

Item. No. 3

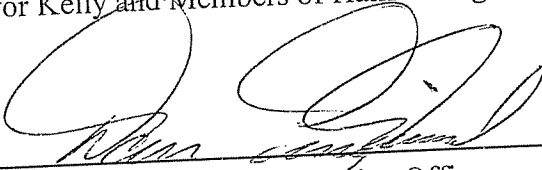


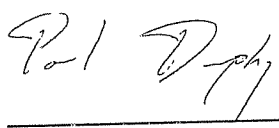
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Halifax Regional Council  
Committee of the Whole  
July 31, 2007

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**

  
\_\_\_\_\_  
Dan English, Chief Administrative Officer

  
\_\_\_\_\_  
Paul Dunphy, Director of Community Development

**DATE:** May 21, 2007

**SUBJECT:** **BMX Dirt Jumping Parks and Free Ride Areas**

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**ORIGIN**

May 8, 2007 - Regional Council requested staff examine challenges and potential solutions related to the Municipality providing BMX Dirt Jumping Parks.

**RECOMMENDATION**

It is recommended that no further dirt jumping parks be built on Municipal lands until a full program is put into place to reasonably protect users and the Municipality.

## EXECUTIVE SUMMARY

HRM has had minor involvement with Bicycle Moto Cross (BMX) Dirt Jumping Parks for five years. It began with a few simple requests for dirt piles on municipal lands and the appearance of unauthorized jumps in the middle of sportfields and woodlands. At that time measures were put in place to provide safe venues for participants and to protect the public and the Municipality from liability. Since then, five dirt jumping areas have been constructed on municipal lands through a variety of means and levels of municipal involvement. The sport has continued to grow rapidly and has progressed in the height and complexity of the stunts performed. At the same time the requests for municipal Dirt Jumping Parks has greatly increased. Currently there are an additional five dirt jumping parks proposed to be built by HRM this year alone.

There has been an increased concern for dirt jumping facility safety standards by municipalities all across North America. These concerns relate to design, construction and maintenance. Currently the sport and consulting/construction industry are not able to address these concerns as there are presently no accepted standards for dirt jumping facilities. Municipalities face a similar situation which existed fifteen years ago with skateboard parks, snow boarding pipes and aerial skiing facilities. As the sport evolves it is expected that universal safety standards will be developed just as they were for playgrounds and skateboard parks. However until then HRM will have to make its own decisions pertaining to standards, best practices and the conditions for its involvement in dirt jumping. Therefore, it is time to step back and develop an HRM standard on the provision of these facilities.

Staff are acutely conscious of “bureaucratizing kids on bikes”. However staff feel it necessary to ensure that the basic HRM principles of providing safe conditions on HRM properties and protecting the Municipality and the tax payer from liability are in place. The challenge in dealing with dirt jumping is its newness and the limited control that a municipality can exercise to prevent injury. There are several core related issues examined in this report for the benefit of Council’s decision making. These fall into two categories;

### **Policy Issues**

- **The Nature of the Activity**
- **Legislated Municipal Responsibilities and Liabilities**
- **Design, Construction and Maintenance Standards for Safety**

### **Operational Issues**

- **Necessary Resources**
- **Budgets**

Staff has initiated repairs to the five existing BMX Dirt Jumping Parks (see Attachment 3). Some of the practices outlined in Attachment 2 are also being implemented (e.g. signage). Further, while Council's request was targeted at BMX Dirt Jumping Parks, staff feel that Council should also be aware of a related activity, Free Ride Mountain Biking, which is also being conducted on municipal lands.

## **BACKGROUND**

### *The Nature of the Activity*

In the last twenty years there has been a steady emergence of bike related extreme sports but the "need for speed" or thrill is nothing new. Whether it is jumping off the barn roof or "bombing down a hill", people, especially youth and young adults, have always felt the need to push themselves to the limits of their physical ability and fear in order to better understand themselves. What has changed is the formalization of a wide variety of these activities. Some of these sports have now entered the Olympics. Changes in bike design and protective equipment have seen the evolution of trick riding, trials, free ride, BMX racing, dirt jumping, downhill, and cross country. Participants challenge themselves through activities with a level of personal risk and physical exertion outside of their normal comfort zone. The activities are generally individual in nature and require a certain amount of courage owing to the fact that a mistake is likely to result in some form of injury. The reward is an adrenalin rush and feeling of accomplishment. Injuries can range from minor cuts and bruises to broken bones and sometimes even paralysis or death. There are many other generally accepted sports which carry similar risks. However, these sports have reduced risk through development of standards. As with any activity there is also a varying range of skill, expertise and "desire to take it to the next level" among individuals. Safety publications related to these sports state "it is not a question of if you will be injured but when and how badly". Most often individuals know their limits and exercise judgement which prevents serious injury. However accidents do happen.

