



# REPORT

## CAO

**TO:** Otter Valley Utility Corridor Board of Management  
**FROM:** Paul Shipway, CAO|Clerk  
**DATE:** September 11, 2019  
**REPORT:** CAO-49/19

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**SUBJECT: OTTER VALLEY UTILITY CORRIDOR - BACKGROUND**

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### BACKGROUND

In 1997 the Village of Port Burwell and the Town of Tillsonburg entered into a Joint Venture Agreement, operating as the Otter Valley Utility Corridor Board of Management, concerning the Otter Valley Utility Corridor. The Joint Venture Agreement, attached hereto as Appendix 'A', is a legal document with prescriptive duties pertaining to ownership of the Utility Corridor and any actions that take place on the Otter Valley Utility Corridor.

Effective February 6, 1997 the Corporation of the Village of Port Burwell and the Corporation of the Town of Tillsonburg, purchased from Canadian Pacific Railway Company land in the Township of Bayham, County of Elgin. The Otter Valley Utility Corridor land included the following properties.

- i. Roll No. 34-01-000-009-01800-0000
- ii. Roll No. 34-01-000-009-01805-0000
- iii. Roll No. 34-01-000-009-01810-0000

The Municipality of Bayham and the Town of Tillsonburg have an Option Agreement with AIM Power and a Road Use Agreement with Erie Shores Wind Farms for use of the Otter Valley Utility Corridor. Additionally, the majority of the Otter Valley Utility Corridor north of Vienna is leased to the abutting land owner's as a result of [Line Fence Act](#) disputes in the early 2000's. Mapping is attached hereto as Appendix 'B'.

Agendas & Minutes of the Otter Valley Utility Corridor Board of Management are available online on the [Advisory Boards and Committees](#) section of the Municipality of Bayham Website.

### RECOMMENDATION

1. **THAT** Report CAO-49/19 re Otter Valley Utility Corridor – Background be received for information.

Respectfully Submitted by:

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Paul Shipway  
CAO|Clerk

*Schedule "A"*  
*Bylaw 97-11*  
*Port Burwell*

THIS JOINT VENTURE AGREEMENT made as of the 6th day of February, 1997.

BETWEEN:

**THE CORPORATION OF THE VILLAGE OF PORT BURWELL**  
("Port Burwell"), the Party of the First Part

- and -

**THE CORPORATION OF THE TOWN OF TILLSONBURG**  
("Tillsonburg"), the Party of the Second Part

**IN CONSIDERATION OF** the covenants and agreements hereinafter contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties), the Parties hereby covenant and agree, effective from and after the Commencement Date, as follows:

**ARTICLE I**  
**DEFINITIONS**

1. Where used in this Agreement or in any Schedule or amendment hereto, the following terms shall, unless the context otherwise requires, have the following meanings, respectively:

- 1.01 "Agreement" shall mean this Agreement, including any Schedules or amendments hereto;
- 1.02 "Buy-Sell Offers" shall mean two (2) contemporaneous offers by one Party to the other, each on identical terms (except that the price shall be pro-rated if the Party's Percentage Interests are not equal), one being an offer to purchase the Offeree's Joint Venture Interest and the other being an offer to sell the Offeror's Joint Venture Interest;
- 1.03 "Capital Account" shall mean, with respect to each Party, the aggregate value of all contributions to the Joint Venture from time to time by that Party, less the aggregate value of any distributions to date to such Party;
- 1.04 "Capital Contributions" shall mean contributions of capital required to be made by the Parties in accordance with Paragraph 4.03;
- 1.05 "Commencement Date" shall mean the 6th day of February, 1997;
- 1.06 "Contributing Party" shall mean a Party making a Capital Contribution as provided for in Paragraph 4.03;
- 1.07 "Contribution Loan" shall mean a loan made by a Contributing Party to a Non-Contributing Party as provided for by Paragraph 4.04;
- 1.08 "Defaulting Party" shall mean the Party in relation to which, or whom, an Event of Default occurs;

- 1.09 **"Event of Default"** shall mean an event listed in Subparagraphs 10.01(a) to 10.01(l) inclusive;
  - 1.10 **"First Right Notice"** shall mean a written notice from one Party to the other of a Single Interest Offer received by that Party;
  - 1.11 **"Joint Venture"** shall mean the Joint Venture undertaken by the Parties for the purpose set out in Paragraph 3.01;
  - 1.12 **"Joint Venture Costs"** shall mean the total of all costs of any nature relating to the completion and ongoing operation and maintenance of the Project incurred subsequent to the Commencement Date including Construction Costs;
  - 1.13 **"Joint Venture Interest"** shall mean, in relation to each Party, the Percentage Interest of each Party respectively from time to time in the Joint Venture;
  - 1.14 **"Major Decisions"** shall mean decisions as defined in Paragraph 5.03;
  - 1.15 **"Non-Contributing Party"** shall mean a Party failing to make a Capital Contribution as provided for in Paragraph 4.03;
  - 1.16 **"Non-Defaulting Party"** shall mean the Party in relation to which, or whom, an Event of Default has not occurred;
  - 1.17 **"Offeree"** shall mean a Party receiving a First Right Notice or a Buy-Sell Offer;
  - 1.18 **"Offeror"** shall mean a Party delivering a First Right Notice or a Buy-Sell Offer;
  - 1.19 **"Party and Parties"** shall mean, respectively, the individual Parties and both Parties to this Agreement;
  - 1.20 **"Percentage Interest"** shall mean, in the relation to each Party, the Party's proportionate interest in the Joint Venture as defined by Paragraph 4.01;
  - 1.21 **"Project"** shall mean the development and ongoing operation and maintenance of the Property as a utility corridor, and as a bicycle path and/or a cross country ski trail and/or a recreational trail and/or related uses, which shall be the undertaking of the Joint Venture;
  - 1.22 **"Property"** shall mean the real property described in Schedule A;
  - 1.23 **"Single Interest Offer"** shall mean a bona fide offer for the purchase of all of the Joint Venture Interest of one Party, which offer complies with the requirements of Paragraph 8.03;
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**ARTICLE II**  
**INTERPRETATION**

