by Council) including:

- (a) direct and concerted efforts to have the County continue, (with regulation), the current use of County Road 19;
- (b) serious consideration to working with Hydro One for use of the transmission line lands which would provide the safest alternative for both snowmobilers and the public; and
- (c) simply letting the snowmobile clubs use the current southerly route which now is an approved means of access to the top of the mountain. While this is not the "fastest" or most "direct" route out of and into Collingwood, it is a completely viable alternative.

Additionally the report does not provide any comprehensive analysis, based on independent evidence of the issues specifically related to the 12th side road as a snowmobile route, including:

- (a) the predominant safety issues related to this stretch of road;
- (b) the significant concerns with noise generated from the many snowmobilers who will use the trail and the resultant loss of enjoyment of property which will be experienced by our clients;
- (c) the issue of compatibility of the use of this stretch of roadway by motorized snow vehicles with the current passive recreational user base including our clients, guests of the Scott Mission, Bruce Trail users and the public in general;
- (d) the concern of policing which has proven in the past to be unenforceable.

It is our opinion that a decision of Council to lift the ban on use of the 12th side road based on this staff report would be fundamentally flawed as the report fails in any sense to provide Council with a comprehensive analysis of the alternatives or with an analysis of the issues particularly related to the 12th side road itself. It may be that the committee did not fully explore the options in the short time available to it, however, it is clear from the staff report that Council has not been given the material necessary in order to make an informed decision on this matter.

There is no indication in the staff report as to what, if any, independent studies and reports were considered and relied upon by the committee in formulating its recommendation to Council. In particular:

1. Apart from the 2004-2005 data on the economic impact or snowmobiling on a Provincial basis, what local studies were undertaken to demonstrate the economic impact, if any, to Town of the Blue Mountains related to providing a shorter access for snowmobilers to the top of the Mountain? How would the Town's economy be impacted if the 12th side road route were not approved. There is no independent evidence that the reopening of the 12th side road will have any economic impact whatsoever, within the Town. Perhaps, in light of the safety and other issues related to the 12th side road discussed below, the matter should be independently studied over the next 2 winter seasons while the ban is in effect.
2. What statistical data was presented to the committee as to the likely average number of snowmobilers to use this route on a daily basis? This would presumably be based on use studies of the current route along County Road 19. This use data is fundamental in considering the important issues related to safety, noise, policing and the impact on passive recreational users of the side road, which must be involved in Council's decision. We would presume that, if independent data supports significant economic impact for the Town, this would translate into significant daily use of the connecting route.
3. Is there a written report from the Town's Roads Department, outlining the various improvements which will have to be made to the 12th side road to accommodate the use by snowmobiles? We would expect this to include an independent engineering report as to the works/costs associated with the improvements.
4. Safety is of the utmost concern to the residents. They are the ones who use this road for its primary purpose as the sole means of access to their homes. It is apparent from previous deliberations by the Town on this matter that safety issues have prevailed in the balancing of interests on this issue. We agree that safety and prevention should be the primary considerations of the Town. The OFSC has offered to provide insurance as the answer to the safety concerns. Insurance is a necessary safeguard once use is allowed, however, the availability of insurance should not be used as a justification for use. Where is the independent legal review of, and opinion on, the policy of insurance offered by the OFSC to protect the Town and its residents? An

independent legal review and opinion of the policy is required to determine what the policy covers, what the preconditions to coverage are and what exclusions exist.

5. The report suggests that a portion of the unopened road allowance will be improved to eliminate use of a portion of the traveled part of the side road. This option is presumably to address the very significant safety concerns associated with snowmobiles traveling along the traveled section of the side road. There should be an independent engineering and environmental report as to the impact of opening this section of the unopened road allowance for snowmobile use. This would involve review and reports from the Conservation Authority, the Niagara Escarpment Commission, and the Department of Fisheries and Oceans (if streams, rivers or fish habitat is involved). Furthermore, as you know, this proposed route will take the snowmobile trail within 19 meters of the home of one of the residents. No action of this nature should be considered until an independent report is submitted to address the impact of the works/trail on this particular residential property.
6. It is our understanding that a portion of the 12th side road is in fact part of the Bruce Trail. What consideration has been given to satisfying the requirements and objectives of the Bruce Trail Association with respect to utilization of the trail?
7. The residents advise that policing has been a problem in the past. While the report suggests that policing will be provided by the OPP in partnership with the OFSC through the provision of S.T.O.P Officers, there is no evidence presented to Council as to the effectiveness of this program and how it will be implemented in relation to the 12th side road. For example will 24 hour coverage be provided during the snowmobiling season?

It is our opinion that no decision by Council on this matter should be made until all of the matters outlined above have been comprehensively addressed and reported to Council. Those independent reports which are required should be commissioned by the Town. The funding of the reports should presumably be from the proponents of the change.

It is clear that the Town, in making its decision, must balance the interests of those impacted by the decision. The residents of the 12th side road have a clear and defined self interest in this matter. It is the safety of themselves, their family, friends, and guests and of those who use the road for permitted vehicular and pedestrian usage. That use currently includes passive recreational hiking and snowshoeing. The user group encompasses the residents of the 12th side road, members or the general public including users of the Bruce Trail and the many guests of the Scott Mission. The proponent group of snowmobiling enthusiasts have their own self interest which is to create the most direct and expedient link possible from the Town of Collingwood to the top of the mountain. In considering these competing interests it is our opinion that the interests of the 12th side road residents and others using the road for pedestrian and automobile use should prevail. Unless the proponents can provide compelling independent evidence to the Town to address the matters outlined above and eliminate safety and other concerns, the Town should not consider lifting the ban on the use of the 12th side

road for snowmobile use.

The committee does recognize that use of the 12th side road presents safety issues. It proposes the use of an unopened portion to the side road to address some of those safety issues. Unfortunately, the same safety concerns exist with respect to the upper portion of the side road where there are a number of hills and gullies with poor sight lines and little available road shoulder. There has been no studied solution to the safety concerns along those areas of the side road.

As expressed above any decision by the Town on the basis of the staff report submitted, would be fundamentally flawed and open to legal challenge. Such decision would have been formulated without appropriate consideration of either the available options or the specific issues related to the 12th side road itself. Further the decision would have been made without the benefit of needed independent report and assessment. While the 12th side road is the most convenient route to the top of the mountain for the snowmobile enthusiasts, there is nothing which has been presented to Council through the staff report that demonstrates that the use of the 12th side road is a necessity for preservation of tourism, the local economy or snowmobiling in general.

On behalf of our clients we are seeking written assurances that the assessments, studies and reports referenced above will be undertaken and reviewed before this matter is further considered by Council. There is an apparent rush to have the 12th side road ban lifted quickly. That is solely to satisfy the self interest of the snowmobile groups. This decision should not be made in haste and Council should only act on the basis of complete, informed and independent reports and studies.

We look forward to hearing from you and to receipt of responses to our inquiries outlined herein.

Yours very truly,

BAULKE AUGAITIS STAFF LLP

Per:



THOMAS D. BAULKE

TDB/del

Copy to clients

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