Personal equipment is very important. These activities can be accomplished on conventional equipment only to a certain degree. Specialized bikes and safety gear are the norm as they offer users better performance, a higher level of safety and a greater opportunity to push the limits. It has been observed that advances in equipment may be leading to higher risk stunts which lead to more serious consequences when things go wrong.

In HRM, there are five dirt jumping areas for BMX/mountain bikes on municipal property (Appendix 3). There are also two widely used "Single Track Free Ride" trails on HRM property at "Whopper Drop" (Bayers Lake) and Sandy Lake/Jack Lake (Bedford). In the case of the free ride mountain bike trails the facilities were built informally by individual trail users and not by the Municipality. Each one of the dirt jumping areas were built with the permission of/or by the Municipality. Both dirt jumping and free ride are generally viewed as positive recreational activities providing personal and social value and direct and indirect benefits across a reasonably wide segment of the population.

## DISCUSSION

### *Legislated Municipal Responsibilities and Liabilities*

To evaluate HRM's future role in Dirt Jumping and Free Ride HRM must be aware of its responsibilities around safety and liability.

- *Occupiers Liability Act Legislation*  
The Occupiers Liability Act of Nova Scotia generally lays out the responsibilities owed by HRM towards users of its premises. The legislation clearly indicates that the occupier of a premise owes a duty of care to ensure that any person and their property is reasonably safe while on the premises. (Appendix 1 Section 4). This includes the condition, activities and conduct of third parties on the premises.
- *Exemptions within the Occupiers Liability Act*  
There are significant exemptions within the act pertaining to land use. The full duty of care "does not apply in respect of risks willingly assumed by persons who enter on the premises" (Appendix 1 Section 5) deemed to be vacant or undeveloped rural land, forested or wilderness land, recreation facilities closed for the season and marked recreational trails among other land uses (see Appendix 1 section 6(1) . The risk of using these lands is assumed by the individual user. The Municipality does owe a duty to "not create a danger with the intent of deliberately causing harm and/or acting with reckless disregard" for the safety of persons and property (see Appendix 1 section 5.) In the courts this translates to a test of **gross negligence** on the part of the municipality.
- *Contributory Negligence Act*  
Nova Scotia has a Contributory Negligence Act which recognizes that not all unfortunate situations are caused by one party. The act allows the courts to decide if the victim contributed to their own misfortune. The weight of negligence owing to each party is a function of the factors contributing to the accident including; type of activity; condition of the premises; information and training opportunities available to the participant; age and decision making ability of the user, etc

### *Pertinence of the Legislation to Free Ride Trails on Municipal Properties*

The free ride mountain bike trails at Whopper Drop and Sandy Lake are undeveloped wilderness areas and parks with formal and informal recreation trails. They fall under the exemptions named in the Occupiers Liability Act and the "user's willing assumption of risk" component of the act would apply. Certainly it is recognized that persons participating in these free ride trail activities or any other activities on these lands assume risk for their actions. The activities obviously have some element of challenge, danger or risk to the participant. The user clearly recognizes this risk by purchasing and using safety equipment such as helmets, body armour, specialised bicycles and bike padding which are not used by the average cyclists. Therefore in the cases mentioned above, if the Municipality was not grossly negligent HRM would be generally found harmless of any liability.

However, the Municipality would be well advised to mark the area of the trail head with a sign advising that;

- These trails are essentially informal and unimproved trails to be used at the users own risk.
- Further, postings should state that persons using them for whatever purpose should possess a necessary level of expertise, physical ability and equipment in order to protect themselves.
- There may also be other messaging included on the sign advising where other information about safe use and safety equipment may be found.

This is intended to assist persons wishing to participate in making making wise personal decisions. The Municipality should also ensure that they have done nothing on the property which would constitute gross negligence. HRM should not seek to improve the trails or alter any stunts or jumps that might trigger a higher duty of care.

