
HALDIMAND COUNTY

Report LSS-05-2019 Farm Crossings Over County Property
For Consideration by Council in Committee on April 16, 2019



OBJECTIVE:

To obtain delegated authority to enter into agreements for existing crossings over County-owned property for property maintenance and farming-related activities.

RECOMMENDATIONS:

1. THAT Report LSS-05-2019 Farm Crossings Over County Property be received;
2. AND THAT a by-law to delegate authority to the Manager of Community Development and Partnerships Division and the Manager of Legal & Support Services Division, jointly, to enter into agreements for existing farm crossings over County-owned lands for farming-related activities, be presented for enactment;
3. AND THAT The Mayor and Clerk be authorized to execute all necessary documents required to give effect to the intention herein.

Prepared by: Sandra Marsh, Property Coordinator

Reviewed by: Dana McLean, Supervisor, Risk Management & Legal Services

Respectfully submitted: Cathy Case, General Manager of Corporate & Social Services

Approved: Donald G. Boyle, Chief Administrative Officer

EXECUTIVE SUMMARY:

The County is aware of five situations where private property owners cross over County-owned lands to access portions of their farmland/property which otherwise have no legal access. Many of these crossings exist over former railway lands (Gypsum Mine Tract) which are now owned by the County. Some of the crossings have been used for several generations of farming without having formal agreements in place. It is recommended that Council provide staff with delegated authority to enter into formal agreements for existing crossings over County-owned lands for farm and property maintenance related activities, where there is no other legal access or where the use of the existing legal access would be an unreasonable expectation. The agreements will clearly identify requirements for maintenance and use of these crossings, as well as indemnification and insurance provisions.

BACKGROUND:

The County recently acquired the former railway lands in Caledonia for future trail purposes. These lands have been used by private property owners to access portions of their farmland, which otherwise have no legal access because the former railway dissects the private property. The County has become aware of other locations of County-owned land being crossed for the same purposes where no formal agreement with the County exists. Staff are currently aware of a total of five crossings that need to be addressed, although there may be additional situations that staff are not yet aware of.

If the private property owners can meet the criteria outlined below, it is necessary to enter into formal License Agreements with the private property owners to cross the County-owned lands. These agreements will set out the maintenance responsibilities of the property owners and the County, as well as insurance and indemnification requirements, which will mitigate risk and liability. A copy of the proposed License Agreement is included as Attachment #1.

The purpose of this report is to seek such delegated authority for farm crossing matters. All real property transactions, whereby the County acquires or divests itself of an interest in land, requires ratification by Council, unless Council has granted delegated authority to staff for such issues.

ANALYSIS:

The County recently acquired lands for public trail purposes, which lands appear to be used to access privately-owned farmland, that do not have other legal access or where the use of the existing legal access would be an unreasonable expectation.

In researching these farm crossings, staff discovered several private property owners cross over County-owned land without any type of formal agreement or easement in place. These private property owners do not have any other way to legally access portions of their farmland and access is only accomplished by crossing over County-owned lands. Without having an agreement in place the County could become liable for the activities associated with the farmland crossings.

Staff are recommending that License Agreements be entered into with the parties utilizing the County lands as crossings. A License Agreement is different than a lease or an easement, wherein it allows the owner and the private party to continue use of the same lands, independently and non-exclusively. A lease provides the private party quiet possession of the land and the owner would not have use, which, in the case of the former railways, is not desirable as many have or are planned to be incorporated into the County's trail network. An easement gives a legal interest in County lands, to a third party, is registered on title and is much more formal than a license agreement, usually with costs associated to it.

License Agreements to be entered into will be for a period of five (5) years with an option to extend the License Agreement for an additional three (3) further terms of five (5) years, on the same terms and conditions as the original License Agreement and can be terminated if both parties agree the crossing is no longer necessary. All License Agreements will set out terms and conditions of using the crossing, including indemnification and insurance requirements, will require the private property owner to repair any damage that may occur to the County-owned property as a result of the crossing activities, and will contain an option for the County to terminate the agreement if the requirements are not fulfilled by the property owner. License Agreements are non-transferrable and are not able to be assigned. If properties are sold and the criteria below can be demonstrated based on the previous title holder's uninterrupted use, new property owners can request to enter into a new agreement with the County if they pay the required fees associated with the request.

Delegated Authority for Properties Affected by Similar Proven Interest

There are several properties located within Haldimand County that are affected by farmland crossings without having a formal agreement in place.

To permit the continued use of the existing farmland crossings, staff will review each situation to confirm the facts are similar to the issues outlined in this report and meet the following criteria:

- a historical crossing exists and has been used for farming related activities;
- the private property owners or a predecessor in title can prove that uninterrupted use of the crossing has continued throughout their ownership of the property – a sworn declaration will be required;

- the records of the Land Registry Office indicate that the private property owner's title does not include an existing right over the County-owned land;
- the private property is landlocked and has no other legal access to the property, or the use of the existing legal access is not physically possible;
- the private property owner must enter into a License Agreement with the County, which will require proof of liability insurance and outline that any damage to the County-owned land will be the responsibility of the private property owner to make good to the satisfaction of the County;
- the License Agreement is not assignable; any new owners of the property will need to contact the County and enter into a new License Agreement based on the criteria herein;
- the private property owner requesting the right to cross over the County-owned land will bear all costs associated with the request, including the administration fee for the License Agreement.

Rather than staff presenting a report to Council each time an agreement is necessary, staff are recommending that delegated authority be given to the Manager of the Legal & Support Services Division and the Manager of the Community Development and Partnerships Division to approve such requests, conditional on the above criteria being met. This will expedite the process for the affected parties and allow their historical farm crossings to continue, if they wish to enter into the formal agreement. Where delegated authority is used, the Mayor and Clerk will sign the License Agreements on behalf of the County.

If the private property owner does not wish to enter into a formal agreement with the County, this would eliminate their ability to continue crossing over the County-owned lands. In these instances, the County has the option of implementing appropriate measures to prevent future trail crossings.

Staff invited specific property owners along the Gypsum Mine Tract to meet and review the proposed approach. This meeting, which took place on December 18, 2018, addressed all concerns from the property owners in attendance.

FINANCIAL/LEGAL IMPLICATIONS:

The License Agreement and all related costs will be borne by the affected private property owner, which includes the one-time application fee of \$224 (2019).

For safety purposes, public trails which involve farm crossing agreements will be signed appropriately for trail users.

STAKEHOLDER IMPACTS:

Community Development and Partnerships Division requested the initiation of this report and were consulted during its preparation.

REPORT IMPACTS:

Agreement: Yes

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. License Agreement