**2.01 Headings**

The division of this Agreement into Articles and Paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

**2.02 Rules of Construction**

Unless the context otherwise requires;

- (a) the terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Paragraph or other portion hereof and include any Schedule or amendment hereto;
- (b) references to Articles and Paragraphs are to Articles and Paragraphs of this Agreement;
- (c) words importing the singular number only shall include the plural and vice versa and words importing either gender shall include both genders and words importing individuals shall include firms and corporations and vice versa;
- (d) the word "or" may be conjunctive or disjunctive, as the context may require;
- (e) reference herein to any agreement, indenture or other instrument in writing means such agreement, indenture or other instrument in writing as amended, modified or supplemented from time to time; and
- (f) unless otherwise indicated, reference to any statute shall be deemed to be a reference to such statute as amended, re-enacted or replaced from time to time.

**2.03 Governing Law**

This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

**2.04 Accounting Principles**

Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be to the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the time and such other principles as generally accepted in the Province of Ontario.

**2.05 Currency**

All references to currency herein are to lawful money of Canada.



## 2.06 Entire Agreement

This Agreement together with the documents referred to herein, constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties other than as expressly set forth in this Agreement.

## 2.07 Severability

Save and except for any provisions or covenants contained herein which are fundamental to the subject matter of this Agreement, the invalidity or unenforceability of any provisions of this Agreement or any covenants herein contained shall not affect the validity or enforceability of any other provisions or covenants hereof or herein contained and any such invalid provision or covenant shall be deemed to be severable.

## 2.08 Schedules

The following Schedules are attached hereto and are incorporated into this Agreement by reference:

Schedule "A" - legal description of Property.

# ARTICLE III THE JOINT VENTURE

## 3.01 Formation

The Parties hereby enter into the Joint Venture for the purpose of the completion and the ongoing operation and maintenance of the Project, and notwithstanding the provisions of Article V, agree to concur in securing of all work, services and material necessary to complete, operate and maintain the Project and to concur in the payment by the Joint Venture of all Joint Venture Costs; provided that all specific costs and liabilities shall be agreed to by both Parties before they are incurred by or on behalf of the Joint Venture.

## 3.02 Scope of Authority

Except as otherwise expressly and specifically provided for in this Agreement, neither Party shall have any authority to bind or act for, or assume any obligations or responsibility on behalf of the other. Neither the Joint Venture nor either Party shall be responsible for any indebtedness or obligation of the other Party relating to the Property or otherwise, incurred or arising either before or after the execution of this Agreement, except as to those joint responsibilities, liabilities, indebtedness or obligations incurred pursuant to and limited by the terms of this Agreement, or as specifically agreed to in writing from time to time. Each Party shall indemnify and hold harmless the other from and against all claims, demands, losses, damages, liabilities, law suits, other proceedings,

judgments, awards, costs and expenses (including but not limited to legal fees on a solicitor and the solicitor's own client basis) arising directly or indirectly in whole or in part out of any breach of the foregoing provisions.

**3.03 No Partnership**

Nothing in this Agreement shall be construed so as to create or support the existence in law of a partnership between the Parties. The Parties specifically deny any intention of creating a legal partnership.

**3.04 Term**

The term of this Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with this Agreement and for so long as the Joint Venture holds any interest in or has any obligations relating to the Property or until the Parties agree to its termination; provided that no Party shall have the right to withdraw from the Joint Venture and each Party agrees not to so withdraw, nor to dissolve, terminate, or liquidate, or to petition a court for the dissolution, termination or liquidation of the Joint Venture, except as provided for in this Agreement, and no Party shall at any time have the right to petition or to take any action to subject the Property, or any part or parts thereof, or any interest therein, or any other assets of the Joint Venture, or any part or parts thereof, to the authority of any court of bankruptcy, insolvency, receivership or similar proceeding.

**3.05 Non-Assignment**

Both Parties agree that neither will sell, transfer, assign, mortgage or otherwise encumber, dispose of or cease to be an owner of the Property, except with the consent in writing of the other, or except otherwise in accordance with the terms of this Agreement.

**3.06 Principal Place of Business**

The principal place of business of the Joint Venture shall be 200 Broadway, 2nd Floor, Suite 204, Tillsonburg, Ontario, N4G 5A7, or such other location as the Parties may agree upon from time to time.