*Pertinence of Legislation to Municipal BMX Dirt Jumping Parks*

The Municipal responsibility towards users of Municipal BMX Dirt Jumping facilities on Municipal lands is different than the mountain bike trail activities discussed above. **Dirt jumping facilities are not considered trails. The facility is essentially a playground and the listed exemptions under the Occupiers Liability Act do not apply. As HRM has modified the land to add technical features it must ensure that the construction and condition of these features do not contribute to or cause an accident. In the event of a serious injury HRM could be sued and be found liable if the Municipality did not fully carry out its duty of care.**

As with the free ride activity, discussed previously, the participant has to assume some responsibility due to the nature of the sport. Again, the knowledge of the risk is generally evidenced through the use of specialized bikes and personal safety equipment and the Contributory Negligence act should apply. HRM should be aware that courts tend to be sympathetic towards the injured when assigning negligence.

Whether the actual risk of liability for injuries is significant remains to be seen. It has been argued, in the extreme sport world and in municipal circles, that participants know the risks associated with these types of activities and therefore do not pursue litigation when injured. HRM has not had a single case brought forward from the skateboard parks although we know that there are injuries. The insurance industry reports that insuring skateboard parks produces a relatively high level of income compared to claims for the reason mentioned above. However, it would take only one very serious accident to change this for HRM. This has been the experience in other municipalities where there have been injuries. Meeting the municipality's duty of care is essential if HRM is to provide areas for dirt jumping.

*Development of Municipal Standards of Design, Construction and Maintenance*

There are currently no standards or guidelines surrounding dirt jumping. Municipalities are on their own to develop safe approaches to the service. Staff have reviewed several municipal approaches to the issue of standards and found that while none are directly transferrable to HRM there are lessons to be learned from each. The municipality also has experience with skateboard facilities to draw upon, however, there needs to be a tailored approach to dirt jumping owing to the tendency for rapid deterioration of jumps with heavy or improper use. HRM has already applied a general safety program to its current dirt jumping facilities along similar lines of what is listed below, however these practices can be tightened up by going further with regard to;

**1) Providing a level of understanding for the users as to the risks involved in the activities and how to minimize those personal risks. This can be accomplished primarily through improved signage.**

**2) Ensuring a program of proper design and construction of HRM owned facilities**

**3) Conducting regular inspection, maintenance and repair of the facilities**

**4) Destroying any unauthorized dirt jumps in Municipal parks**

Detailed suggestions for practice in each of these areas can be found in Appendix 2 of this report. Staff are in the process of refining these standards for implementation.

A future step would be to approach the Province to make changes to the Occupiers Liability Act making dirt jumping parks and skateboard parks a named exemption under the Occupiers Liability Act owing to the nature of the sport. Municipalities in the United States have been successful in changing relevant legalisation in a number of States. Similar to the Municipal approach to trails this should not excuse HRM from its practice of providing safe properties but would limit liability.

*Resourcing*

Over the past five years staff have been through a learning process regarding “Bike Parks” and have gained important insight into the costs and responsibilities of their provision. Perhaps the most important lesson is the need for an “Expert” in the sport to be involved. This person would assist in the details of design, construction and initial testing and provide ongoing inspections to assure that HRM is providing safe facilities. These experts are hard to find in the conventional sense. Even when an expert is found, neither HRM nor the private consulting sector has developed any capacity for oversight or accountability of these experts. This is largely due to the sport’s infancy. A similar situation existed ten to fifteen years ago for skateboard facilities. At that time HRM assumed an amount of risk in building skateboard parks but sought to reduce that risk by using the best expertise reasonably available while the sport developed.

To date, HRM staff have had the benefit of an experienced individual. This person has had many years competing, travelling to facilities across the country and researching the sport in terms of facility design, best practise and consulting with associates in the same business. This individual has provided his services to HRM primarily as a paid consultant, aside from a short three month position in 2006, in which he was directly employed by HRM. There are two issues currently around continuing to use a dirt jumping expert. The first being liability insurance. HRM requires proof of insurance and the individual has a need to personally protect themselves from litigation. Unfortunately, insurance rates which have been quoted are five times the standard rates for professional architects and engineers. Again, this is a result of a lack of established standards. Although it is both the desire of this individual and staff to continue on a consulting bases, the cost of insurance coverage versus market potential for the service has made this prohibitive.

Another issue is a lack of certification for individual 'experts'. There is no oversight organization or set of qualifications for any individual claiming to have expertise in designing and construction of these facilities. With the growing demand for the sport not only here in HRM but across the Province, the individual HRM has been working with is continuing to assess their business options. In the meantime HRM does not have access to this service forcing staff to pursue other means to provide expertise in construction and maintenance.

