

***The Line Fences Act and  
Abandoned Rail Right of Ways***



**Report Prepared for the  
Minister of Municipal Affairs and Housing**

*by*

*Wayne J. Caldwell, PhD, RPP, MCIP*  
Caldwell Consulting

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# The Line Fences Act and Abandoned Rail Right of Ways

## **1.0 Introduction and Background**

At one-time Ontario was crisscrossed by a network of railroads that contributed to the vitality of rural and urban communities. These rail-lines were imposed on original surveyed parcels by the federal government to develop the local and national rail system. As local lines became less competitive the rail companies proceeded to formally abandon these facilities and dispose of the property. As part of the formal abandonment procedure the rail right of ways were offered to the federal and provincial governments, municipalities and lastly to abutting property owners.

As the use of these corridors for rail transport diminished communities began to identify the potential for new uses. These abandoned rights of ways represent a unique resource that many people contend would be very difficult to recreate. As a result governments (municipal<sup>1</sup> and provincial) considered and acquired some of these rights-of-way as a resource for the community. Many have developed new uses as trails, some have become corridors for utilities, and others have been acquired simply for the “future”. While some have been thoughtfully converted to a new use, others have been left to nature. In any event, the new use needs to coexist with neighbouring properties which in Southern Ontario are mostly farms but they also include non-farm rural properties, urban areas, forests and swamps.

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At one-time much of rural Ontario was divided into small fields that supported a diverse mix of crops and livestock. The need for fences to delineate properties and to contain livestock was essential - as was a set of rules to help neighbouring property owners understand their rights and obligations. In response the provincial government first adopted the Line Fences Act<sup>2</sup> in 1874. In addition to helping to explain who had responsibility for fences the Act established a framework for dispute resolution when neighbours were in disagreement over construction or maintenance. Much of this responsibility was transferred to municipalities and administered by Fence-Viewers appointed by the municipality.

A number of amendments to the legislation have occurred over the years.

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<sup>1</sup> Within this report references to municipalities are frequently used to reflect their extensive involvement in the ownership of Abandoned Rail Right-of Ways (ARROWs). In many instances the reference to municipality should equally be construed as including other public agencies such as Conservation Authorities who may also own ARROWs and are subject to the same provisions of the Line Fences Act.

<sup>2</sup> Current legislation can be traced to fencing legislation passed in 1834.

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Abandoned Rail Right of Ways (ARROWs) and the need for fencing create a unique challenge for the Line Fences Act. While federal requirements for fencing of active rail right-of-ways are contained in the Railway Safety Act<sup>3</sup> the provincial Line Fences Act has jurisdiction over fencing adjacent to ARROWs. Specifically the legislation under Section 20 requires municipal owners (as well as the Crown in right of Ontario and a crown agency and any non-adjacent landowner) of former or abandoned rail right-of-ways to construct and maintain, in perpetuity, all fences adjacent to all ARROWs that have come into municipal ownership.

The requirement of the legislation that fencing be provided by municipalities has become an issue from two perspectives. From municipalities' perspectives there is a concern that they will be required to provide and maintain miles of unneeded fences. From an agricultural perspective some municipalities have been reticent to fulfill their obligations and some farmers have been forced to resort to the courts to ensure that appropriate fences are constructed. Amidst these two issues are a myriad of subtleties that will be explored later within this report.

In response to municipal and agricultural concerns the province initiated this study with the following three goals:

- To identify all issues related to line fence responsibilities on abandoned rail rights-of-way and develop possible solutions.
- Seek to build consensus on possible solutions to issues and to identify areas where no consensus has been reached.
- To provide non-binding advice to the Minister on improvements to section 20 of the *Line Fences Act* and on other actions that may provide relief to the issues identified.

### **1.1 Evolving Legal Context**

There are at least two legal proceedings that are relevant to this report.

In the case of *Caiser (and others) vs. the Corporation of Bayham and the Corporation of Tilsonburg* the courts upheld section 20 finding that the municipalities had an obligation to construct fences as required under the legislation. The decision includes the statement that “The provisions of the Act requiring municipalities to bear the cost of fencing abandoned rail lines serves as notice to the municipality of its responsibility should it agree to assume these lands.”

The case of *Grosvenor (and others) vs. the Corporation of East Luther Grand Valley* is still before the courts. In this instance the municipality has passed a by-law to designate an Abandoned Rail Right of Way as a “highway” as set out under the Municipal Act. The Line Fences Act does not require the fencing of boundaries between highways and private lands. Neighbouring land owners who wish to see a fence established are contesting this by-law on the

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<sup>3</sup> The Railway Safety Act replaced the Railway Act. The Railway Safety Act provides for regulations to be made dealing with access to rail lines, however such regulations have not been made. The Ontario Railways Act requires companies with an active rail line to construct and maintain fences along the right-of-way. There are a very limited number of rail lines under this provincial legislation.

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grounds that it specifically attempts to circumvent the Line Fences Act. A decision which accepts the municipal position would potentially have wide ranging consequences for those abandoned rail right of ways under municipal jurisdiction.

## **2.0 Approach to the study**

To address the goals of this study methods were developed that stressed the input of both the farm and municipal sectors. It is recognized, that although the issue is contentious, open and transparent dialogue increases the potential for understanding and can lead to new positions that may help to alleviate concerns.

Appendix 1 provides an overview of the process used to develop this report. Two separate meetings were held (March 8 and 10) with equal invitations to key representatives of the farm and municipal sector. These two meetings were designed as an open discussion to identify issues, key principles and solutions to the issues (Appendix 2). These meetings were designed to secure targeted input from farmers and municipal representatives who had direct experience with this issue. Following these 2 meetings a draft report was prepared and presented to a joint meeting of the 2 groups on March 17, 2005. The report was revised further based on input received at this meeting.

Participation at all three meetings was excellent. At the March 8 meeting representatives were present from the Ontario Federation of Agriculture and the Christian Farmers Federation of Ontario. In addition farmers were present from Bruce, Grey, and Elgin (Bayham-Tillsonburg). Representation for the March 10 municipal meeting came from the same counties as well as the Ontario Good Roads Association and the Rural Ontario Municipal Association. A representative from Hastings County was also present as was a representative from Conservation Ontario. Most of the same representatives from the March 8 and 10 meeting also attended the March 17 meeting. Although Eastern Ontario was underrepresented at these meetings a conference call and individual phone calls helped to obtain an eastern Ontario perspective on the issue.

To the extent that this report is successful in addressing the identified issues it is a tribute to the experience and wisdom of participants at these 3 meetings.

## **2.1 Assumptions and Limitations of the study**

Although the report attempts to provide a comprehensive overview and identifies a number of options to address the issue it should be acknowledged that it is based on a number of assumptions and has certain limitations:

- 1) Input was drawn primarily from municipal and farm groups. These two sectors represent the vast majority of landowners – both of the abandoned rail lines and of the privately held land through which the former rail lines traverse.
- 2) The report draws heavily from those communities that have experienced specific issues with ARROWs and the Line Fences Act. These folks clearly have a perspective and insight into this issue which may differ from other areas in the province.

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- 3) The research for this report was conducted over a compressed time frame. Key stakeholders with first hand experience with the issues were consulted as part of a process to identify relevant issues and possible solutions. (Appendix 1, Process to Develop Report on the Line Fences Act and Abandoned Rail Right-of-ways.)
  - 4) Although the total number of participants was limited the process was successful in its goal of engaging knowledgeable and experienced people from both the farm and municipal perspective.
  - 5) The author was impressed with the resourcefulness of farmers and municipalities in addressing this issue in differing ways in different communities across the province. Additional investigations may have yielded more models that would have contributed to the recommendations of this study.



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### 3.0 The Issues

*“Should fences be provided adjacent to Abandoned Rail Right of Ways and who should pay?”*

At first, the issue of fences adjacent to ARROWs may seem as straight-forward as this question, however there are many related issues. At the March 8 and 10 meetings with agricultural and municipal representatives there was excellent discussion concerning why the issue of fencing adjacent to Abandoned Rail Right of Ways was so important to both communities. In general, both groups were appreciative of each others issues and interests. In fact, many issues were held in common. Issues identified at the two workshops are presented in Appendix 3.1.

Key issues are identified from the two meetings, interviews, and published reports.

### 3.1 Agricultural interests in this issue include the following:

- 1) Fencing of livestock. Although the pasturing of livestock is not as prevalent as it once was there is a clear need for fencing adjacent to pasture fields. From an agricultural perspective the public ownership of an abandoned rail right of way creates a need for a fence where it would otherwise not likely be required.
- 2) Preventing trespass (controlling access from ARROWs onto adjacent lands). The potential impact of trespassers onto private land is a concern for a number of reasons. Whereas fencing was historically required adjacent to railways to keep livestock away from trains it is increasingly required to keep people on the right of way and off privately held lands. Preventing trespass is important for a number of reasons:
  - a. Vandalism and crop damage – This was identified as a particular issue where there is an unmaintained trail (especially involving ATVs).
  - b. Liability – Farmers are concerned that people may leave a trail and in the act of trespassing on private lands injure themselves potentially making the farmer liable. This may potentially impact insurance premiums.
  - c. Biosecurity – Both livestock and crops may be at risk as people (ATVs etc) travel from one property to another potentially transmitting disease along the way.
  - d. Theft – Concerns exist over the potential for theft. This was identified were ARROWs exist in proximity to buildings or where the ARROW provides easy access to certain crops (vegetables, orchards etc.). In addition to economic loss, this is a particular risk where recently sprayed crops might be unsafe for human consumption.
  - e. The difficulty of enforcing trespass legislation was identified as a specific problem.
- 3) Cost. Farmers are concerned about who absorbs the cost of fencing ARROWs. While legislation and legal decisions are clear that fencing adjacent to ARROWs is a municipal responsibility there are examples from across the province of where municipalities have been reticent to construct fences. In some instances farmers have constructed the fence themselves and in other instances they may have reached an amicable shared arrangement with the municipality. In any event farmers want to avoid the cost and hassle of going to

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court to force the construction of a fence required pursuant to section 20 of the Line Fences Act.

It was also noted that farmers are tax payers and expect municipal officials to make good decisions prior to the construction of a fence.

- a. The issue of cost is a fundamental concern. Farmers are aware that some municipalities want to see them pay a portion of the costs, however, farmers also see that ARROW's are primarily used for the greater public good.
- 4) Land use determines the need for fencing. Fencing adjacent to pasture fields and buildings is likely to be a higher priority than fencing in a swamp or bush.
- 5) Standards and Maintenance. Appropriate standards need to be established that meet the needs of agriculture. This includes standards for fencing – but also includes standards for crossings. Maintenance is also relevant given the yearly monitoring this could entail as well as the long-term commitment.
- 6) Access across and along corridors. At the farm and municipal workshops there were two opinions on whether or not farmers have an automatic right to have a perpendicular crossing of an ARROW. This report does not offer a conclusive opinion on this issue, but proceeds on the assumption that it is in everyone's interest to avoid landlocked or inaccessible parcels. The standard and provision of the crossing is an issue for farmers (gates, width etc.). The farmers right to use the corridor to travel along it to get from field A to field B for example or to use it to lay a pipeline for irrigation or manure application is much less certain and most likely requires the approval of the municipality.