**3.07 Financing**

Any required financing, shall, wherever possible, be on the basis of several, not joint, liabilities so that each Party shall be liable only to the extent of its Percentage Interest. In the case of joint and several liability, the Parties, as between themselves, shall only be liable in the same percentage as their respective Percentage Interest and each hereby agrees to indemnify and save harmless the other for the Party's percentage share of such financing, and the Party's percentage share of any costs and liabilities associated therewith.



**ARTICLE IV**  
**CAPITAL CONTRIBUTIONS**

**4.01 Percentage Interest**

Each of the Parties shall have a Fifty Percent (50%) Percentage Interest in the Joint Venture, including the Project and the Property. There shall be no adjustment to the Percentage Interest of either Party except as provided for by this Agreement or by written agreement of both Parties.

**4.02 Initial Contributions**

It is the intention of the Parties that they contribute equally to the cost of the Joint Venture. Contributions to the Commencement Date have been made by the Parties equally.

**4.03 Additional Capital Contributions**

To the extent that the Joint Venture requires funds for completion and ongoing operation and maintenance of the Project and the payment of Joint Venture Costs, the Parties agree to make additional Capital Contributions from time to time in accordance with the provisions hereof and in the same percentage amounts as their Percentage Interest as provided for herein, and as adjusted from time to time, and in such amounts as are sufficient to enable the Joint Venture to complete, operate and maintain the Project. Either Party may give notice in writing to the other Party of the requirement for additional capital contributions, which notice shall specify in reasonable detail the amount and purpose of any such additional capital contributions. Each Party shall, within thirty (30) days of such notice, deposit the additional capital contribution required by such notice into the bank account of the Joint Venture.

**4.04 Contribution Loans**

In the event that either Party fails to make any such additional capital contribution within the time specified, a Contributing Party shall have the right to advance directly to the Joint Venture the funds required from a Non-Contributing Party as a loan to such Non-Contributing Party.

**4.05 Contribution Loan Security**

In the event that the Contributing Party elects to make a Contribution Loan then the Contribution Loan shall bear interest at a rate equal to the Prime Rate charged by the Canadian chartered bank or trust company used by the Joint Venture from time to time plus two percent (2%). The Contribution Loan shall be due and payable immediately and shall be repaid out of any subsequent distribution made pursuant to this Agreement to the Non-Contributing Party. All payments shall be applied first to interest and then to principal until the Contribution Loan is repaid in full. Repayment of the Contribution Loan shall be secured by the Non-Contributing Party's Joint Venture Interest and the Non-Contributing Party hereby grants a security interest in such Joint Venture Interest to the Contributing Party and hereby irrevocably appoints the Contributing Party and any of its agents as the Non-Contributing Party's attorney with full power and authority to prepare and execute any documents, instruments and agreements, including but not limited to any note evidencing



the Contribution Loan, and financing statements and other security instruments as may be appropriate to perfect and continue such security interest in favour of the Contributing Party.

#### 4.06 Remedies of Contributing Party

In the event that any Contribution Loan has not been repaid in full within sixty (60) days of the date when the Contribution Loan is made, then, in addition to any other rights or remedies available to the Contributing Party at law or in equity, at any time thereafter the Contributing Party may elect to proceed under either Subparagraph 4.06(a) or 4.06(b).

- (a) Upon thirty (30) days prior written notice to the Non-Contributing Party, the Contributing Party may elect to treat the outstanding balance of its Contribution Loan as a Capital Contribution added to the Contributing Party's Capital Account and both Parties' Percentage Interests shall thereupon be recalculated as of the effective date of the notice of such election; or
- (b) The Contributing Party may elect to make written demand upon the Non-Contributing Party for payment in full of the Contribution Loan, including accrued interest attributable to such loan and, upon the failure of the Non-Contributing Party to pay such Contribution Loan, and interest, in full within seven (7) days following the day upon which demand is made, the Contributing Party may elect to treat such failure to pay as an event of default as provided in this Agreement, and to enforce the security interest in the Non-Contributing Party's Joint Venture Interest.

#### 4.07 No Interest on Capital

Interest earned on Joint Venture funds shall enure solely to the benefit of the Joint Venture and, except as specifically provided herein with respect to the payment of interest on a Contribution Loan, no interest shall be paid upon any contributions or advances to the capital of the Joint Venture nor upon any undistributed or reinvested income or profits of the Joint Venture.

#### 4.08 Adjustment to Capital Accounts

The Capital Accounts of each Party shall, during each fiscal year, be:

- (a) increased by Capital Contributions made by such Party during such fiscal year, and such Party's share of the profits (calculated without including depreciation) of the Joint Venture determined pursuant to Paragraph 4.09 during such fiscal year, whether or not distributed; and
- (b) decreased by distributions to or for the account of such Party, whether of capital or income, during such fiscal year, and such Party's share of losses (calculated without including depreciation) of the Joint Venture during such fiscal year, determined pursuant to Paragraph 4.10.

#### 4.09 Allocation of Profits

The respective share of each Party in all Joint Venture income and expenses and each item thereof, including depreciation and tax credits, shall be allocated to the Parties in accordance with their Percentage Interests; provided however, that the decision as to when, and to what extent, claims are made for such depreciation (capital cost allowance) and tax credits for tax purposes shall be left to the discretion of each Party.

#### 4.10 Withdrawal of Capital

Except as otherwise provided herein, no portion of the capital of the Joint Venture may be withdrawn at any time without the consent of all of the Parties. Upon termination of the Joint Venture, the Parties' capital shall be distributed pursuant to Paragraph 10.04.