The alternative to obtaining outside expertise would be to directly employ an individual, however this would have to be addressed as a longer term option through the Business Planning process in the next budget cycle. Full employment would be difficult owing to the small quantity and narrow focus of the work, however staff are pursuing a part time position. In the meantime staff are also attempting to develop the means to provide the expertise through partnerships with other consultants including landscape architects and engineers in order to attend to existing and currently proposed facilities. This may prove to be a solution for both the insurance and oversight issues.

In the meantime staff are using the best expertise available to repair and reconstruct existing dirt jumping facilities. This requires HRM to take on full responsibility for jumping areas rather than passing some responsibility to outside expertise. Staff feel that due to the demonstrated lack of standards and formal expertise, HRM is exercising its due diligence as long as it pursues these other options above. Staff feel that this is the most prudent solution short of closing down all existing facilities which would be considered to be unnecessary overkill.

### ***Budgeting***

There are three general considerations in budgeting for BMX Bike Parks;

- 1. Capital Construction:** The expertise to assist in design and construction supervision has typically been in the \$1,000 to \$1,500 range. The cost of design expertise would have to be factored into the overall capital budget for any new parks being planned. Overall project management is provided through Parks Capital Division by an assigned and salaried Park Planner. The actual construction of these parks has been in the \$10,000 to \$15,000 range.

**2. Ongoing Maintenance:** From a safety stand point it is recommended that sites be inspected on a weekly bases by trained maintenance staff and further on a monthly bases by an “expert”. For the five existing sites these weekly and monthly inspections, including repairs, will be worked into current Park Maintenance resources. The weekly service is factored at 2 hours per site at \$25/hour x 28 weeks = \$1,400.00 per year. Total for five sites is \$7,000.00. These sites would not be maintained in the winter and would be posted as closed.

The monthly inspection by the “expert” is estimated at \$450/month from May to November = \$3,150.00

In addition \$1,200 per site should be factored for minor repair/ materials for a total cost of \$6000.

Based on the above calculations \$3,230.00 per year is the annual maintenance costs per site and total maintenance costs for all five sites totals \$16,150 per year.

**Life-Cycle Costs and Current Condition/Compliance:** Attached in Appendix 3 is a brief history of the five existing sites and an assessment of their current condition. As noted \$15,000 is an estimated allocation required to bring the existing sites to an acceptable condition. Staff has begun to carry out this work.

### *Conclusion*

Free Ride trails and Dirt Jumping Parks are good healthy activities for HRM citizens. They are of comparatively low cost to the municipality and appeal to a wide range of individuals. However, they are not without risk. If it is to participate HRM must put into place the necessary precautions to provide safe places for these activities and meet our responsibilities. Free ride trails simply require a few signs at a cost of less than \$1000 to inform participants of the condition of the trail and associated risks. There should also be an ongoing awareness of these activities so that the Municipality does not cause harm through gross negligence.

BMX dirt jumping parks on Municipal lands requires a more conscientious program of design, construction, maintenance and repair tailored to the specialised needs of the activity. This needs to be more fully developed before any new parks are built. Design of parks already on the books may be able to proceed but none should be built this year.

HRM’s immediate focus should be to ensure that existing dirt jumping facilities are up to a standard of safety in accordance with generally accepted practices. Prudent action should be taken using a combination of existing dirt jumping knowledge, experience and best practices garnered to date and transferred from similar activities.

Staff has already begun to address many of the issues identified in this report utilizing the best expertise available. New signage is being developed and installed. A review of existing facilities has been completed and repairs are taking place on a priority basis as identified in Attachment 3. Staff are



also pursuing the means to develop inhouse and local professional expertise to enable additional facilities to be built in the following year.

### **BUDGET IMPLICATIONS**

Budget requirements for dirt jumping are not substantial;

**1. Capital Construction:** The five existing parks have primarily been funded to date from Community Recreation Area Rates and District Funds with minimal cost sharing from General Parks Capital. Approvals for these funds are through the normal Capital and District Fund budget approval processes. Staff are not proposing any new funding under capital for 07/08 which has not already been approved.

**2. Ongoing Maintenance:** Based on staff calculations \$3,230.00 per year is the annual maintenance costs per dirt jump site. Funding for inspections and repair of the current five sites (total \$16,150) can be absorbed in 2007/08 operational budgets. The funds can be found in accounts W182 and W186 where they would be assigned to the appropriate GL accounts for tracking materials, labour and any outside consulting incurred. Funds for signage for free ride areas would come from these same accounts (approximately \$2000).