### **3.2 Municipal interests in this issue include the following:**

- 1) Costs. A major concern for municipalities was the need to manage costs. Municipalities acknowledge their need to contribute to fencing along ARROWs but many question the basis for covering 100% of the costs of construction/maintenance. Issues of cost include a number of related items:
  - a. Needs Priority. Municipalities tend to see a hierarchy of need. Municipal support for fencing tends to be coincident with the perceived legitimacy of the use. Fencing adjacent to pasture fields or buildings tended to receive a higher level of support than fencing in a swamp for example.
  - b. Frivolous demand. Comments from municipal representatives tended to suggest a high level of support for fencing legitimate agricultural needs vs. what might be termed a more frivolous demand.
  - c. Budgeting. Miles of unfenced ARROWs represent, in many cases, an unfunded liability for the municipality. Municipalities need to be able to spread this cost out over an appropriate time period to be able to budget effectively.

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- d. Maintenance and construction in perpetuity. Municipalities expressed concerns about the long-term responsibility to monitor and keep fences in good repair and the related financial implications.
  - e. It was noted that there may be times where a survey will be required to identify property boundaries thereby adding to costs.
- 2) Liability. Municipalities recognize that the assumption of an ARROW brings with it a legal liability and that active use of the ARROW may increase the potential for incidents. It was noted that insurance rates are much lower for trails where motorized vehicles are prohibited.
  - 3) Economic Development and the Broader Public Interest. Many rural communities want to diversify their economy, provide services and support tourist related activities. Discussion with folks in Eastern Ontario noted that trails have resulted in economic spin-off effects such as the development of bed and breakfast facilities, farm vacations, etc.
    - a. Related to economic development there is a belief that the province should play a role in supporting local efforts to develop trails and related activities (reflecting a broad public interest).
    - b. There was also an expressed concern that some municipalities have declined ARROWs because of the perceived financial liability associated with the need to establish fences adjacent to ARROWs.
    - c. Municipalities also want to encourage the maximum use of the corridor including promotion of trails where they have been established.
  - 4) Dated and Ambiguous Requirements. A concern exists that Ontario's standards for fencing adjacent to ARROWs are more rigorous than elsewhere in the country. Originally, section 20 mirrored federal fencing requirements but those were repealed in 1996 and replaced with an authority of the federal minister of transportation to issue a fencing standards regulation. To date no such regulation has been filed. There is concern that the current system is not working.
  - 5) Maintenance responsibilities. Determining how long-term maintenance should occur is a concern for some municipalities. Municipalities feel adjacent landowners should be a party to maintenance of the fences. As one person suggested – "if we could just get the property owners to walk the fences in the spring with a pail of staples..."
  - 6) Standards. Appropriate standards are required for fence construction. Municipalities want a base fencing standard above which they would not be responsible. This includes appropriate standards for crossings.
  - 7) Access to the Corridor. The question of right of access from one parcel of an owner to a landlocked parcel on the other side of the ARROW has been raised. Most participants felt that access to land locked parcels should be ensured.

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### 3.3 Discussion

Clearly, there are a number of shared issues between the farm and municipal sectors. Both share a common view concerning the need for appropriate standards and the need to adequately address issues related to the crossing of an ARROW. Both acknowledge that there are issues related to trespass and liability. To varying degrees both acknowledge that the use of the ARROW plays an important role in the need for and type of fence.

#### 3.3.1 Further discussion on key issues- the author's perception

*The continued need for fencing.* For some it is ironic that rail companies are not required to provide fencing adjacent to an active rail line, whereas municipalities are required to provide fencing adjacent to ARROWs. It needs to be remembered, however that the landscape of Ontario has changed drastically over the last generation and with 4 million more people anticipated in the province in 30 years this change will accelerate. Historically, while the provision of fences was intended to protect livestock it was even more important for the safety and use of the railroad. From an agricultural perspective train traffic was relatively unobtrusive to individual farms. As the province continues to urbanize, however pressure to use ARROWs for recreational purposes is likely to increase. This suggests that in the future there may be an even greater need for fences than was ever the case under historical use as a railway. *While there may be arguments to the contrary, from an agricultural perspective the need for a fence adjacent to a trail may be greater than the need for a fence when it was an active railway.*

*Cost:* Cost is a key issue which divides the municipal and agricultural perspective in that the farm sector wishes to see Section 20 of the Line Fences Act upheld whereas municipalities would like to pay something less than 100% (the notion is that if landowners pay a percentage they will be discouraged from requesting “frivolous” fences). From the perspective of the author fencing requirements should be based on the use of both the ARROW and the adjacent lands. Adjacent lands used for active agricultural purposes should be afforded some protection from the liability of a publicly accessible trail system and the continued requirement for the owner of the ARROW where there is a trail to pay 100% of the cost of a “standard” fence is reasonable. This is based primarily on the belief that a trail represents a new use, is provided in the public interest and has the potential to impact the operation and management of a farm. Where property owners request something beyond a base standard, however, the cost should be their responsibility (for example, a 12 foot chain link fence to contain an exotic animal). This can also work in reverse. In Eastern Ontario, for example, farm groups appear to have reached an amicable resolution with the Eastern Ontario Trails Alliance to accept electric fences at a fraction of the cost of a standard page wire fence.

It is also acknowledged that there will be farmers and other landowners who either do not want a fence or are indifferent to the provision of a fence. In Bayham-Tillsonburg for example farmers and the Municipality have reached an agreement where the municipality has limited the potential use of the ARROW to utility purposes only. In this instance there is a mutual agreement to not construct a fence. Where this occurs municipalities should not feel obligated to provide a fence despite what might appear to be a statutory obligation under section 20.

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The goal of avoiding the construction of ‘frivolous’ fences is a reasonable goal but needs to be addressed through some manner other than funding. Based on anecdotal information it may be fair to conclude that requests for ‘frivolous’ fences are relatively rare.

*The Public Interest and Economic Development*

While the conversion of ARROWs into trails is sometimes contentious there is a benefit to the local and broader community. Although there may be economic benefits there are equally important social, cultural and lifestyle advantages for farm and non-farm alike. The author accepts the notion that the acquisition of these trails by municipalities is a unique opportunity and is in the public interest. It is unfortunate that some municipalities have forfeited this opportunity for future generations on the basis of concerns related to fencing as a liability. Reportedly, there is at least one example of where a fence was demanded as a means to block the acceptance of an ARROW by a municipality. Clearly a renewed and more predictable process is required that protects farmers rights to see a fence established where required and municipalities responsibility be limited to the costs of providing ‘functional’ fences and reasonable maintenance.

*Predictability:* From the perspective of the author a key issue which underlies both municipal and agricultural concerns relates to the need for a predicable and transparent process. Farmers need to have certainty that a fence will be constructed where needed. The notion of needing to go to court to assert this right is untenable. Where conflict occurs there needs to be a much less expensive, and more responsive and predictable process. Likewise municipalities need to feel confident that if they approach the issue in a reasonable and timely manner that they will not face the threat of lawsuits. This is important to allow municipalities the opportunity to develop a budget which can address this issue over the long-term.



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#### **4.0 Municipal and farm experience with the issue – some sample communities**

The identification of principles and options at the two workshops and the refinement of these by the author was fundamentally influenced by the experience of Bruce County, Bayham-Tillsonburg and Hastings County. The author was impressed by the resourcefulness of farmers and local officials in establishing a process that seems to be positively received in each of these local jurisdictions.

##### *4.1 Bruce County*

Bruce County has the largest concentration of beef cattle in Ontario (2001 census of Agriculture). Agriculture is a cornerstone of the local economy and discussion with local officials confirms a sympathetic attitude towards farmers and a genuine desire to work with the farm community. This empathy towards agriculture is evident in the County approach to ARROWs and the Line Fences Act.

The County has acquired 80 kilometers of abandoned rail line and recognizes their obligation to provide fencing consistent with section 20 of the Line Fences Act. To fulfill this requirement the County of Bruce has taken the following actions:

- 1) They established an annual budget of \$60,000 to provide for fencing (financing the construction of approximately 1000 rods of new fences annually<sup>4</sup>).
- 2) They established a process to receive and evaluate applications for fencing.
  - a. The county established terms of reference for a Fencing Subcommittee that reports to the County Highways Committee.
  - b. The county established criteria to assist with the review of individual applications.
  - c. An advertisement is placed in a local newspaper inviting applications from landowners with fencing needs adjacent to Abandoned Rail Right of Ways.
  - d. These applications are reviewed by the Fencing Sub-Committee. Membership on this Committee includes the OFA and CFFO. The committee is chaired by a farmer and reports to the County Highways Committee. The Committee has the following specific objectives:
    - i. To describe the standards for fences.
    - ii. To recommend the priorities for construction, upgrades, and repairs of fences.
    - iii. To set out the procedures and deadlines for a landowner to apply for a fence, and for approvals.
    - iv. To recommend a budget and the allocation of funding for fencing work.
    - v. To act as liaison between groups with an interest in fencing of the rail corridor.
    - vi. To consider exceptional circumstances and other matters that affect fencing of the rail corridor.
    - vii. To issue an annual report to the County, including accomplishments, financial matters, and recommendations.
  - e. Fences are awarded consistent with budget and ranked priority. They are able to fund approximately 30 fencing projects per year. Lower priority fences are held over for review in subsequent years.
  - f. A number of policies have been developed to ensure consistency and fairness. These include policies on Corridor Crossings, Livestock Crossing and New Fence Construction (Appendix 4)

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<sup>4</sup> To ensure consistency Bruce contracts out the construction of fences at approximately \$55/rod (3.33/foot).

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#### *4.2 Bayham-Tillsonburg*

In 1993, the Town of Tillsonburg and the Village of Port Burwell (now the Municipality of Bayham) located in Elgin County acquired 32 kilometers of abandoned rail right of way running between the two municipalities. Initially the municipality had aspirations of establishing a trail along the corridor. As reviewed earlier within this report a number of farmers requested that a fence be established adjacent to the abandoned rail right of way. To assert this right the abutting landowners pursued the matter in the courts and in a decision released October 11, 2002 the courts agreed with the landowners and directed the municipality to construct, maintain and repair fencing along the ARROW. The interesting point about this file is what has happened since the decision of the courts.

- 1) Approximately 5-8 km of the right-of-way have been designated as a trail adjacent to tourism areas.
- 2) When the lands were originally acquired there was an expectation that they would be used for multiple purposes, however, the key focus was for future use as a utility corridor.
- 3) Given the intended use as a utility corridor and given the courts decision the municipalities approached the abutting landowners and offered a compromise as follows:
  - a. In lieu of fencing the municipality offered long term leases on those portions of the right of way that were not being used as a recreational trail to abutting landowners.
  - b. The municipality retained ownership of the lands and the ability to use the lands for utility corridors.
  - c. This allowed large sections of the former rail lands to be closed from access to roads either through fencing, ditching or vegetation (the result has been a significant reduction in problematic ATV traffic)
  - d. The retention of the utility corridor has apparently been a major bonus facilitating the planned establishment of a major wind-farm across the region.