### ARTICLE V DECISION MAKING

#### 5.01 Decisions

The Parties agree that all decisions regarding the Joint Venture, the Project or the Property other than Major Decisions and other than contributions toward costs payable by the Joint Venture solely as owner of the Property shall be made by the Board.

#### 5.02 Board

The Board shall consist of three representatives from each Party. At least one representative from each Party shall be a member of that Party's Council. Each representative shall be an individual who shall be qualified to be elected as a member of the Council of the Party which appointed such representative. Each representative shall hold office at the pleasure of the Council of the Party which appointed such representative and unless sooner removed from the Board shall remain on the Board until the expiration of the term of the Council of the Party that appointed such representative and until such representative's successor is appointed.

#### 5.03 Major Decisions

No act shall be taken, sum expended, decision made or obligation incurred by the Joint Venture with respect to a matter within the scope of any of the Major Decisions enumerated below, unless and until the same has been approved by both Parties. Major Decisions shall be:

- (a) acquisition of any land or other real property or interest therein, other than the Property;
  - (b) financing or refinancing of the Joint Venture, the Property, or the Project;
  - (c) the sale or transfer of the Property or the Project or any interest therein;
  - (d) approval of any addition to and/or alteration of the Project or any portion thereof, and of any modification of plans, specifications and drawings for the Project;
  - (e) retention of legal counsel, surveyors, engineers and architects for the Joint
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- Venture, and for the institution of any law suit or similar legal action;
- (f) making any expenditure or incurring any obligation by or on behalf of the Joint Venture; and
- (g) any other decision or action which materially affects the Joint Venture or the assets or operations thereof.

## ARTICLE VI MANAGEMENT

### 6.01 Overall Management

The Board shall be responsible, in addition to its part in the decision-making process outlined in Article V above, for the implementation of all Major Decisions agreed to by both Parties and for the overall construction, operation and maintenance of the Joint Venture and the Project and the Property.

### 6.02 Chairman

At each annual meeting of the Board, the Board shall elect from its members a Chairman who shall be responsible for the following:

- (a) presiding at all meetings of the Board;
- (b) signing, along with the Treasurer, all cheques.

### 6.03 Vice-Chairman

At each annual meeting of the Board, the Board shall elect a Vice-Chairman who shall be responsible for fulfilling the Chairman's responsibilities in the absence of the Chairman.

### 6.04 Secretary

At each annual meeting of the Board, the Board shall appoint a Secretary from the staff of one of the Parties who shall be responsible for the following:

- (a) keeping written minutes of all meetings of the Board;
- (b) receiving all correspondence directed to the Joint Venture and sending all correspondence required to be sent by the Joint Venture;
- (c) keeping and maintaining all records of the Joint Venture, including minutes of Board meetings, correspondence, contracts, plans, past financial statements and all other records;
- (d) forwarding to each Party written notice of any required contribution; and
- (e) forwarding to all members of the Board all notices required to be given under this Agreement.



**6.05 Treasurer**

At each annual meeting of the Board, the Board shall appoint a Treasurer from the staff of the Party that the Secretary does not represent, who shall be responsible for the following:

- (a) maintaining all current financial records of the Joint Venture;
- (b) preparing a balance sheet as at the end of each fiscal year of the Joint Venture and an income and net cash flow statement for each such fiscal year within sixty (60) days after the end of each such fiscal year;
- (c) preparing any and all income tax returns or information statements of the Joint Venture and furnishing same for review and approval by each of the Parties at least thirty (30) days prior to any statutory dates for filing thereof;
- (d) maintaining the Joint Venture's bank account and bank records; and
- (e) signing along with the Chairman or Vice-Chairman, of all cheques.

**6.06 Bank Accounts**

The Board shall maintain at least two bank accounts, one of which shall be an operational account and one of which shall be a reserve account. All monies received by the Joint Venture shall be deposited into one or more of the bank accounts maintained by the Board. The Board may also place funds into such term deposits, investment certificates or other financial instruments as shall be decided upon by the Board. All cheques and other Bank documents shall be signed by the Chairman or Vice-Chairman and by the Treasurer.

**6.07 Meetings**

The Board shall hold an annual meeting on or before the 15th day of February in each year for the purpose of considering reports, approving financial statements, electing officers, and establishing budgets. In addition, the Board shall hold at least four other meetings in each year in order to discuss such business as the Chairman may determine. The Chairman may also call such other special meetings as the Chairman considers necessary. All meetings of the board shall be at times and places as determined from time to time by the Chairman.

**6.08 Notice of Meetings**

Notice of the time and place of each meeting of the Board shall be given to each member of the Board not less than five (5) days before the day on which the meeting is to be held, and the Notice shall specify the nature of the business to be conducted at such meeting. Notice may be given by mail or by telephone or by facsimile transmission, and the certificate of the Secretary as to the proper giving of Notice shall be conclusive of such Notice having been given.

**6.09 Quorum**

A quorum at any meeting of the Board shall be four (4) members, of which there shall be at least two (2) representatives from each Party. All decisions of the Board in carrying out its tasks shall be agreed to by a majority of those present at such meetings.

**6.10 Contracts and Documents**

All contracts, documents or instruments in writing shall be signed by the Chairman or Vice-Chairman and by the Treasurer or as otherwise authorized by the Board.