If Council decides to continue with the construction of new bike parks through district funding, the required operating funds need, to be transferred to Park Operations from the appropriate operating reserve.

**3. Life-Cycle Costs and Current Condition/Compliance:** Funding of \$16,150 to ensure that existing dirt jumping facilities are to an HRM standard are available in the 2007/08 Capital Budget under Park Upgrades account CPU00928 reservation 1329.18 Block Funding approved by Regional Council in the 2007/08 Budget..

### **FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

### **ALTERNATIVES**

- \*1) Council could choose not to provide dirt jumping parks as a Municipal service. Staff would remove existing facilities. The costs of this would be approximately \$5000 and would be found in the approved operating accounts mentioned in the Budget Implications section of this report.
- \*2) Council could choose to commit only to the five dirt jumping parks that are currently in place and not build any additional facilities. Again this option would be funded through operating accounts already mentioned in this report.

\* In both alternative options Council would move forward on the necessary actions regarding Free Ride sites.

**ATTACHMENTS**

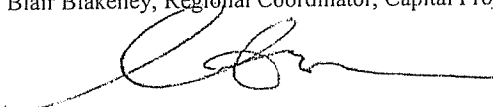
Attachment 1 - Occupiers Liability Act

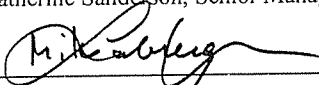
Attachment 2 - Suggested Practices for the Provision of BMX Dirt Jumping Parks

Attachment 3 - Conditions Assessment of Existing HRM BMX Dirt Jumping Parks

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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# Attachment 1 Occupiers' Liability Act

## CHAPTER 27

### OF THE

### ACTS OF 1996

**NOTE - This electronic version of this statute is provided by the Office of the Legislative Counsel for your convenience and personal use only and may not be copied for the purpose of resale in this or any other form. Formatting of this electronic version may differ from the official, printed version. Where accuracy is critical, please consult official sources.**

## An Act Respecting the Liability of Owners and Other Occupiers of Land and Other Premises

### Short title

1 This Act may be cited as the *Occupiers' Liability Act*, 1996, c. 27, s. 1.

### Interpretation

2 In this Act,

(a) "occupier" means an occupier at common law and includes

(i) a person who is in physical possession of premises, or

(ii) a person who has responsibility for, and control over, the condition of premises, the activities conducted on the premises or the persons allowed to enter the premises,

and, for the purpose of this Act, there may be more than one occupier of the same premises;

(b) "premises" includes

(i) land and structures, or either of them, except portable structures and equipment,

(ii) water,

(iii) ships and vessels,

(iv) notwithstanding subclause (i), trailers and portable structures designed or used for a residence, business or shelter,

(v) railway cars, vehicles and aircraft, except while in operation. 1996, c. 27, s. 2.

### **Replacement of common law rules**

**3** This Act applies in place of the rules of common law for the purpose of determining the duty of care that an occupier of premises owes persons entering on the premises in respect of damages to them or their property. 1996, c. 27, s. 3.

### **Duties of occupier**

**4 (1)** An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that each person entering on the premises and the property brought on the premises by that person are reasonably safe while on the premises.

**(2)** The duty created by subsection (1) applies in respect of

(a) the condition of the premises;

(b) activities on the premises; and

(c) the conduct of third parties on the premises.

**(3)** Without restricting the generality of subsection (1), in determining whether the duty of care created by subsection (1) has been discharged, consideration shall be given to

(a) the knowledge that the occupier has or ought to have of the likelihood of persons or property being on the premises;

(b) the circumstances of the entry into the premises;

(c) the age of the person entering the premises;

(d) the ability of the person entering the premises to appreciate the danger;

(e) the effort made by the occupier to give warning of the danger concerned or to discourage persons from incurring the risk; and

(f) whether the risk is one against which, in all the circumstances of the case, the occupier may reasonably be expected to offer some protection.

**(4)** Nothing in this Section relieves an occupier of premises of any duty to exercise, in a particular case, a higher standard of care that, in such case, is required of the occupier by virtue of any law imposing special standards of care on particular classes of premises. 1996, c. 27, s. 4.

### Willing assumption of risk

5 (1) The duty of care created by subsection 4(1) does not apply in respect of risks willingly assumed by the person who enters on the premises but, in that case, the occupier owes a duty to the person not to create a danger with the deliberate intent of doing harm or damage to the person or property of that person and not to act with reckless disregard of the presence of the person or property of that person.