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### 4.3 Hastings County

The use of abandoned rail right of ways in Hastings County is largely administered through the Eastern Ontario Trails Alliance (EOTA). In total there are 156 kms of trail in Hastings and this is part of a 520 km trail network which extends into a number of neighbouring counties and regions. The partnership between the trails alliance, the farmers and municipalities appears to be a success story. Key features include:

- 1) The business plan for the Eastern Ontario Trails Network ([www.thetrail.ca](http://www.thetrail.ca)) includes a specific section on the Line Fences Act. This highlights the role of the Hastings Federation of Agriculture as EOTA's adjacent Landowner/Farmer Committee. The business plan acknowledges the role of the Line Fences Act, but also acknowledges that many farms don't graze and don't need fencing. The business plan also recognizes the benefits of electric fencing vs. page wire fencing both in terms of cost and effectiveness.
- 2) Landowner/Farmer Committee: The Adjacent Landowner/ Farmer Committee (comprised of representatives from County Federations of Agriculture and the Eastern Ontario Trails Alliance) has a mandate to:
  - a. Determine Federation of Agriculture members owning land along the trail
  - b. Determine fencing needs, if applicable
  - c. Prioritize needs
  - d. Cost breakdown for owners of the trails
- 3) Support from the Federation of Agriculture - Appendix 5 includes a brochure prepared by the Hastings, Frontenac, Prince Edward, Lennox/Addington, Northumberland and Lanark County Federations of Agriculture. This brochure recognizes changes in farming, the formation of the Adjacent Landowner / Farmer Committee to deal with fencing issues, and the advantages of electric vs. page wire fencing<sup>5</sup>. The group has a goal of upholding the integrity of Section 20 of the Line Fences Act, but equally is prepared to implement this in a practical way.
- 4) The EOTA carries \$5,000,000 of General Commercial Liability Insurance and this coverage extends to all private and public landowners who are covered with respect to the operations and activities of the EOTA on their lands ([www.thetrail.ca](http://www.thetrail.ca) – business plan).
- 5) A key change from an agricultural perspective is the professionalism with which the trail is run. In the words of the chair of the Adjacent Landowner/Farmer Committee the trail was “total chaos” before the involvement of the EOTA. Today users of the trail pay a membership fee that ranges from \$120 annually for an ATV to 0\$ for hiking/walking. All of these users play a very important role in policing and monitoring the appropriate use of the trail. The Ontario Provincial Police also play a role in patrolling the trail.

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<sup>5</sup> People sometimes criticize electric fence as a hazard to snowmobile or ATV use. In discussions with the Chair of the Adjacent Landowner/Farmer Committee he noted that areas adjacent to the trail often have significant undergrowth in which case a properly built electric fence (2-strand electric) is not a safety issue.

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#### 4.4 Lessons From These Communities

While each of the examples from Bruce, Bayham-Tillsonburg and Hastings are quite different they each appear to be quite successful. In the case of Bruce and Hastings strong involvement from the farm sector has helped to mold a system which is responsive to the needs of farmers and through the process of establishing priorities addresses many related municipal concerns (for example helping to minimize the potential for frivolous applications for fencing). In the case of Bayham-Tillsonburg the municipality has worked out an arrangement with local farmers that protects the use of the ARROW for purposes of a utility corridor while avoiding the need to establish fencing.

The following lessons can be observed from these three cases:

- 1) One size does not fit all: Each of the jurisdictions in their own way have developed approaches which appear to generally meet the intent of the legislation (i.e. the provision of fencing consistent with farmer needs).
- 2) Process to Review and Evaluate: Considerable flexibility and predictability exists where clearly defined criteria are developed and applied locally. This appears to minimize the potential for frivolous requests for fencing and allows a municipality to plan for a reasonable budget to address the need for fencing.
- 3) Local Planning Exercise: The potential for a successful process is enhanced through the application of an open discussion with interested stakeholders.
- 4) Standards: Standards need to be set which address the needs of agriculture in a given community and which also respect municipal finances. For example, in Hastings (EOTA) electric fences are being promoted by the farm community because of their effectiveness and cost savings (70% less than page wire fencing). Standards also need to be set to address crossings, maintenance and new fence construction.
- 5) Budget: A reasonable budget allows municipalities to anticipate and positively react to the need to fence ARROWs<sup>6</sup>. Where a municipality is working through this issue in a reasonable fashion it is difficult for residents to be critical if they are not meeting all requests for fencing in a given year.
- 6) Respect for Agriculture: Vast acreages of privately held land are owned by farmers in Ontario. Abandoned Rail Right of Ways potentially impact neighbouring farm properties. Input from farmers both in planning for the use of ARROWs and in the implementation of a fencing strategy is desirable (in Bruce and Hastings (EOTA) farmers lead the process to review and approve fencing applications).
- 7) Insurance: Liability seems to be a pervasive issue and yet in the case of the EOTA they have established an Insurance Policy which extends to all private and public landowners with respect to the operations and activities of the EOTA on their lands.
- 8) Trail Management: A properly run trail tends to minimize the potential issues which can lead landowners to require or request the construction of a fence.

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<sup>6</sup> Bruce County with the largest population of cattle in the province has a fencing budget of \$60,000 which is approximately \$1/resident.

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## 5.0 Key Principles

Key principles serve as a guide in the selection of appropriate policy options. Appendix 3.2 includes a listing of principles identified at the March 8 and 10 workshops. Although these principles were not finalized at the workshops they reflect the general direction of the two groups. The following discussion focuses on the themes expressed at the workshops:

### 5.1 An Agricultural Perspective

- The farm groups felt that the owner of the ARROW should demonstrate the need for a trail and assume responsibility for the effects of uses permitted on the trail.
- Community awareness and education was identified as an important theme related to trail development and the importance and need for fencing.
- There was a strong belief that landowners who own property adjacent to ARROWs should play a strong role in planning their use and related fencing decisions. Related to this was a need to respect the rights of property owners.
- There was a suggested principle that the legislation not be changed as it was deemed to be fine as is.
- A principle was identified that accessibility be ensured across ARROWs to avoid what might otherwise be landlocked parcels.
- It was acknowledged that one size does not fit all. Circumstances, the municipal context and uses vary across the province.

### 5.2 A Municipal Perspective

- The municipal groups strongly felt that corridor retention was in the public interest as a means to achieve economic development and as a service to future generations.
- The issue of affordability was a key municipal principle. To this end they felt that the cost of fencing should be shared. There was recognition that fencing for agriculture was more of a priority than for many other types of uses.
- “Good Neighbours” was a theme expressed at the municipal meeting. This included the belief that farm operations should not be jeopardized by trails.
- It was a municipal position that basic fencing standards should be clear.
- There was a belief that the Line Fences Act needed to be revised and brought up to modern standards reflecting current realities and public priorities. The legislation should be reasonable in its treatment of municipalities.

## 5.3 Discussion

The principles discussed at the two respective meetings share elements in common. Respecting the rights of landowners adjacent to ARROWs, and the need to establish appropriate standards are examples of shared principles. There are, however, some important differences such as whether Section 20 of the Line Fences Act should be changed or not. This report builds on the principles identified at the two workshops while also tackling the issues as discussed earlier in this report. The result is a number of principles some of which may be contrary to positions held by either the farm or municipal group.

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## 5.4 Principles Suggested as the Basis for the Recommendations of this Report

### 1) Farms should be protected from negative effects of uses on the ARROWs.

Abandoned rail right of ways have a number of potential uses. While these are often benign they do have the potential to negatively impact neighbouring farms. As these uses are introduced they should be planned and designed to protect agriculture from any negative effect.

### 2) Responsibility for the ARROW rests with its owner.

The need for a fence is driven largely by the ARROW if it is used as a trail. The trail is a new use with the potential to impact farms. A trail is also a public resource which provides little benefit to individual farmers. With 4 million more people anticipated in Ontario in 30 years the need for fencing is likely to increase.

### 3) Intact corridors serve a public interest.

Abandoned rail corridors are a unique resource that would be difficult to reestablish. Municipalities should seriously consider acquiring them for current and future generations. They have potential for use as trails or utility corridors.

### 4) There should be clarity in fencing rules.

Municipalities and property owners will benefit from clear statements of responsibility. Clarity should be sought in fencing and crossing standards and in municipal processes for the administering of their responsibility. Related to this municipalities need to build certainty into their budgetary process. Property owners should be responsible for fencing requirements beyond set standards.

### 5) Access should be provided across Right of Ways to landlocked parcels.

Municipalities need to facilitate the provision of access across ARROWs. A base standard should be set related to access crossings beyond which additional costs would be the responsibility of the landowner.

### 6) Farmers, ARROW owners and Arrow users all have an interest and need to work together. Communication is key.

In some instances municipalities may not appreciate the impact of trails on agriculture; in other instances farmers may not appreciate the potential role of trails in the local community and in some instances trail users may not be sensitive to neighbouring land uses. On-going education and awareness building can build support and understanding.

### Reflections on the Principles following the March 17 Workshop.

*Following the March 17 workshop the above principles were edited for clarification. In general, there was agreement with these principles. Two additional principles were suggested at the workshop, however, there was no consensus related to these proposed additions (there was stronger support for these 2 principles from the municipal perspective). The two additions included:*

*1) The Line Fences Act should not be used to prohibit the development of trails.*

*2) Only necessary fences should be built.*

*The first suggestion reflects a concern that the Line Fences Act could be used to stymie the development of a trail, whether or not the fence has a real function or value beyond fulfilling the Act. The second option relates to a goal of avoiding frivolous fences. To a certain degree these principles are addressed in the options, however, the fundamental challenge of determining when a fence has real value or function still remains. Defining what is a fence with real value or function is equally challenging.*

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## 6.0 Options in Response to the Issues

This report was developed on the premise that the issue of fencing along ARROWs needs to adequately address the concerns of both the municipal and farm sector or else the broader concerns of the two groups will fester indefinitely. Consequently, while some of the options may be perceived as favouring one position or the other the reader is encouraged to reserve judgment until the entire report has been read. While the report favours the retention of Section 20(c) for example it does include numerous options intended to provide municipalities with a more predictable process around which budgets and processes may be more easily managed.

The following options draw upon the discussion that occurred at the workshops on March 8 and 10. They have also been edited for clarification following the March 17 workshop. The options reflect the issues as discussed within this report and are intended to be consistent with the principles presented earlier. The options draw upon interviews and a review of numerous reports, court cases and the author's insight developed into this issue. It is acknowledged that some of the options lie outside the purview of the Line Fences Act.

The options are presented under themes reflecting many of the issues identified in the report.

### 6.1 Options Related to the Requirement for Fencing

#### **Option 1: Retention of Section 20(c).**

Section 20(c) establishes the requirement for municipalities to construct a fence adjacent to abandoned rail right of ways. The retention of this provision, subject to addressing certain municipal issues is appropriate.