**6.11 Capital Expenditures and Major Maintenance Expenditures**

The Board shall request tenders or bids for all capital expenditures and all major maintenance expenditures.

**6.12 Rules**

The Board shall establish rules and regulations governing the use and operation of the Project and the Property.

**6.13 Budgets**

The Board shall repair and provide to the Parties the following budgets:

- (a) forthwith after the establishment of the Board, the Board shall establish a budget for the construction, operation and maintenance of the Project and the Property for one year and the budget shall be presented to each of the Parties for approval;
- (b) prior to December 31 of each year, the Board shall prepare and present to the Parties a budget for the construction, operation and maintenance of the Project and the Property for the following year, which shall include all costs relating to the construction, operation and maintenance of the Project and the Property and which shall include a reserve amount equal to ten percent of the cost of operating the Project and the Property;
- (c) forthwith after the Board is established, the Board shall prepare and present to each of the Parties a five-year budget forecast setting out both projected operating and capital expenditures, and further five-year budget forecasts shall be prepared as and when determined by the Board.

**6.14 Reserve Accounts**

The Board shall establish a reserve account(s) for major capital expenditures relating to the Project and the Property. All reserve funds elected on an annual basis shall be deposited into such special reserve account(s). The determination of what constitutes a major capital expenditure, and the utilization of funds in the reserve account(s), shall be determined by the Board, provided that the reserve account(s) shall not be reduced below the total sum of \$1,000.00.

**6.15 Special Assessments**

The Board may submit a special assessment to each Party for the approval and the payment of same by each Party with respect to:

- (a) a deficit, projected or actual in the Board's initial budget or any of the Board's annual budgets, with respect to the Project and the Property;
- (b) projected major capital expenditures which exceed the balance(s) in the reserve account(s).

**6.16 Compensation of Parties**

Except as may be expressly provided for herein or hereafter approved by the Board, no payment will be made by the Joint Venture to either Party for the services of such Party.

**6.17 Reimbursable Expenditures**

Each of the Parties shall be reimbursed by the Joint Venture for out-of-pocket expenditures incurred with respect to Joint Venture Costs, including broker fees, surveying costs, engineering costs, legal costs and costs of other outside consultants.

**6.18 Time Devoted to Joint Venture**

The Parties shall devote such time to the Joint Venture as is reasonably necessary to carry out the provisions of this Agreement.

**6.19 Other Business Activity, Disclosure, Waiver**

Each of the Parties understands that the other may be interested, directly or indirectly, in various other businesses or undertakings not included in the Joint Venture. The Parties hereby agree that the creation of the Joint Venture and the assumption by each of the Parties of duties hereunder shall be without prejudice to the Parties' rights to have such other interests and activities and to receive and enjoy profits or compensation therefrom, and each Party waives any right to share or participate in such other interests or activities of the other Party. The Parties may engage in or possess any interest in any other business venture of any nature or description independently or with others, including but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage, or development of real property, and neither the Joint Venture nor the other Party shall have any right by virtue of this Agreement in or to such interest or the income or profit derived therefrom.

**ARTICLE VII**  
**ACCOUNTING**

**7.01 Books and Records**

The Joint Venture shall maintain, at the expense of the Joint Venture, accurate books and records of account on an accrual basis, in which shall be recorded all matters relating to



the Joint Venture, including all income, expenditures, assets, and liabilities thereof. The said books and records, and all other information relating to the Joint Venture, shall be maintained at all times at the place of business of the Joint Venture. Each Party, or its authorized representative, shall have the right to inspect and copy the books, records, files and documents of the Joint Venture at all reasonable times.

7.02 Fiscal Year

The fiscal year of the Joint Venture shall end on such date of each year as agreed to by the Parties from time to time.

7.03 Allocations to Parties

Each item of income, gain, loss, deduction or credit earned, realized or available by or to the Joint Venture shall be allocated to the Parties in accordance with the Percentage Interest of each Party.

7.04 Accountant

The Joint Venture shall engage such firm of chartered accountants as the Parties may agree upon in respect of completing an audit of the financial statements of the Joint Venture for each fiscal year of the Joint Venture.

**ARTICLE VIII**  
**TRANSFER AND BUY-SELL**

8.01 Prohibition Against Transfer

Except as expressly permitted herein, neither Party shall sell, assign, transfer, mortgage, charge or otherwise encumber, or agree to sell, assign, transfer, mortgage, charge or otherwise encumber, whether voluntarily or by operation of law, any part or all of its Joint Venture Interest, without the written consent of the other Party, and any document evidencing such sale, assignment, transfer, mortgage, charge or other encumbrance, or agreement to do so, shall be void; provided that this Paragraph shall not prohibit any such transactions between one of the Parties and one of its shareholders, a corporation controlled by the Party or its shareholder, the spouse or child of a shareholder, or a trust in which the entire beneficial interest is owned by a shareholder, or the spouse or child of a shareholder; provided further that any such permitted transaction shall be on the express condition that such shareholder, corporation, trust, spouse or child agree to be bound by this Agreement.

8.02 Right of First Refusal

If a Party receives a Single Interest Offer which it desires and intends to accept, it shall before accepting such offer give a First Right Notice to the other Party.

