

Staff Report

Presented By: Mark Paoli, Director, Development Services
Meeting Date: March 24, 2025
Subject: Hi-Berry Farms Encroachment Agreement
Attachment(s): Reference Plan

Recommendation

That Council adopt By-law 26-2025, a By-law to authorize the execution of an encroachment agreement for Hi-Berry Farms.

Report Summary

An encroachment agreement is recommended to allow a conduit to be installed under the Rail Trail to provide irrigation to the adjacent farm field. The encroachment agreement and authorizing by-law are included in the By-laws section of the Council agenda.

Background/Analysis

Hi-Berry Irrigation and Existing Conduit

Hi-Berry Farms has land holdings on the east and west sides of Highway 21. The Saugeen Rail Trail in this vicinity is west of Highway 21 and adjacent to Hi-Berry Farm lands.

On February 29th, 2016, Saugeen Shores Council passed By-Law 24-2016 to approve an Encroachment Agreement between the Town of Saugeen Shores and Hi-Berry Farms Inc.

This agreement allowed Hi-Berry Farms to install and maintain an underground drainage conduit across the Saugeen Rail Trail for the purpose of extending an irrigation water line through the conduit to irrigate fruit and vegetable crops. This Encroachment Agreement is set to end on March 1st, 2026.

Proposed New Conduit and Encroachment

More recently, Hi-Berry Farms has determined that, in order to facilitate more efficient operation of their irrigation system, they would like to change the location of the conduit that crosses the Rail Trail (see map below) under a new agreement.

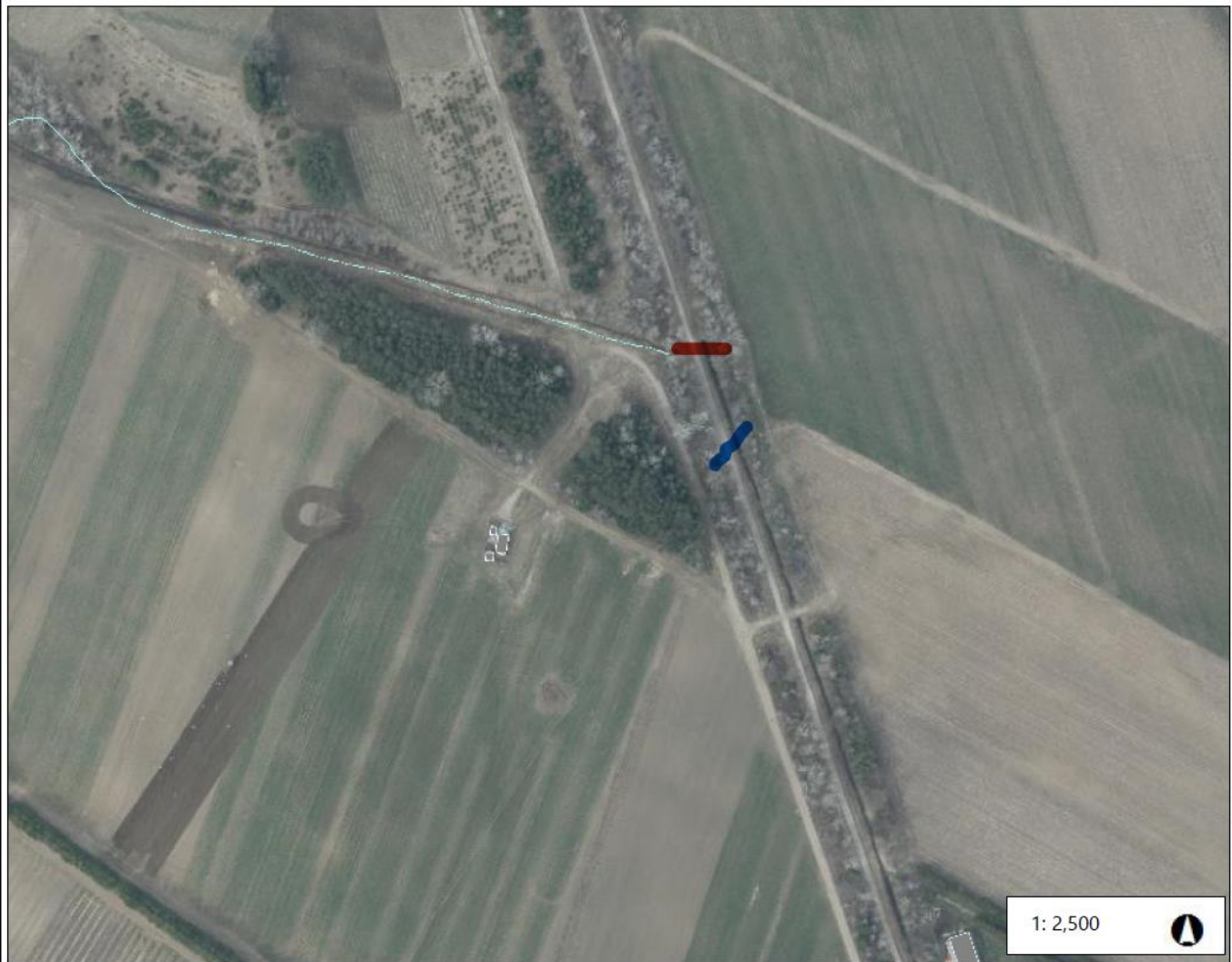
They would like to establish the new irrigation conduit in April of 2025 in time for the upcoming growing season.