The need for a line fence is driven largely by the presence of the ARROW, especially where it is used as a trail. The conversion of rail lines to trails is in the public interest and represents the introduction of a new use which is likely to become increasingly important for rural communities and residents of the province. The onus for the fence should continue to rest with a public authority.

#### **Option 2: A Fencing Strategy for Phased Implementation of Section 20(c)**

That Section 20 be amended by the addition of a new provision 20(d) to provide municipalities with certain flexibility to fulfill their obligations under section 20(c).

Suggested wording is as follows:

*20(d) Municipalities may develop and adopt a strategy for phased implementation of Section 20(b) and (c). Such strategy shall identify priorities for fencing, timing, local fencing standards (see option 7), anticipated budget, and a process for administering the requirements of Section 20.*

In many cases municipalities acquire ARROWs where fencing has not previously been provided. Municipalities are concerned that the Line Fences Act makes them fully liable for construction and maintenance of a fence at considerable expense but does not provide any reasonable time frame to accomplish this task. For a variety of reasons (logistical and financial) municipalities will likely need to spread their responsibilities for fencing over a period of time. A strategy can create an easily understood and transparent process that will explain to abutting landowners the municipal approach to fencing and Section 20(c). A fencing strategy would be developed with the input of abutting landowners.

The setting of priorities is likely to rank different types of land uses based on their need for a fence. For example, a fence adjacent to a pasture field or in close proximity to buildings is likely to have a much higher priority than through a woodlot or swamp.

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**Option 3: Written Request for Fencing Required**

Section 20(c) could be amended by the addition of the following sentence: “Such fence shall be provided where a written request is received from the owner of abutting land”.

Municipalities do need to limit their “exposure” to the requirement to provide fences. It is clear that many adjacent landowners will not need or want a line fence along an abandoned rail line. The addition of a clause that indicates that a line fence will be provided based on a written request ensures that the intent of Section 20(c) is maintained while avoiding the potential legal argument that a fence should be provided whether or not the adjacent property owner requests it.

**Option 4: Mutual Agreement to Not Construct a Fence**

Where an abutting landowner and the owner of an abandoned rail right of way mutually agree in writing that a fence is not required it should be clear that the provisions of Section 20 (c) do not apply for the length of the agreement specified.

In Ontario there are municipalities and landowners who have come to an agreement that a fence is not required (specifically related to utility corridors although they might make the same decision for trails). Although a legal opinion has not been obtained, the existing wording of 20(c) may override a mutual agreement to not establish a fence. As a result a municipality may, for legal reasons, feel compelled to provide a fence even though both the landowner and municipality agree that it is not needed.

**Option 5: Make Section 20 Applicable Only to Agricultural Operations**

Section 20 could be amended to only apply to agricultural operations.

The most compelling need for a line fence exists where a rail right of way abuts a farm. Limiting the application of Section 20 to farms would retain the intent of the legislation, while reducing municipal exposure to this issue. Farms can be identified in a number of ways including the possession of a farm business registration number.

A slight variation to this option would be to allow municipalities to apply (perhaps to the Line Fences Referee) for exemptions where it does not involve agricultural land. Municipalities could identify other sensitive uses which could qualify for municipal fencing in their fencing strategy.

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**Option 6: Establish an Appeal Mechanism to Deal With Fencing Disputes Related to the Approval of a Fencing Strategy or Provision of Fencing in Accordance with such Fencing Strategy**

Disputes may occur in relation to the appropriateness of the fencing strategy or in response to individual requests for fencing. While this provision is not meant to circumvent the rights of an abutting landowner to proceed to court it would be desirable to deal with these disputes in a more constructive and less expensive manner. The key challenge would be to establish a test of “reasonableness” by which municipal actions could be judged. The province should evaluate whether this would be an appropriate responsibility for the provincial Line Fence Referee.

Although there may be a cost associated with this process it should be distinctly less than the cost of proceeding to court. Costs would be handled in the same manner as other appeals to the Line Fence Referee.

**Reflections on the Requirement for Fencing (Options 1-6) Following the March 17 Workshop.**

*Options 1-6 are the most fundamental options of this report. They were also the options that generated the most discussion at the March 17 workshop. In some respects, the municipal position was one of wanting Section 20(c) changed to alleviate their responsibility to provide fences, whereas the agricultural position was one of wanting to see the provision retained. Following a careful review of this issue this report favours the retention of Section 20(c) (option 1), but with a number of additions that speak to municipal concerns (options 2-6).*

*Appendix 6 presents the rating of individual options by the 19 participants at the March 17 workshop. Option 1 generated significant debate. While the farm group was unanimous in their support for this option, 8 of 12 municipal reps were either supportive or neutral towards the retention of Section 20(c) whereas 4 municipal people were opposed. Overall 61% were supportive, 17% were neutral and 23% were opposed. It is probable that the majority of municipal folks supported this option because of options 2-6 which from the municipal perspective, if implemented, represent a significant improvement over the status quo. For this reason, one of the dominant views expressed relating to Options 1-6 is that they should be thought of as a package.*

*Options 2-6 received substantial support from both the farm and municipal sectors. When one adds the neutral rating to supportive and very supportive Options 2-6 receive 100%, 89%, 89%, 94% and 89% respectively. The biggest anomaly in this group was Option 4 where 44% of the respondents were neutral.*

*Other comments related to Options 2-6 included a suggestion by some that the Fencing Strategy (option 2) should use the word “shall” vs. “may” making it compulsory. There was also discussion concerning whether the fencing strategy is an adequate tool to allow municipalities to defer the construction of a low priority fence given the provision of Section 20(c). A number of minor wording changes were identified and have been built into the options as presented within this report.*

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## 6.2 Options Related to Fencing Standards

### **Option 7: Develop Base Standards for Fencing**

The municipality in partnership with abutting landowners should develop base standards for fencing. Requests for fencing that exceed these base standards should be the responsibility of the abutting property owner.

In many instances these standards will reflect a uniform page wire fence of an acceptable height designed to safely contain livestock and to act as a deterrent to trespass. The standards should be developed locally with abutting landowner input. It is conceivable that these standards may vary according to use (for example adjacent to buildings or in the case of one farmer supported initiative in Eastern Ontario a 2 strand electric fence is the accepted standard).

### **Option 8: Develop Base Standards for Crossing an ARROW**

The municipality in partnership with abutting landowners should develop base standards for crossing right-of-ways to ensure access to otherwise landlocked parcels. Requests for crossings that exceed these base standards will be the responsibility of the abutting property owner.

These standards will reflect the need to move livestock and farm equipment. How municipalities deal with specific requests to use the corridor for other access will vary by municipality (for example an irrigation pipeline or right of way for access to other fields).

### **Option 9: Provincial Standards for Fencing and Crossing**

The province in consultation with stakeholders could develop base standards for fencing and crossings. An approved fencing strategy as outlined in option 2 could vary this standard to reflect local needs.

### **Reflections on Fencing Standards (Options 7-9) Following the March 17 Workshop.**

*Options 7-9 deal with an important issue from both the farm and municipal perspective. Clearly the type and standard of the fence is important to its cost and effectiveness. Whereas option 7 and 8 received overwhelming support (89% and 95% respectively) option 9 did not (42% supportive; 48% opposed). This sensitivity to a provincial standard (from both the farm and municipal sector) was seen as potentially undermining local autonomy in dealing with this issue. For example, it was suggested that a provincial standard would make it difficult for a municipality to proceed with a lesser standard in their Fencing Strategy. Although not discussed at the workshop a reasonable response to these concerns might be to include a section within the Best Practices Manual (option 12) that discusses typical fencing systems (for example a fence to contain livestock would typically be page wire with the following characteristics... The manual might go on to recognize that under certain conditions an electric fence may be an acceptable substitute... etc. The OMAF Factsheet on Farm Fencing Systems might also be a useful resource). It would not be the goal of the Manual to prescribe standards, but rather to give municipalities and farmers a reasonable starting point in developing their own local standards.*

*There was also discussion at the workshop related to the legal obligation of municipalities to provide access and the rights of adjacent landowners. This is seen as a legal issue and is not discussed further within this report other than to say it is a principle that access needs to be provided to otherwise landlocked parcels.*

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## 6.3 Options Related to Maintenance

### **Option 10: Consistent with Section 20(c) Municipalities Will Continue to Assume Long Term Responsibility for Fence Maintenance.**

Once established, the fence is a liability in terms of its on-going maintenance, but it may be even more of a liability if it is not properly maintained. If properly maintained it should have a long lifespan. It is in the municipal interest to see that the fence will last as long as possible and proper maintenance is likely to save money in the long-term. Having said this many farmers are likely to keep an eye on the fence as if it were their own. It is understood that the ARROW owner and adjacent landowner may enter into a mutual agreement for maintenance (lasting the length of the agreement).

#### **Reflections on Maintenance (Option 10) Following the March 17 Workshop.**

*Option 10 deals with the on-going issue of fence maintenance. Fences are expensive to build and maintain. This report takes the position that if municipalities are to continue to be responsible for constructing the fence (option 1) it is therefore in their interest to ensure that the fence is properly maintained to maximize the life of the fence. It is acknowledged that the Fencing Strategy (option 2) anticipates discussions with landowners that may lead to local agreements with landowners related to maintenance.*

*Not surprisingly this was a point of significant debate. In the end the option was supported by 58% of participants and opposed by 27%. It was supported by all of the farm representatives. The municipal position included 5 people opposed, 3 neutral and 4 supportive.*

*Given the possible reduction in total length of fencing through implementation in accordance with an approved Fencing Strategy, municipalities are likely to see related savings in maintenance costs.*



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## 6.4 Options Related to the Management of the Municipal Line Fences Responsibility

### **Option 11: Establish a Local Landowner Fencing Committee**

Local committees should be established to assist municipalities. These committees should have the following responsibility:

- Review and recommend standards for fence construction, crossings etc.
- Establish and recommend criteria for the ranking of applications for fencing
- Review, prioritize and recommend individual applications for fencing consistent with the criteria for ranking applications

Local involvement in the administering of Section 20(c) is likely to lead to support for the municipal approach, judicious decisions and minimal requests for “frivolous” fences (i.e. this process of peer review is likely to discourage this type of application). This group will have a key responsibility to help administer the fencing strategy.

### **Option 12: Develop a Best Practices Manual for Municipal Management of Section 20 Responsibility**

The province, in cooperation with the agricultural and municipal sectors, should lead the development of a “Best Practices Manual” to assist municipalities with Section 20 Responsibility.

A Best Practices Manual would help with the sharing of information between municipalities. Within this report, for example there are three innovative approaches from Bruce, Hastings (EOTA) and Bayham-Tillsonburg. The lessons from these municipalities include policy on fencing standards and how to establish a local committee.