### 8.03 Requirements of Offer

A Single Interest Offer shall satisfy the following requirements:

- (a) it shall provide for a closing date within ninety (90) days of the date of the Offer;
- (b) the proposed purchase price (which shall be net of any liability of the Joint Venture which the prospective purchaser has agreed to assume), if not payable entirely in cash, shall not be secured by any charge, encumbrance or hypothecation of a Joint Venture Interest;
- (c) it shall contain provisions obligating the purchaser to comply with the provisions of Paragraph 9.02 on or before closing;
- (d) it shall be an offer by a principal (identified in the offer and not an agent acting on behalf of an undisclosed principal) which principal shall not be related to or affiliated with the Offerors or in which the Offerors have any direct or indirect ownership or control;
- (e) it shall be accompanied by a certified cheque for a sum equal to at least ten percent (10%) of the proposed purchase price, by way of deposit;
- (f) it shall be an offer from a prospective purchaser of good business character and reputation and financially capable of carrying out all obligations of the Offeror under this Agreement; and
- (g) it shall be from a prospective purchaser meeting the limitations set out in Paragraph 9.05.

### 8.04 First Right Notice

The First Right Notice shall be accompanied by a true copy of the Single Interest Offer and shall be deemed to be an offer by the Offeror to the Offeree to sell the Joint Venture Interest of the Offeror at the same price and subject to the same terms and conditions as set forth in the Single Interest Offer. The Offeree shall notify the Offeror in writing of the Offeree's acceptance or rejection within thirty (30) days of the date of receipt of the First Right Notice, and failure to give notice within the required time period shall be deemed to be an election to reject.

### 8.05 Acceptance of Sale Offer

If the First Right Notice is accepted by the Offeree as specified in Paragraph 8.04, there shall be deemed to be an agreement of purchase and sale between the Offeror and the Offeree which shall be completed in accordance with Article IX.

### 8.06 Right to Sell to Third Party

If the First Right Notice is rejected as provided in Paragraph 8.04, the Offeror shall be free to accept the Single Interest Offer and to complete the sale of the Offeror's Joint Venture Interest as provided therein. The Offeree's election not to exercise the Offeree's rights hereunder with respect to a First Right Notice or particular Single Interest Offer shall not constitute a waiver of the Offeree's rights hereunder with respect to any subsequent Single Interest Offers.



#### 8.07 Buy-Sell

At any time prior to the termination of the Joint Venture, either Party may deliver Buy-Sell Offers to the other Party, which shall be open for acceptance for a period of thirty (30) days from their receipt, and one (1) of which offers may be accepted by the Offeree by delivery of written notice to the Offeror within thirty (30) days of the receipt of the said Buy-Sell Offers.

#### 8.08 Acceptance of Offer

If one of the Buy-Sell Offers is accepted, the Offeror shall be bound to sell the Offeror's Joint Venture Interest or to purchase the Offeree's Joint Venture Interest, as the case may be, in accordance with the terms contained in the Buy-Sell Offers and the closing of the transaction shall take place in accordance with Article IX. If neither offer is accepted within the said thirty (30) day period, then the Offeree shall be deemed to have accepted the offer of the Offeror to buy the Joint Venture Interest of the Offeree and the closing of the transaction shall take place in accordance with Article IX.

#### 8.09 Limitation on Exercise

Notwithstanding anything to the contrary contained in this Article VIII, no transfer of any Joint Venture Interest pursuant to this Article VIII shall be permitted, nor may either the First Right of Refusal right with respect to a Single Interest Offer, nor the Buy-Sell right, be exercised subsequent to the giving of a First Right Offer or the making of a Buy-Sell Offer, until all notice periods arising therefrom have expired and until all transactions arising therefrom have either been completed or otherwise terminated.

### ARTICLE IX GENERAL SALE PROVISIONS

#### 9.01 Closing

The closing of any sale of a Joint Venture Interest to the other Party pursuant to Article VIII, or Paragraph 10.02(a) shall be held at the place of business of the Joint Venture on the date thirty (30) days after:

- (a) with respect to a First Right Notice, the earlier of the receipt by the Offeror of the written notice of election by the Offeree pursuant to Paragraph 8.05, or the expiration of the notice period set by Paragraph 8.04; or
- (b) with respect to Buy-Sell Offers, the earlier of the receipt by the Offeror of the written notice of election by the Offeree pursuant to Paragraph 8.08, or the expiration of the notice period set by Paragraph 8.07; or
- (c) with respect to the election of the Non-Defaulting Party to purchase the Defaulting Party's Joint Venture Interest, receipt of the written notice of election to purchase pursuant to Paragraph 10.02(a).



#### 9.02 Agreements with Transferees

If, pursuant to the provisions of Article VIII, any Party transfers its Joint Venture Interest to any person or entity other than the other Party, no such transfer shall be made or shall be effective or entitle the transferee therein to any benefits or rights hereunder until such transferee agrees in writing to assume and be bound by all the obligations of the transferring Party under the terms of this Agreement.

#### 9.03 Closing Adjustments

Upon closing, any closing adjustments which are then usual and customary in the Province of Ontario shall be made between the purchasing Party and the selling Party as at the date of closing. The price to be paid shall also be adjusted as of the date of closing for Capital Contributions made by the selling Party, or distributions made to the selling Party, subsequent to the establishment of the purchase price. The Joint Venture Interest shall be transferred free and clear of any liens, encumbrances or any other interest of any third Party and any and all documents required to fully transfer such interest to the purchasing Party shall be delivered on closing. Any monetary default by the selling Party to the Joint Venture must be cured at closing out of the proceeds from such sale and any interest and principal owing on any outstanding Contribution Loans must similarly be paid in full at closing.

