

## **Line Fences Act and Abandoned Rail Right-of-Ways A CFFO Policy Statement**

**Whereas** the federal Railway Safety Act requires the owner of the railway right-of-way to maintain fences in perpetuity.

**Whereas** Section 20 of the Line Fences Act<sup>1</sup> requires municipal owners of former or abandoned railway right-of-ways (ARROWs) to construct and maintain all fences adjacent to ARROWs.

**Whereas** putting ARROWs to new uses such as trails is in the public interest.

**Whereas** new uses for ARROWs, such as trails have an even greater need for fencing than the original use.

**Whereas** new uses for ARROWs such as protection as utility corridors have little use for fencing.

**Whereas** disputes over fencing ARROWs should not be settled by the courts.

### **Therefore be it resolved**

**That** Section 20 of the Line Fences Act be retained and municipalities be required to maintain fences along ARROWs with the following qualifiers:

- The fence is requested by the adjacent landowner.
- The municipality can phase the construction/maintenance over two years to manage budget implications.
- A mutual agreement can modify the need for a fence or the type of fence.
- Creation of an appeal process to establish reasonableness of the request for a fence or the type of fence.

**That** base provincial standards for fence and crossing construction and maintenance be established. If a landowner requests more than the base, the landowner should pay the difference.

**That** the agricultural and municipal sectors develop a Best Practices Manual for ARROWs that have been turned into trails with the following BPs:

- Municipalities create a permit system to raise funds for fencing.

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<sup>1</sup> See Appendix A

- Municipalities create a local committee with responsibility for determining the reasonableness of a request for a fence and the timing of construction to manage budget implications.
- Municipalities purchase liability insurance that extends to adjacent lands so that the municipality has liability coverage if trail users leave the trail and come to harm on adjacent property or trail users cause damage on adjacent property.
- Municipalities restrict motorized vehicles from trails except where an official trail organization manages such usage.
- Development of a trail user's booklet that urges respect for adjacent landowners.

**That** the province amend appropriate legislation (e.g. Trespass Act) so that landowners have no liability to persons who trespass on their property and come to harm while trespassing except where the landowner consciously plans to cause injury.

*Adopted*

*June 22, 2005*

*Provincial Council*

*Christian Farmers Federation of Ontario*

## **Appendix A: Excerpt from the Line Fences Act**

20. (1) Where land that was formerly used as part of a line of railway is conveyed in its entire width by the railway company,

(a) to the owner of abutting land, such owner, the heirs, executors and assigns of the owner, are responsible for constructing, keeping up and repairing the fence that marks the lateral boundary between the conveyed lands and the lands of the adjoining owner for a period of ten years from the date of the conveyance and thereafter section 4 applies;

(b) to a person who is not the owner of abutting land, such person, the heirs, executors and assigns of the person, are responsible for constructing, keeping up and repairing the fences that mark the lateral boundaries of such land; or

(c) to the Crown in right of Ontario, a Crown agency within the meaning of the Crown Agency Act or the corporation of a municipality where the Crown, Crown agency or corporation, as the case may be, is not the owner of abutting land, the Crown, Crown agency or corporation is responsible for constructing, keeping up and repairing the fences that mark the lateral boundaries of such land. R.S.O 1990, c. L.17, s. 20 (1).