### **Reflections on Management of the Municipal Line Fences Responsibility (Options 11 and 12) Following the March 17 Workshop.**

*These 2 options received overwhelming support from workshop participants. In total 100% of the respondents were in the category of supportive and very supportive with a small number of people who were neutral. This support probably reflects the very positive examples from Bruce and Hastings (EOTA) where the combined efforts of the farm and municipal community have been very successful in developing a targeted, fair, and transparent process.*

*A Best Practices Manual would benefit municipalities in planning for fencing. Fencing items might include fencing standards, the role of local landowner committees, criteria for prioritizing applications etc. This would have the added benefit of creating greater consistency across the province.*

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## 6.5 Options Related to Municipal Budgets and Funding

### **Option 13: A Budget for Fence Construction.**

Municipalities should establish a policy directing a reasonable short and long-term budget reflecting the need for fencing, standard of fencing, miles of projected fencing and anticipated demand. This could be approached at the same time as the development of the municipal fencing strategy.

The establishment of fencing costs money. If owners of the right-of-way have established an appropriate budget for this purpose they will more easily be able to respond to fencing needs as they arise. Furthermore, if there is a budget that is being used most abutting landowners are going to be prepared to wait their turn for the construction of a fence. Although a legal opinion has not been sought in this matter it would be hoped that the courts would be sympathetic towards a municipality that has an annual and reasonable program of fence construction even though they may not yet have constructed a given fence.

### **Option 14: Trail Permits Encouraged as a Means to Raise Money and Manage Use**

Where an abandoned rail right of way is used for the purpose of a trail there is a benefit to the user of the trail. A user-pay system can help to raise funds that in turn can help with trail maintenance including the provision of fences. The Eastern Ontario Trails Alliance, for example has established a trail permit system with a cost ranging from \$0 for walkers and hikers to \$120 for ATVs.

Trails that have established a permit process appear to have a number of advantages related to the use and management of the trail. Based on the experience of the Eastern Ontario Trails Alliance they appear to be largely self-policed, trail users are very responsible and there is high compliance with trail rules.

### **Option 15: Provincial Funding to Assist with Fencing**

The province should be encouraged to provide limited funding to assist with the cost of fencing abandoned rail right-of-ways.

The retention of corridors is a long-term investment that benefits current and future residents of the province. A limited amount of money made available to municipalities to cover a certain portion of fencing costs would help to encourage and support rural municipal initiatives to retain corridors and develop trails.

### **Reflections on Municipal Budgets and Financing (Options 13-15) following the March 17 Workshop.**

*These options speak to the fundamental question of how to finance the construction of fences. They also speak to the role of trail users, the province and the need for a municipal fencing strategy that leads to an appropriate budget to finance the municipal responsibility.*

*With the exception of 1 individual who opposed option 13 each of these options received 100% support (including neutral). While budget decisions rest with the municipality, a reasonable budget allocation will be helpful from a number of perspectives. It means municipalities can respond to requests and demonstrates a willingness to fulfill obligations under Section 20(c) of the Line Fences Act. A limited commitment from the province would demonstrate a recognition that trails are also a provincial resource that benefits citizens beyond the local municipality.*

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## 6.6 Options Related to Trespass and Liability

### **Option 16: Insurance to Cover Abutting Property Owners**

Insurance coverage related to the use of the ARROW should be provided by the ARROW owner extending onto private lands abutting the corridor.

One of the main reasons cited by farmers for requiring a fence is a concern over liability. If users of an ARROW are restricted by a fence adjacent to the ARROW there is less chance of them straying onto neighbouring property and causing damage or injuring themselves. If, however, liability insurance coverage could be extended by the owner of a trail or other use to neighbouring land owners this would likely reduce the demand for fencing. A legal opinion on this option may be of benefit. It is understood that this type of coverage is held by the Eastern Ontario Trail Alliance.

### **Option 17: Restrict Motorized Vehicles on Trails**

Insurance premiums are apparently significantly lower on a trail that either prohibits or restricts motorized vehicles.

In addition to reduced insurance premiums the absence or management of motorized vehicles is likely to lead to reduced concerns of vandalism, trespass and theft. The result is likely a corresponding reduction in the demand for fencing.

### **Option 18: Reduce Private Landowner Liability on Lands Adjacent to Trails**

Legislation to reduce landowner liability in the event of trespass on private lands adjacent to trails would alleviate some of the concerns expressed by the farm community. The province should consider this option further.

### **Reflections on Trespass and Liability (Options 16-18) Following the March 17 Workshop.**

*Issues of trespass are a major irritant for the farm community and issues of liability are a significant concern for both the farm and municipal sectors.*

*Option 18 received overwhelming support (95%). It was noted by one of the participants, for example, that in New Hampshire there is legislation preventing a law suit if someone leaves a trail and is injured. While this report does not offer a legal opinion on this issue, it is clear that a reduction in landowner liability adjacent to trails would be reviewed favourably by this group.*

*Options 16 and 17 received less endorsement. Option 16 was supported by 61% and opposed by 23% of respondents (supported by all farmers, whereas 4 municipal people were in opposition vs. 6 who were supportive). It is suspected that the reduced support for this option reflected concerns over potential cost and whether such insurance was practical or readily available. In the words of one municipal respondent this “sounds too good to be true.” Although such insurance is used by the Eastern Ontario Trails Alliance and was confirmed by one of the participants at the workshop a legal opinion on this option may be desirable. Option 17 was supported by 39% of respondents and opposed by 23% with 39% neutral (4 municipal people opposed, 3 supportive and 5 neutral). Related discussion acknowledged that restricting motorized vehicles has an advantage from an insurance perspective, but would prevent a major user of the trails (who may be important financial contributors). It should probably be stressed that this option would only apply to certain trails as identified by municipalities.*

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## 6.7 Options Related to Education and Awareness

### **Option 19: Develop a Best Practices Booklet on Trail Use and Development.**

As part of the Ontario Trail Strategy a ‘best practices booklet’ on trail development and management should be developed.

There are a number of local examples that should be profiled in a “how to” for trails development. The work of the Eastern Ontario Trails Alliance is profiled earlier within this report. They appear to have established a relationship with abutting property owners, have worked with farmers, have made a significant contribution to the economy and appear to have a workable arrangement ensuring that issues of fencing are addressed. Their approach to the development of a business plan, insurance and cost recovery establish a standard that may have application across the province.

This booklet could build on existing materials with a specific focus on the relationship with neighbouring uses of land.

### **Option 20: Increase Communications Between Agriculture, Municipalities and the Users of Trails.**

Increased communication can lead to enhanced education, awareness and understanding. Both municipalities and individual farmers can promote their respective interests by ensuring that they have clearly communicated their interests to all stakeholders. The open process promoted as part of this report, including the use of local landowner participation on committees to advise and assist the municipality is an excellent way to improve the sharing of information.

Trail users also need to learn to respect agriculture and the private lands on either side of a trail corridor.

### **Reflections on Education and Awareness (Options 19, 20) Following the March 17 Workshop.**

*The role of education and awareness was clearly recognized during discussions at the March 17 workshop. Option 19 received 90% support and option 20 received 94% support (only 1 person was opposed to either of the options). The direction established by option 19 and 20 and confirmed at the workshop can play an important role in addressing the issues identified within this report.*

*A Best Practices Manual would benefit municipalities in planning for trail management. Best practices for trail management might include approaches to land owner contact, education, working with adjacent landowners, trail access etc. This would have the added benefit of creating greater consistency across the province.*

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## 7.0 Recommendations

### 7.1 Preamble:

The process that was used to develop this report was supported by 94% of the respondents with 1 person neutral. The process provided an opportunity for respondents to indicate their concerns and identify possible responses. Following a careful review of the discussion at the March 8 and 10 workshop a series of options were developed that attempted to strike a balance between the retention of Section 20(c) of the Line Fences Act and the need to limit municipal financial exposure to this issue while providing a more predictable framework for the acceptance of abandoned rail right of ways and the development of trails.

At the March 17 workshop both the farm and municipal representatives were invited to return and they were presented with 20 options that were developed following the earlier workshops. In response to the question: "Overall if you consider all of the options as an entire package how do you feel about them?" - 78% indicated support and 23% indicated opposition. Numerically, 4 of 6 farm representatives were supportive as were 10 of 12 municipal representatives. Individually, as already reviewed within this report, many individual options received near unanimous support. Consequently, the recommendations of this report do not stray very far from the options as presented on March 17. Limited editing and clarification have been built into the options presented within this report. In addition, the recommendations attempt to address some of the concerns related to the most contentious options.

The recommendations are presented in the context of the 7 themes covered within this report. More specific detail is included under the discussion of the individual options:

Options Related to the Requirement for Fencing

Options Related to Fencing Standards

Options Related to Maintenance

Options Related to the Management of the Municipal Line Fences Responsibility

Options Related to Municipal Budgets and Funding

Options Related to Trespass and Liability

Options Related to Education and Awareness

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## 7.2 The Recommendations:

**Recommendation 1: Options Related to the Requirement for Fencing**  
**It is recommended that options 1-6 be treated as a package and that they be accepted.**

Options 1- 6 are discussed in more detail in the Options section of this report and include:

Option 1: Retention of Section 20(c).

Option 2: A Fencing Strategy for Phased Implementation of Section 20(c)

Option 3: Written Request for Fencing Required

Option 4: Mutual Agreement to Not Construct a Fence

Option 5: Make Section 20 Applicable only to Agricultural Operations

Option 6: Establish an Appeal Mechanism to Deal With Fencing Disputes Related to the Approval of a Fencing Strategy or Provision of Fencing in Accordance with such Fencing Strategy

This recommendation maintains the current intent of the Line Fences Act by requiring the continued provision of fences by the owner of the abandoned rail right of way, but at the same time it addresses many of the concerns expressed by municipalities.

To further entrench the Fencing Strategy as a workable tool the proposed option presented at the March 17 workshop could be further amended as follows:

*20(d) Municipalities may develop and adopt a strategy for phased implementation of Section 20(b) and (c). Such strategy shall identify priorities for fencing, timing, local fencing standards (see option 7), anticipated budget, and a process for administering the requirements of Section 20. The Fencing Strategy shall demonstrate how the requirements of Section 20(c) are to be met. A Fencing Strategy may be appealed at the time of adoption to the Provincial Line Fences Referee and once approved a relevant council decision may be referred to the Provincial Line Fences Referee on the grounds that it does not conform to the fencing strategy. A municipality that is following its approved fencing strategy shall be deemed to be in compliance with Section 20(c).*

It should be noted that this revised wording was not reviewed March 17, but it may offer further certainty to both the farm and municipal sector.

Local decision making and the development of a fencing strategy are a means by which municipalities can manage and control a fencing budget. Local landowners need to have an important role in this process. Municipalities should develop a fencing strategy including an evaluation of need and budgetary requirements. This strategy should be developed in partnership with local landowners. . It should be available for public review and appealable during the adoption and/or amendment phases if necessary.

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**Recommendation 2: Options Related to Fencing Standards**  
**It is recommended that options 7 and 8 be accepted.**

Options 7-8 are discussed in more detail in the Options section of this report and include:

Option 7: Develop Base Standards for Fencing

Option 8: Develop Base Standards for Crossing an ARROW

Option 9 is not recommended, however the proposed Best Practices Manual (option 12) should include a section on typical fencing systems.

This recommendation recognizes the benefits of a set of clear standards to deal with both fencing and crossings. These standards will be developed locally. Where adjacent landowners seek standards that exceed the base standards it would be their responsibility to cover additional costs above the base standard. It is expected that the standards would be made public within the Fencing Strategy.