#### 9.04 Restraining Order

In the event that any Party shall at any time transfer or attempt to transfer the Party's Joint Venture Interest in violation of the provisions of this Agreement, then the other Party shall, in addition to all rights and remedies at law and in equity, be entitled to a decree or order restraining and enjoining such transfer and the offending Party shall not plead in defense thereto that there would be an adequate remedy at law; it being hereby expressly acknowledged and agreed that damages at law will be an inadequate remedy for a breach or threatened breach or violation of the provisions concerning transfer set forth in this Agreement.

#### 9.05 Limitations of Transfer

No Party shall transfer all or any part of the Party's Joint Venture Interest to any Party, whether or not such transfer would otherwise be permitted herein, if such transfer would result:

- (a) in the Joint Venture or any of its assets becoming subject to any restrictions or regulations or controls or approval process by reason of the nationality or residence of the transferee;
- (b) in any term of a mortgage, agreement or document entered into by the Joint Venture being breached or accelerated; or
- (c) in increased income taxes being payable by the other Party.

**ARTICLE X**  
**DEFAULT AND DISSOLUTION**

**10.01 Events of Default**

The occurrence of any of the following events shall constitute an Event of Default on the part of the Party with respect to whom such event occurs if within seven (7) days following notice of such default from the other Party the Defaulting Party fails to commence reasonable efforts to cure such default and thereafter fails within a reasonable time to pursue to completion with diligence and continuity the curing of such default, or, if the default is due solely to the non-payment of monies, fails to pay such monies; provided, however, that the occurrence of any of the events described in Paragraphs 10.01(a) and 10.01(c) to 10.01(j) below shall constitute an Event of Default immediately upon such occurrence without any requirement of notice or passage of time except as specifically set forth in any such Paragraph:

- (a) violation by a Party of any of the restrictions set forth in Article VIII of this Agreement with respect to the right of a Party to transfer or otherwise deal with the Party's Joint Venture Interest;
- (b) the failure of a Party's transferee to assume in writing and agree to be bound by all of the transferring Party's obligations, as provided in Paragraph 9.02;
- (c) institution by a Party of proceedings of any nature under any laws, whether now existing or subsequently enacted or amended, for the relief of debtors wherein such Party is seeking relief as a debtor;
- (d) a general assignment by a Party for the benefit of creditors;
- (e) the institution by a Party of an action or other proceeding under any section of the Bankruptcy and Insolvency Act of Canada, as amended or replaced;
- (f) the institution against a Party of any action or other proceeding under the Bankruptcy and Insolvency Act of Canada, as amended or replaced, which proceeding is not dismissed, stayed or discharged within a period of sixty (60) days after the filing thereof, or if stayed, such stay is thereafter lifted without a contemporaneous discharge or dismissal of such proceedings;
- (g) a proposed plan of arrangement or other action by a Party's creditors taken as a result of a general meeting of the creditors of such Party;
- (h) the appointment of a receiver to take possession of the assets of a Party, which receivership remains undischarged for a period of thirty (30) days from the date of its imposition;
- (i) admission by a Party in writing of its inability to pay its debts as they mature;
- (j) attachment, execution or other judicial seizure of all or any substantial part of a Party's assets or of a Party's Percentage Interest in the Joint Venture, or any part thereof, such attachment, execution or seizure remaining undischarged for a period of fifteen (15) days after the levy thereof;



- (k) default in performance of or failure to comply with any other agreement, obligation or undertaking of a Party herein contained; and
- (l) any other matter specifically deemed an Event of Default hereunder.

#### 10.02 Election of Non-Defaulting Party

Upon the occurrence of an Event of Default the Non-Defaulting Party may elect to purchase the Defaulting Party's Joint Venture Interest as provided in Paragraph 10.02(a), or may elect to dissolve and terminate the Joint Venture pursuant to Paragraph 10.02(d).

##### (a) Purchase of Party's Interest

Upon the occurrence of an Event of Default the Non-Defaulting Party shall have the right to acquire the Joint Venture Interest of the Defaulting Party at a price determined in accordance with the appraisal procedure set forth in Article XI, subject to adjustment as set forth in Paragraph 9.03. In furtherance of such right, the Non-Defaulting Party may notify the Defaulting Party at any time following an Event of Default of its election to institute the appraisal procedure set forth in Article XI. Within thirty (30) days of receipt of notice of determination of the net fair market value of the Defaulting Party's Joint Venture Interest, the Non-Defaulting Party may notify the Defaulting Party of its election to purchase the Joint Venture Interest of the Defaulting Party.

##### (b) Terms of Purchase

The Non-Defaulting Party who elects to purchase the Joint Venture Interest of the Defaulting Party shall have the right to purchase such Party's interest by payment of twenty percent (20%) of the purchase price (as determined by the appraisal procedure pursuant to Article XI) of such Joint Venture Interest at closing, and the balance of the purchase price, without interest, in equal monthly instalments over a period of five (5) years, with the right of prepayment of any amount at any time and from time to time without premium or bonus or penalty.