(2) A person who is on premises without the permission of the occupier for the purpose of committing an offence against the person or the right of property contrary to the *Criminal Code* (Canada) is deemed to have willingly assumed all risks and the duty of care created by subsection (1) applies.

(3) The question of whether a person is on premises for the purpose set out in subsection (2) shall be determined on a balance of probabilities. 1996, c. 27, s. 5.

### Deemed willing assumption of risk

6 (1) This Section applies to

- (a) land used primarily for agricultural or forestry purposes;
- (b) vacant or undeveloped rural land;
- (c) forested or wilderness land;
- (d) recreation facilities when closed for the season;
- (e) utility rights-of-way and corridors, excluding structures located thereon;
- (f) highway reservations under the *Public Highways Act*;
- (g) mines as defined in either the *Metalliferous Mines and Quarries Regulation Act* or the *Coal Mines Regulation Act*, where the harm or damage suffered is not, in whole or in part, the result of non-compliance with a law relating to the security of such mine and the safety of persons and property;
- (h) private roads situated on lands referred to in this subsection;
- (i) private roads to which this Section does not otherwise apply, reasonably marked by notice as private, where persons are physically restricted from access by a gate or other structure; and
- (j) recreational trails reasonably marked by notice as such.

(2) Subject to subsection (3), a person who enters premises described in subsection (1) is deemed to have willingly assumed all the risks and the duty created by subsection 5(1) applies.

(3) This Section does not apply to a person who

(a) enters premises for a purpose connected with the occupier or any person usually entitled to be on the premises;

(b) has paid a fee for the entry or activity of the person on premises, other than a benefit or payment received by the occupier of the premises from a government or government agency or a non-profit recreation club or association;

(c) is being provided, in exchange for consideration, with living accommodation by the occupier; or

(d) is authorized or permitted by any law to enter or use the premises, for other than recreational purposes, without the consent or permission of the occupiers. 1996, c. 27, s. 6.

### **Agreements modifying duties**

**7 (1)** An occupier may, by express agreement, express stipulation or notice,

(a) extend or increase the duty created by subsection 4(1); or

(b) restrict, modify or deny the duty created by subsection 4(1),

subject to any prohibition or limitation imposed by this or any other Act of the Legislature, against or on, the restriction, modification or denial of the duty.

**(2)** No restriction, modification or denial of the duty pursuant to clause (1)(b), whether by express agreement, express stipulation or notice, is valid or binding against any person unless in all the circumstances of the case it is reasonable and, without limiting the circumstances to be considered in any case, in determining the reasonableness of any restriction, modification or denial of the duty, the circumstances to be considered include

(a) the relationship between the occupier and the person affected by the restriction, modification or denial;

(b) the injury or damage suffered and the hazard causing it;

(c) the scope of the restriction, modification or denial; and

(d) the steps taken to bring the restriction, modification or denial to the attention of the persons affected thereby.

**(3)** Subject to subsections (4) and (5), where an occupier restricts, modifies or denies the duty created by subsection 4(1), the occupier shall take reasonable steps to bring the restriction, modification or denial to the attention of the person to whom the duty is owed.

(4) An occupier of premises shall not restrict, modify or deny the duty imposed by subsection 4(1) with respect to a person who is empowered or permitted by any law to enter or use the premises without the consent or permission of the occupier.

(5) This Section applies to express agreements, stipulations and notices that are made prior to or after the coming into force of this Act. 1996, c. 27, s. 7.

### **Independent contractors**

**8 (1)** Notwithstanding subsection 4(1), where damage is caused to persons or property on premises solely by the negligence of an independent contractor engaged by the occupier of the premises, the occupier is not on that account liable pursuant to this Act if, in all the circumstances,

(a) the occupier exercised reasonable care in the selection of the independent contractor; and

(b) it was reasonable that the work that the independent contractor was engaged to do should have been done.

(2) Subsection (1) does not restrict, modify or deny the liability imposed by any other Act of the Legislature on an occupier of premises for the negligence of independent contractors engaged by the occupier.

(3) Where damage is caused to persons or property on premises by the negligence of an independent contractor engaged by an occupier of the premises and there are two or more occupiers of the premises, subsection (1) applies to each of those occupiers. 1996, c. 27, s. 8.

### **Duties of landlord**

**9 (1)** Where under a lease of premises a landlord is responsible for the maintenance or repair of the premises, the landlord owes the same duty to each person entering on the premises as is owed by the occupier of the premises.