**Recommendation 3: Options Related to Maintenance**  
**It is recommended that option 10 be accepted.**

Options 10 is discussed in more detail in the Options section of this report and includes:

Option 10: Consistent with Section 20(c) Municipalities Will Continue to Assume Long Term Responsibility for Fence Maintenance.

This option places responsibility for maintenance with the owner of the ARROW. This will help to ensure appropriate maintenance which will maximize the lifespan of a given fence. It is anticipated that the Fencing Strategy will speak to this issue. Municipalities may enter into discussions with abutting landowners concerning issues of maintenance.

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**Recommendation 4: Options Related to the Management of the Municipal Line Fences Responsibility**

**It is recommended that options 11 and 12 be accepted.**

Options 11-12 are discussed in more detail in the Options section of this report and include:

Option 11: Establish a Local Landowner Fencing Committee

Option 12: Develop a Best Practices Manual for Municipal Management of Section 20 Responsibility

These two recommendations are in support of the local administration of this issue, including a partnership between the farm and municipal sector. This local approach can assist the development and implementation of the Fencing Strategy. There are examples reviewed within this report of where this approach is working in a very positive way.

Local Landowner Fencing Committees can be established to help with the administration of municipal responsibility for fencing ARROWS under the Line Fences Act. Local involvement in the administering of Section 20(c) is likely to contribute to support for the municipal approach, judicious decisions and minimal requests for “frivolous” fences (i.e. this process of peer review is likely to discourage this type of application). This group will have a key responsibility to help administer the fencing strategy.

**Recommendation 5: Related to Municipal Budgets and Funding**

**It is recommended that options 13-15 be accepted.**

Options 13-15 are discussed in more detail in the Options section of this report and include:

Option 13: A Budget for Fence Construction

Option 14: Trail Permits Encouraged as a Means to Raise Money and Manage Use

Option 15: Provincial Funding to Assist with Fencing

These options reiterate the importance of having an approved budget for fencing consistent with the need, standard, amount and demand for fencing (Fencing Strategy) and suggest that trail users and the province may contribute to the funding of fencing through user fees or grants.

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**Recommendation 6: Options Related to Trespass and Liability**  
**It is recommended that options 16-18 be accepted.**

Options 16-18 are discussed in more detail in the Options section of this report and include:

Option 16: Insurance to Cover Abutting Property Owners

Option 17: Restrict Motorized Vehicles on Trails

Option 18: Reduce Private Landowner Liability on Lands Adjacent to Trails

These recommended options reflect the important issue of trespass and liability. Two additional items are noted. First the restriction of motorized vehicles from trails will be at the discretion of the owner of the trails and second the option of the extension of insurance onto abutting properties (Option 16) may benefit from a legal opinion (to confirm feasibility of this option).

**Recommendation 7: Options Related to Education and Awareness**  
**It is recommended that options 19-20 be accepted.**

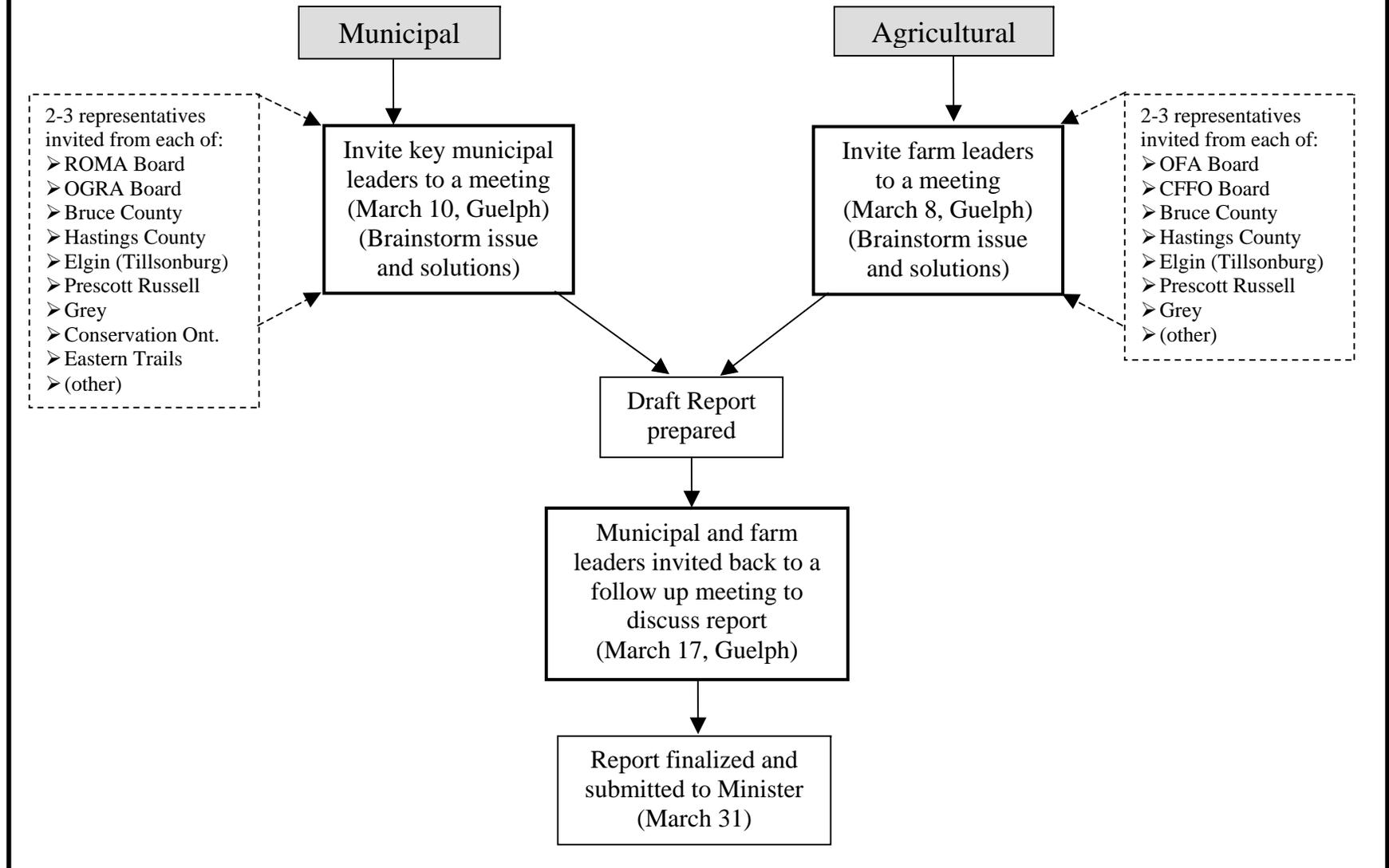
Options 19-20 are discussed in more detail in the Options section of this report and include:

Option 19: Develop a Best Practices Booklet on Trail Use and Development.

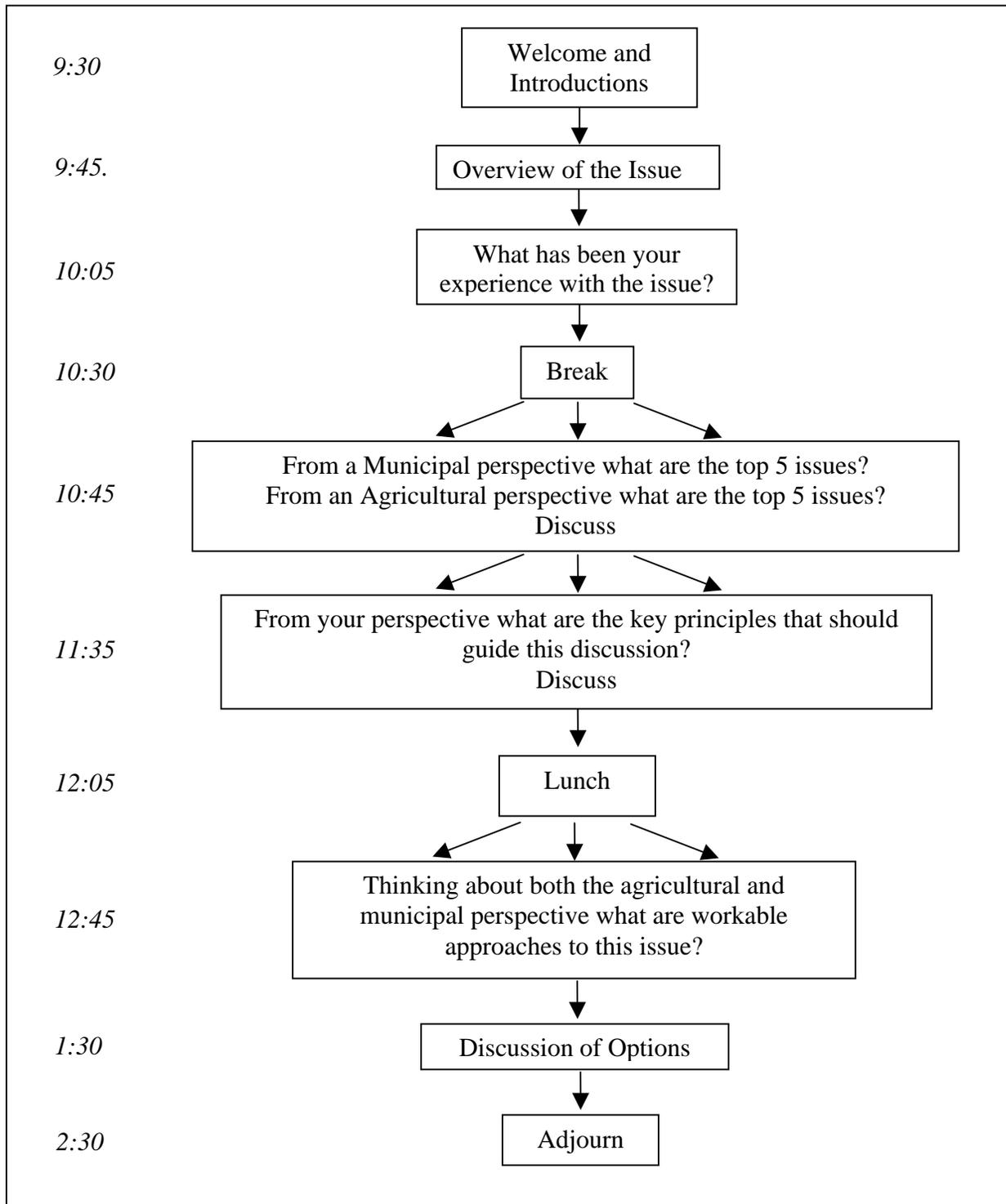
Option 20: Increase Communications Between Agriculture, Municipalities and the Users of Trails.

These recommended options reflect the need to share information and increase understanding of the issues between the various parties involved with this issue.