The proposed encroachment agreement would deal with the new conduit, while the agreement noted above for the existing conduit would run its course with expiry in 2026 as that conduit will be no longer needed by the applicant. There would be a benefit in leaving the existing conduit in place to promote drainage for the trail so it can remain when the existing agreement expires.

Location Map: Existing and Proposed Irrigation Conduit Approximate Locations

Red is Existing

Blue is Proposed New



Policy Basis

Under the Town's "Encroachments on Municipally Owned Lands" policy, updated in January, 2025, there may be situations that warrant the Town's consideration to authorize private encroachments onto municipal land.

The policy includes the following considerations in assessing the merits of a request for an encroachment:

- Safety: The proposed encroachment would not create hazards for users of the trail.
- Public's rights of usage: The proposed encroachment would not interfere with the public's use of the trail.
- Need: The irrigation infrastructure is needed for growing fruits and vegetables on the applicant's adjacent lands.
- Effect on Municipal operations, work, plans, initiatives, or underground infrastructure: Public works oversaw installing the existing conduit, are familiar with the design, and, having reviewed the proposed conduit location, have no concerns.

If approved, the agreement would enable Hi-Berry Farms to install the conduit and related irrigation water supply.

Proposed Encroachment Agreement

The proposed agreement follows the format of other recently approved encroachment agreements and would encompass the proposed conduit which consists of approximately 115 m² of the Town's property. If approved, the encroachment would be Part 1 identified on the attached Reference Plan.

Highlights of the Agreement include but are not limited to:

- The term of the Agreement shall be a 15-year period.
- The Licensee agrees that it shall, at its own expense, at all times, cause to be maintained a policy of comprehensive general liability insurance in all respects, including deductible levels, satisfactory to the Town acting reasonably, with each policy containing \$5,000,000.00 in respect of each occurrence limit of coverage.
- In the event the Town requires that the Encroachment be relocated or removed for any reason, it may give the Licensee notice requesting removal or relocation of any or all of the Encroachment within a reasonable time frame, as more particularly specified in the notice. The Town covenants and agrees that, provided the Licensee is not in default under this Agreement, it will not give notice to the Licensee to remove the Encroachment during the Notice Period.

- The Licensee shall be responsible for all costs and liability associated with the installation of the Encroachment, including but not limited to the following:
 - The Licensee shall retain a contractor, approved by the Town, to install the conduit and remediate the site to a condition satisfactory to the Town.
 - Provide adequate notice to the Town and the Saugeen Rail Trail Association prior to undertaking any work on the Rail Trail.
 - Provide adequate warning and notice to the users of the Rail Trail advising of the construction and potential dangers during the installation of the conduit.
- The Licensee agrees to place and maintain the underground irrigation line through the conduit without disrupting or damaging the Rail Trail or Town owned property.

Annual Fee

The annual fee of \$ 303.13 is based on 28.76 m² (38.34m length and 0.75m diameter conduit) at a rate of \$10.54 per m² as set out in the Fees and Charges By-law.

Next Steps

If Council authorizes execution of the agreement, the applicant will register the Reference Plan. Once registered, the Agreement will be updated and then executed as authorized by By-law 26-2025.

Linkages

- Strategic Plan Alignment: Pillar 4: Fostering a Vibrant Place to Live and Visit
- Business Plan Alignment: Development Services Business as Usual

Financial Impacts/Source of Funding

The Annual License Fee is \$ 303.13.

Prepared By: Mark Paoli, Director, Development Services

Approved By: Kara Van Myall, Chief, Administrative Officer