(2) Where premises are sublet, subsection (1) applies to any landlord who is responsible for the maintenance and repair of the premises.

(3) Nothing in this Act relieves a landlord of any duty imposed on landlords by any law.

(4) For the purpose of this Section, obligations imposed on a landlord by any law shall be deemed to be imposed under the lease and "lease" includes any statutory lease or any contract or statutory provision conferring the right of occupation of premises on a person who is not the owner thereof and "landlord" shall be construed accordingly.

(5) This Section applies to leases that are made prior to or after the coming into force of this Act. 1996, c. 27, s. 9.

### Application of certain Acts

10 The *Contributory Negligence Act* and the *Tortfeasors Act* apply to and in respect of damages arising from a breach of the duties imposed by this Act. 1996, c. 27, s. 10.

### Application of Act to Crown

11 (1) Subject to subsection (2), this Act is binding on Her Majesty in right of the Province and in right of Canada.

(2) This Act does not apply to Her Majesty in right of the Province or in right of Canada as the occupier of

(a) a public highway or a public road;

(b) drainage works; or

(c) a river, stream, watercourse, lake or other body of water except those areas thereof that have been specially developed by Her Majesty for recreational swimming or for the launching and landing of boats. 1996, c. 27, s. 11.

### Application of Act to municipalities

12 (1) In this Section,

(a) "highway" includes any public road or street;

(b) "municipality" means a regional municipality, incorporated town or a municipality of a county or district.

(2) This Act does not apply to a municipality as the occupier of a highway, public walkway or public sidewalk. 1996, c. 27, s. 12.

### Exemption from application of Sections 5 to 9

13 Sections 5 to 9 do not apply to or affect

(a) the liability or duties of an employer to employees of the employer;

(b) the liability or duties of any person arising under a contract for the hire of, or for the carriage for reward of persons or property in any vehicle, vessel, aircraft or other means of transportation;

(c) the liability or duties of any person under the *Tourist Accommodations Act*;

(d) the liability or duties of any person by virtue of a bailment; or

(e) the liabilities or duties of any person under the *Trails Act*. 1996, c. 27, s. 13.



**Causes of action affected by Act**

**14** For greater certainty, subject to subsections 7(5) and 9(5), this Act applies only in respect of a cause of action arising after the coming into force of this Act. 1996, c. 27, s. 14.

**Repeal**

**15** Chapter 322 of the Revised Statutes, 1989, the *Occupiers of Land Liability Act*, is repealed. 1996, c. 27, s. 15.



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Attachment 2

**Municipal Practices for the Provision of BMX Dirt Jumping Parks  
(Subject to refinement by HRM staff prior to implementation)**

There are currently no standards or guidelines surrounding dirt jumping. Municipalities are on their own to develop appropriate approaches to design, construction and maintenance. Staff have reviewed several municipal approaches to the issue of standards and found that while none are directly transferrable to HRM there are lessons to be learned from each. HRM has generally applied a safety program to its current facilities along the lines of what is listed below, however these practices can be tightened up through;

**1) Providing a level of understanding for the users as to the risks involved in the activities and how to minimize those personal risks. This can be accomplished primarily through signage.**

- Signs should be at all entrances and at key areas. Additional signs may be required at higher risk and more advanced section. Signs should be simple and use standard symbols where possible instead of long text.
- Mark runs with signs or colour for degree of difficulty.
- Post signs at entrances to the facility strongly recommending ANSI or SNELL approved bicycle helmets for use by all entrants. Depending upon the difficulty requirements for body gear - shin pads, elbow pads, wrist guards, abdomen shields and gloves may also be recommended.
- Restrict access to advanced sections for highly skilled riders if such areas are included in the park. This may be accomplished through the use of test gates which users must negotiate before entering the advanced sections.

**2) Institute a program of proper design and construction of HRM owned facilities**

To most persons dirt jumping areas simply look like piles of dirt. While the materials are simple, the design and construction must be carried out carefully and with thought. Dirt jumping ramps are subject to deformation through use. The take off and landing mounds are subject to impact and are subject to changes in angles and the creation of deep ruts. Spacing of jumps, bail out areas and landings must be carefully designed. Aerial manoeuvres require predictability and an understanding of what can affect a takeoff and a successful landing. Dirt jumping areas must be designed and constructed by persons knowledgeable in the physical engineering, park design and the elements of the sport. Some thoughts around this include;

- Site the park in areas visually and physically accessible for easy monitoring, emergency access and to meet CPTED principles. Nearby access to a phone is important.
- Determine the expected users of the parks - age group, skill level, physical size. Will the design include various degrees of difficulty and does the most challenging trail present a hazard for a novice rider.