**Appendix 1: Process to Develop Report on the Line Fences Act and Abandoned Rail Right of Ways**



**Appendix 2- Agenda - March 8 and 10**  
**Abandoned Rail Right of Ways and the Line Fences Act:**  
**A Municipal/Agricultural Perspective**



***Thanks for your participation!***

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## **Appendix 3.1: Issues Identified at the March 8 and 10 Workshop**

### **Agricultural Issues identified at the agriculture workshop**

- Liability – trespass – livestock
- Land use determines need for fencing (swamp/bush vs. pasture)
  - Land use conflicts with residences
- Vandalism- ATVs- crop damage- 4 wheel trucks
  - easy, hidden access
  - mainly related to unmaintained ARROWs
- Property Maintenance
  - Fences, drainage, tree falls, weeds
  - Standards adequate for approved use
- Cost – farmers pay taxes
  - also cost of conflict
  - who should bear cost?
- ARROWs – negative impact on adjacent farms
  - if public benefits who pays?
- Biosecurity
  - Transmit disease from other farms
  - Crops – similar threats from other farms
  - Contamination from weeds/undesirable crops
- Access across corridor
  - Land locked
  - Owners of both sides
- Liability
  - Injury to trespassers
  - Injury to livestock
- Insurance cost
  - Trail introduction has increased premiums (ponds, livestock, potential trespass)

### **Agricultural Issues Identified at the Municipal Workshop**

- Liability
- Safety
- Why agree to accept new costs?
- Trespass – legislation almost impossible to enforce
- Who should bear the cost - broader public good
- Desire to own land – right of first refusal.
- Biosecurity
- Drainage
  - maintenance & standards
- Fence
  - maintenance & standards
- Access across ARROW or along ARROW
- Prescriptive right of use -> 20 years
- Lack of public respect for private property

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### **Municipal Issues identified at the Municipal workshop**

- LFA – requirements old legislation mirroring redundant federal legislation
  - 100% requirement
- Cost – construction &/or maintenance
- Standards of Fencing
  - Equity – Reasonableness (timing)
- Lost Opportunity (utility Economic Development (see East Ferris))
- No priority on need
- Frivolous demand
- Liability
- Liability of trail use
  - motorized
  - pedestrian
- Ontario should show support for municipal Economic Development (utilities & trail) recreation opportunities – broader public good
- No sunset clause for fencing responsibility
- System shown to not be working - demonstrated by multiple solutions developed
- Ont. Legislation behind fed. & other jurisdiction
- Establishing (by surveyor) actual / location of property line - cost

### **Municipal Issues identified at the Agriculture workshop**

- Broader Public interest
- Costs
  - Who pays fencing
  - Maintenance of fencing
- Maintenance responsibilities (solution: offer to adjacent owner to use and maintain)
- Liability
  - LFA
  - lack of performance- maintenance
  - users of ARROW
- Standards of Fencing
  - Legislative framework
  - Municipal standards
- Setting standards for use of corridor
  - Seek maximizing use
- Public asset – Who should pay?

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## **Appendix 3.2**

### **Key Principles Identified at the Agriculture Workshop March 8, 2005**

- Owner of trail responsible for effects of uses permitted on ARROW
- Respect for Rights of Property Owners
- Current Legislation fine as is
- Community Awareness and Education (to public and council)
- Adjacent Landowners on Decision making Committee for ARROW use.
- Accessibility – no landlocked parcels
- One Size does not fit all
- Demonstrate need for trail (balance with public understanding/responsibility for costs)

### **Key Principles Identified at the Municipal Workshop March 10, 2005**

- Good neighbours
- Corridor retention is in public interest
  - Trail development is in best interest of public
  - obligation to future generation
  - don't lose future opportunities
- Affordability
- Bring legislation up to current day realities & public priorities.
- LFA Reasonable
- ARROWs present opportunities to enhance economic development
- Cost of fencing should be shared.
- Basic fencing standard should be clear
- Farm operations should not be jeopardized by trails
- Assumption of ownership by Municipalities should be economically viable.
- Should differentiate (cost sharing formula) fencing responsibility based on agriculture or other use.

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### **Appendix 3.3**

#### **Solutions Identified at Agricultural Workshop (March 8)**

- Municipality pay 100% - leave LFAs 20
- Trespass
  - Increase fines
  - Seize chattels
  - Increase damage awards
  - Educate public & users
- Communication between owners of ARROWs and adjacent lands
- Legislation to reduce liability of adjacent land owners (State of Massachusetts)
- Clarification of standard of fence & who is responsible for deviation from standard
- Access across ARROW
  - Need clarification
  - MMAH – investigate right of access across ARROW – federal legislation?
- Bruce County has protocol for providing access across ARROWs.
- Lease option – Tillsonburg Elgin
- Maintenance
  - Incentive program – provide benefit to user groups that provide good maintenance (refund of part of yearly fee)
- Enforcement
  - Users fees – part targeted to enforcement
  - Partnership with police
  - Adjacent land owners should not be responsible to police ARROW users.
- Requirement to share cost of fencing
  - Not attractive
  - Concerns that low % may escalate in future
  - Sharing cost may increase liability for injury on fence or related to crossing fence (i.e. becomes part owner).
- Blocking access limits obnoxious users.
  - Cut length of linear property makes it less attractive.
- Fence Viewers – role in crossing awards – what gate/ where?
- Agricultural Advisory committee – role

#### **Solutions Identified at Municipal Workshop (March 10)**

- If any other legislation (Federal, Provincial & Municipal) binds an adjacent owners use to provide fencing: that must be 100% constructed & 100% maintained by adjacent owner (aggregates, wrecking yards).
- Treat ARROW fencing under S4, LFA
- S20 apply only to agricultural lands but subject to agricultural share & exemption where existing barrier discounts need for fence. Other lands dealt with in S4 LFA.
- Regulations/ conditions to establish validity need for fence.
- Set standards for fence – type, height, etc. Standards for crossing rights, gates.

- 
- Provide flexibility for municipality & adjacent landowner to enter into agreement for other standard
  - Liability – tort law – limits on ability of trespasser to sue – limit settlements
  - Trespass – higher penalties
  - Get rid of “joint & several” liability
  - Best practices: stakeholder committee to guide municipal policy & application of policy.
  - Economic benefits that can benefit whole community – Educate the public to benefit.
  - Fencing requirements should be based on land use – eg. – utility corridors – no fences.
  - Authority to ban ATV’s from trails.
  - Access - process for landowner to enter into agreement for access/use.
  - Ability to license ATV’s
  - Affordable solutions
  - Municipal process – guarantee time line if adjacent owner shares cost
  - Owner of ARROW required to maintain natural & existing drainage.
  - S. 20 (1) (a) apply based on fair share of costs for the 10 years.
  - Maintenance – authority share set out in agreement
    - options – sunset clause for municipal maintenance.

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**Appendix 4.1**  
**BRUCE COUNTY RAIL CORRIDOR**  
**FENCING SUB-COMMITTEE**  
**TERMS OF REFERENCE**

March 11, 2004

The Fencing Sub-Committee is established by the County of Bruce as a working group, and will report to the Highways Committee. Committee members are appointed according to a formula determined by the County.

**PURPOSE**

To develop policy and priority recommendations and submit them for approval to the County and advise the Highways Committee on issues pertaining to fences on the CN rail corridor. This corridor runs from Huron County, through Mildmay, Walkerton, Paisley, and Port Elgin, and turns south to the Bruce Nuclear Power Development.

**OBJECTIVES**

1. To describe the standards for fences.
2. To recommend the priorities for construction, upgrades, and repairs of fences.
3. To set out the procedures and deadlines for a landowner to apply for a fence, and for approvals.
4. To recommend a budget and the allocation of funding for fencing work.
5. To act as liaison between groups with an interest in fencing of the rail corridor.
6. To consider exceptional circumstances and other matters that affect fencing of the rail corridor.
7. To issue an annual report to the County, including accomplishments, financial matters, and recommendations.

**DUTIES**

1. To attend meetings and participate in the work of the committee.
2. Members would generally sit on the sub-committee for 2 years yet those initiating the sub-committee would sit for 2 years then a rotation of tenure would start.
3. To maintain objective and impartial decision-making.
4. To respect the privacy of individuals who may apply or have dealings with the committee.
5. To be familiar with the concepts and information pertaining to the work of the committee.
6. To issue timely and complete reports to the Highways Committee, as required.
7. To carry out the work of the committee in a manner that reflects the confidence of the County of Bruce.

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**Appendix 4.2**  
**BRUCE COUNTY RAIL CORRIDOR**  
**FENCING SUB-COMMITTEE POLICY**  
**NEW FENCE CONSTRUCTION**

April 2, 2004  
Revised February 10, 2005

The Bruce County Highways Committee has created a Fencing Sub-committee to develop policy and priority recommendations concerning fencing along the corridor. This New Fence Construction Policy has been prepared to provide guidance in the installation of new fence and has been broken down into sub categories for ease of reading.

**New Fence Location:**

The County of Bruce purchased the former rail corridor based on the description of deposited reference plans. These reference plans were prepared by an Ontario Land Surveyor and accurately describe the boundary of the County property. The location of the new fence shall generally be on the property line yet unusual circumstances may require that the new fence be located at a mutually agreed upon alternative location. The County shall provide the fencing contractor the specific location.

**Standard Fence:**

The standard fence shall consist of and be constructed of the following new material:

- Minimum 8 wire page fence, 42" high with a single barb wire above, conforming to CSA Standard G42 **or**  
Minimum 9 wire page fence, 48" high conforming to CSA Standard G42
- Minimum 200mm (8") diameter new wood posts for end posts and brace posts, minimum length of 2.7m (9') embedded approximately 1.2m (4').
- Minimum 150mm (6") diameter new intermediate wood posts spaced at 5.0m (16.5'), minimum length of 2.4m (8') embedded approximately 1.0m (3').
- Minimum 75mm (3") diameter new wood stakes spaced at approx. 1.2m (4'), minimum length of 1.5m (5').
- Brace wire in the brace panel shall consist of 4 strands of 3.5mm (#9 gauge) galvanized soft steel, tensioned
- Staples shall be 4mm diameter galvanized with a driving length of at least 45mm (1 3/4")
- Wood braces shall be a minimum of 100 x 100mm (4" x 4") and a length to support the 3.5m (12') brace panel between the end post and brace post.
- Brace panels shall be located, on average, every 20 rods and placed in a location to suit the topography.

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### **Site Preparation:**

It is the objective of the County to install a fence that shall last in the long term.

Accordingly, site preparation will be necessary as follows:

- Contractor shall remove the old fence,
- Where possible, trees and shrubs shall be close cut to the ground,
- Usable wood from cut trees, may be salvaged by the landowner,
- Trees and brush shall be cleared to the County property or where wild fruit trees are on adjacent County property the fruit trees shall be trimmed to 2m on County property,
- Fence brush pile to be burned and debris to be picked up by the contractor and hauled to an agreed-upon location,
- Landowner and County to agree on the removal of the debris.

### **Installation:**

The installation of the fence shall be done in a neat and workmanlike manner in order that the fence is serviceable for a minimum of twenty-five years. The following shall be undertaken in conjunction with the installation:

- Wire will be adequately stretched,
- Wire shall be applied on the landowners side of the fence,
- Staples shall be placed at every location where wire crosses the wood posts,
- The County shall review each installation and rate the contractor on his efforts.

### **Access:**

Where the landowner has property on each side of the former rail corridor, the new fence will accommodate one crossing access point per property owned by the landowner. This access point shall include the necessary brace panels and a western gate made of the same material as the balance of the fence. All other costs related to the access shall be borne by the property owner. The County considers access over the rail corridor a privilege and the users of the access must give the right-of-way to the trail users and must conform to other rules established by the County.

### **Process:**

The Fencing Sub-committee shall place an advertisement in local papers annually requesting interest in fencing along the corridor. The Fencing Sub-committee shall review the submissions and determine the priorities. Fencing work shall be undertaken up to the fencing budget amount established by the County Highways Committee.

The County tenders and awards a contract to undertake the work of supplying and installing the fence, yet if a landowner wishes to undertake his own work, the County may be prepared to compensate the landowner in a similar amount as if the contractor undertakes the work.

If the landowner undertakes the work, the following will be the protocol:

- An agreement shall be signed with the County for the work,
- The adjacent landowner shall undertake the work,
- The County shall review the work to ensure that it meets the minimum County standards and shall confirm the length of the fence which will be the basis of the County's contribution,
- If the fence meets or exceeds the County standard, then the County shall make the contribution.

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**Appendix 4.3**  
**BRUCE COUNTY RAIL CORRIDOR**  
**FENCING SUB-COMMITTEE POLICY**

**LIVESTOCK CROSSING**

January 13, 2005

The Bruce County Highways Committee has jurisdiction over the former CNR rail corridor from Huron County through Mildmay, Walkerton, Paisley to Port Elgin and then south-westerly to the BNPD. There are a number of situations where adjacent landowners own property on both sides of the corridor and wish to have access across the corridor for livestock.

The County is prepared to consider approving livestock crossings if they are undertaken in a safe manner and do not create a major obstruction to the use of the corridor. The landowner must own the adjacent property on both sides of the corridor and must be prepared to enter into the agreement referred to in this policy.

The County is prepared to contribute \$500 towards the construction of the crossing with the balance being paid by the landowner and the landowner would be responsible for all maintenance of the crossing.

The County will consider two approaches to this issue as follows:

a) Livestock Underpass:

The landowner would install a conduit underneath the rail bed and fencing from the conduit that would direct livestock across the corridor without interfering with the operation on the corridor.

b) Partially Fenced Livestock Runway:

A minimum of an 18' opening (with steel gates) across the corridor and wood stake fencing from the gate anchor post to the property line fence. The gates and posts would be organized in order that the gates can swing to open and close the corridor. A sketch of the standard is attached. In order to close the corridor, adjacent landowners would be responsible for the following:

- having a person in attendance on the corridor while moving the livestock.
- The attendant should permit trial users to continue with a maximum delay of 5 minutes.
- Selecting an appropriate time of the day and of the week to move livestock.

AGREEMENT:

We would require an agreement with the owner of the adjacent lands, which would include a site plan, a hold harmless clause, liability insurance, etc.

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**Appendix 4.4**  
**BRUCE COUNTY RAIL CORRIDOR**  
**FENCING SUB-COMMITTEE POLICY**

**CORRIDOR CROSSING**

February 10, 2005

The Bruce County Highways Committee has jurisdiction over the former CNR rail corridor from Huron County through Mildmay, Walkerton, Paisley to Port Elgin and then south-westerly to the BNPD. There are a number of situations where adjacent landowners own property on both sides of the corridor and wish to have access across the corridor.

The County is prepared to consider approving crossings if they are undertaken in a safe manner and do not create a major obstruction to the use of the corridor. The landowner must own the adjacent property on both sides of the corridor and must be prepared to enter into the agreement referred to in this policy.

The issue of crossing the corridor by adjacent landowners is divided into the following sub-categories:

- a) Adjacent landowner crossing directly over the corridor:

*In this application, adjacent landowners would have land on either side of the corridor and would require access directly across the corridor. The County would support this type of crossing with an appropriate agreement.*

- b) Landowner request to travel down the corridor to adjacent lands:

Generally, the adjacent landowner would have road access to each of the properties and travel down the corridor for non-recreational use would not be allowed since it represents a considerable hazard to corridor use.

- c) Special permission:

*There may be applications where landowners wish to have access along the corridor for other infrequent activities, for which the County may wish to provide permission to access property along the corridor. The County may support this type of access on a case-by-case basis with an appropriate agreement.*

- d) Adjacent landowner may wish access to the trail from adjacent lands:

*An adjacent landowner may wish to enter the trail to have trail use. The landowner is responsible to install and maintain the access point and would enter an appropriate agreement.*

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## AGREEMENT:

The County requires an agreement with the owner of the adjacent lands, which would include a site plan, a hold harmless clause, liability insurance, etc.

The Agreement would include the following issues:

- Vehicular traffic crossing the corridor will use their road lights to be visible.
- Vehicular traffic will proceed with caution and will either stop at the edge of the rail bed or, if on a steep grade with a heavy load, will proceed across the rail corridor at not more than 5 mph.
- There should be a review of visibility of all access points and it may be an obligation of the landowner to remove brush to provide and maintain visibility.
- If there is a fence along the corridor and a gate is necessary, it will be the responsibility of the landowner to supply, install and maintain the gate.
- The maintenance of the access point will be the responsibility of the adjacent landowner. The County will establish the maintenance standard.
- There will be a maximum of one access point per individual adjacent property.
- The agreement would expire upon the sale of the property or after ten years, whichever occurs first.

## PROCESS:

Following the opening of a section of corridor to trail use the County will review all existing access locations and determine if they conform to this policy. If an access conforms, then the County shall prepare an agreement for the landowner to consider. If the County and landowner agree on the contents, both parties shall sign the agreement. If the County and landowner do not agree, then the County may request that the access be abandoned.



## Appendix 5 - Brochure from Hastings County (OFA and EOTA)

### Adjacent Landowner / Farmer Committee's Mandate

- Determine Federation of Agriculture members owning land along the trail
- Determine fencing needs, if applicable
- Prioritize needs
- Cost breakdown for owners of the trails

To learn more about the Lines Fences Act, you may download a copy from E-Laws at:



Box 267

Foxboro ON., K0K 2B0

Phone: 416-485-3333

Fax: 416-485-9027

**HFA**  
Hastings Federation of Agriculture

**FFA**  
Frontenac Federation of Agriculture

**PEFA**  
Prince Edward Federation of Agriculture

**LAFA**  
Lennox/Addington Federation of Agriculture

**NFA**  
Northumberland Federation of Agriculture

**LFA**  
Lanark County Federation of Agriculture

**OFA**  
EASTERN ONTARIO TRAILS ALLIANCE

AN INFORMATIONAL BROCHURE

DRAFT COPY ONLY

## ► Changes in Agriculture

Farming has changed drastically over the years. In the early 1900's every farm along the railroad had livestock grazing adjacent to the rail line. Over the years, there has been a steady decline of livestock being pastured along these corridors, and the need for fencing and the type of fencing has changed.

Today, there are some farms that do not pasture livestock along the trail and presently do not require fencing and they may never need it.

Agriculture has moved away from page wire fencing to more extensive use of electric fencing.



### Formation of the Adjacent Landowner / Farmer Committee

Years ago farmland was expropriated for the development of the railroad. At that time, the railroad was beneficial to the farming industry and communities. The railroad was responsible for keeping the corridor fenced. With the abandonment of rail lines, trail opportunities flourished but the issue of fencing along these trails remains an unresolved issue. This has initiated the formation of the Adjacent Landowner / Farmer Committee, comprised of representatives from County Federation of Agriculture organizations and Eastern Ontario Trails Alliance.

### Electric Fencing vs. Page Wire Fencing

According to the Ontario Ministry of Agriculture and Food (Fact Sheet on Farm Fencing Systems) electric fence can be built for 30% less than page wire fencing. Installed properly, electric fencing is comparable to page wire fencing in terms of livestock confinement.

The OFA's mandate is to maintain the Line Fences Act but realizing some changes can be made to alleviate the costs. In the past, most farmers who needed immediate fencing had to share costs with EOTA due to lack of funding. Some farmers had to absorb the total cost themselves.

**Appendix 6 Rating of Individual Option (1-20 as Presented at the March 17 Workshop)**

# Representatives – Municipal sector= 12  
 - Agricultural Sector= 7

Rating Individual Options (% of Total ,farm, municipal)										
	Very opposed		opposed		neutral		supportive		Very supportive	
Option 1	17%		6%		17%		33%		28%	
		3		1		3	2	4	4	1
Option 2	0%		0%		22%		39%		39%	
					2	2	3	4	1	6
Option 3	11%		0%		17%		56%		17%	
		2			3		3	7		3
Option 4	0%		11%		44%		28%		17%	
			2		3	5	1	4		3
Option 5	6%		0%		6%		61%		28%	
		1			1		5	6		5
Option 6	0%		11%		6%		33%		50%	
				2		1	2	4	4	5
Option 7	5%		0%		5%		63%		26%	
		1				1	3	9	4	1
Option 8	0%		5%		0%		63%		32%	
				1			4	8	3	3
Option 9	16%		32%		11%		37%		5%	
	1	2	1	5	1	1	3	4	1	
Option 10	11%		16%		16%		26%		32%	
		2		3		3	2	3	5	1
Option 11	0%		0%		17%		28%		56%	
						3	3	2	4	6
Option 12	0%		0%		5%		79%		16%	
					1		5	10	1	2
Option 13	5%		0%		5%		55%		35%	
		1				1	3	8	3	4
Option 14	0%		0%		16%		37%		47%	
						3	2	5	4	5
Option 15	0%		0%		11%		28%		61%	
					1	1	3	2	2	9
Option 16	6%		17%		17%		22%		39%	
		1		3	1	2	1	3	4	3
Option 17	17%		6%		39%		11%		28%	
		3		1	2	5		2	4	1
Option 18	0%		6%		0%		24%		71%	
				1			1	3	5	7
Option 19	0%		5%		5%		58%		32%	
			1		1		4	7	1	5
Option 20	0%		0%		5%		26%		68%	
					1		2	3	4	9

---

Overall if you consider all of the options as an entire package how do you feel about them?

Very opposed	opposed		neutral		supportive		Very supportive		
6%	17%		0%		67%		11%		
	1	2	1			3	9	1	1

How do you feel about the process we have used?

Very opposed	opposed		neutral		supportive		Very supportive		
0%	0%		6%		65%		29%		
				1		3	8	2	3

Total Support and Opposed by Option

	% supportive	% opposed
Option 1	61%	23%
Option 2	78%	0%
Option 3	73%	11%
Option 4	45%	11%
Option 5	89%	6%
Option 6	83%	11%
Option 7	89%	5%
Option 8	95%	5%
Option 9	42%	48%
Option 10	58%	27%
Option 11	84%	0%
Option 12	95%	0%
Option 13	90%	5%
Option 14	84%	0%
Option 15	89%	0%
Option 16	61%	23%
Option 17	39%	23%
Option 18	95%	6%

Option 19	90%	5%
Option 20	94%	0%