- Determine if the facility will be shared with other recreation activities or single use. For example if there is a trail portion will jogger, dog walkers also use the trail.
- Have the facility designed by an architect, preferably, a landscape architect with experience in designing bike parks. Use of an expert rider for consultation and testing is greatly advised.
- Design to introduce the sport to users sequentially so that they can improve their skill before moving on to more difficult portions. Sign areas appropriately for degree of difficulty.
- Place technical features appropriately, for example is the feature appropriate for the anticipated skill level. If the park is unsupervised more attention is paid to risks to the novice rider.
- Follow Standard Construction Guidelines. Both natural and man-made additions to trails must be durable, predictable and designed to minimize injuries when users fail to negotiate them properly. If standards are not available use best practices from similar activities and technical expertise.
- Provide adequate fall zones around any feature to provide a clear landing for a rider who has failed to negotiate the obstacle or ramp. This includes clearing branches from the trees that may cause injury.
- Locate spectator areas at a safe distance away from the technical features for safety. This may require some barriers. Locate walkways at a safe distance from the activity, provide safe and east access.
- Provide easy accessibility for emergency response.
- Provide an adequate draining system to eliminate excessive rutting or erosion.

### **3) Conduct Regular Maintenance and Repair of the Facility**

As these parks are subject to steady and relatively quick degradation through use, maintenance and repair are essential to protect the user from injury and lower the risk of liability.

- Conduct physical inspection of ramps, technical features, walkway, parking and spectators area. All trails require consistent inspection and maintenance. Technical trail features should be inspected for durability and predictability (the rider should be able to predict how the feature will move on impact).
- Consistent maintenance logs should be kept to ensure the course are being kept up to standard. Different courses require different levels of maintenance, depending on a variety of factors, including climate, soils, volume of use and the number and type of features. Wooden structures, like bridges and teeter totters require routine upkeep. HRM must be committed to their inspection and maintenance.

- Due to the activity, inspection would be more frequent than static infrastructure such as sport fields. Regular inspections should occur every week with a once a month inspection by an expert who would walk and ride the jumps to assess any major deformation or other issues.
- Repairs should be effected in a timely manner. If a present danger exists and cannot be repaired immediately or safely secured off the facility should be closed down.
- Inspections should also look for adequate lighting and condition of signage as well as trip, slip and fall hazards (broken glass, rocks, tree branches etc).
- Inspection and repair should be carried out by properly trained knowledgeable persons.
- Overhaul and rebuild the parks as necessary.

### Attachment 3

## Conditions Assessment of Existing BMX Dirt Jumping Parks

Below is a brief history of the five existing sites and an assessment of their current condition. As noted \$15,000 is an estimate to bring the existing sites to an acceptable condition.

1. **Mainland Common**- This site started it all by circumstance back in 2000 when staff began stock piling compost material and the local bikers informally used this as a bike park. In 2004 the bikers approached HRM to formalize this usage and upgrades were funded. This site now requires a refurbishment estimated at \$5,000.00.

2. **Brookside** - This site was developed in 2004 for approximately \$10,000 by a group of avid community riders and parents, funded by local area rate funds and cost shared by Parks Capital. At this time an expert advisor was not involved and in retrospect mistakes were made, mainly in the type of fill material used, which at the time was kindly donated. This site now requires a complete rebuild estimated at \$15,000, however the community has set aside \$10,000 from the local Area recreation Rate and is awaiting HRM to assist.

3. **Berryhill Subdivision** (Laurie Lively Park) - Site was developed in 2005 for approximately \$10,000 and was jointly funded as part of an overall new community park project. This site was designed with the assistance of an expert. The original fill material was not satisfactory, however this was amended last year and is now at an acceptable standard. The site does need a minor top-up of material and a few jumps should be re-worked, this is estimated at \$2,500.00.

4. **Fall River** (The Pit) - This site was developed in 2005 at approximately \$20,000.00 through District Funds and Area Rate. Although not originally designed by an expert, this was re-worked last year under expert advice. This site still needs further reshaping and material at an estimated cost of \$2,500.00.

5. **Mount Edward Road** - This is the newest park in the system built in 2006, for \$15,000 funded by three area Councillors' District Funds. This site is in good condition and no immediate capital work is required.