##### (c) Closing

The closing of the purchase shall take place as provided in Article IX; provided that upon closing the Non-Defaulting Party may elect to offset against the purchase price the amount of any loss, damage or injury caused to it by the default of the Defaulting Party, which has been established by a final non-appealable judgment.

##### (d) Election to Dissolve

Upon the occurrence of an Event of Default the Non-Defaulting Party may elect to dissolve and terminate the Joint Venture upon seven (7) days written notice to the Defaulting Party.



### 10.03 Dissolution

The Joint Venture shall be dissolved only in the event that:

- (a) an Event of Default has occurred as provided in Paragraph 10.01 and the non-defaulting Party elects to dissolve the Joint Venture as Provided in Paragraph 10.02 hereof;
- (b) the Parties mutually agree to terminate the Joint Venture;
- (c) the Parties cease to hold any interest (which term shall include, but not be limited to, a security interest) in the Project;
- (d) either of the Parties elect to dissolve or terminate the Joint Venture pursuant to any provision of this Agreement permitting such election to be made; or
- (e) the Joint Venture by its own terms as set forth in this Agreement is terminated.

### 10.04 Procedure on Dissolution and Liquidation

#### (a) Winding Up

Upon dissolution of the Joint Venture, the Joint Venture shall immediately commence to wind-up its affairs and the Parties shall proceed with reasonable promptness to liquidate the business of the Joint Venture.

#### (b) Management Rights During Winding Up

During the period of the winding up of the affairs of the Joint Venture, the rights and obligations of the Parties set forth herein with respect to the management of the Joint Venture shall continue; provided that if the termination of the Joint Venture results from an Event of Default, the Defaulting Party shall have no further right to participate in the management or affairs of the Joint Venture, but shall nonetheless be bound by all decisions made by the Non-Defaulting Party that may arise out of the management by the Non-Defaulting Party of the Joint Venture so long as such Non-Defaulting Party acts in good faith.

#### (c) Work in Progress

If the Joint Venture is dissolved for any reason while there is work in progress in the development or construction or ongoing operation and maintenance of the Project, winding up of the affairs and termination of the business of the Joint Venture may include completion of the work in progress, as the Non-Defaulting Party may determine to be necessary to bring the Project to a state of completion convenient to permit a sale or sales of the Joint Venture's interest in the Project.

(d) Allocation of Profits and Losses

- (i) Profits and losses of the Joint Venture following the date of dissolution shall be determined in accordance with the provisions of this Agreement and shall be credited or charged to the capital accounts of each Party in the same manner as profits and losses of the Joint Venture would have been credited or charged if there were no termination, dissolution and liquidation.
- (ii) For tax purposes, any taxable gain or any loss upon the sale, transfer, or other disposition of Joint Venture assets following the date of dissolution shall be allocated to the Parties in accordance with the allocation of profits and losses set forth in Subparagraph 10.04(d)(i).

(e) Distribution in Liquidation

If a Party shall have a negative balance in the Party's Capital Account, such Party shall immediately, and prior to any distributions made pursuant to this Paragraph 10.04(e), pay to the Joint Venture in cash an amount equal to the negative balance in said Party's Capital Account. The assets of the Joint Venture shall be applied or distributed in liquidation in the following order of priority:

- (i) in payment of debts and obligations of the Joint Venture owed to third Parties, which shall include any Party as the holder of any secured loan;
- (ii) in payment of debts and obligations of the Joint Venture to any Party;
- (iii) to the Parties in payment of any positive balance remaining in the Capital Accounts.

(f) Non-Cash Assets

Every reasonable effort shall be made to dispose of the assets of the Joint Venture in order that the distribution may be made to the Parties in cash. If at the time of the termination of the Joint Venture, the Joint Venture owns any assets in the form of work in progress, notes, deed of trust or other non-cash assets, such assets, if any, may be distributed in kind to the Parties, in lieu of cash, proportionately to their right to receive the assets of the Joint Venture on an equitable basis reflecting the net fair market value of the assets so distributed, which net fair market value shall be determined by appraisal in accordance with Article XI.

(g) Disposition of Documents and Records

All documents and records of the Joint Venture including, without limitation, all financial records, vouchers, cancelled cheques and bank statements, shall be delivered to one of the Parties as agreed, assuming the Parties are in existence, upon termination of the Joint Venture. Unless otherwise approved by both of the

Parties, such documents and records shall be retained for a period of not less than ten (10) years in a location not more than twenty (20) miles from the head office of the Joint Venture at the date of its termination, and such documents and records shall be made available during normal business hours to the Parties for inspection and copying at the cost and expense of the Party making such copies.

## **ARTICLE XI** **APPRAISAL**

### **11.01 Appraisal Procedure**

Where any matter is to be determined under this Agreement by appraisal, either Party may by written notice to the other appoint an appraiser. The other Party may by written notice given to the first Party within ten (10) days following appointment of the first appraiser appoint a second appraiser. If no second appraiser is appointed within the ten (10) day period, the first appraiser shall be the sole appraiser. Within five (5) days following appointment of the second appraiser the first appraiser and second appraiser shall by written notice to the Parties appoint a third appraiser, failing which either Party may on not less than five (5) days' written notice to the other Party apply to a judge of the Ontario Court (General Division) for appointment of a third appraiser.

### **11.02 Appraiser**

Each appraiser shall be a disinterested person of recognized competence who is a member in good standing of the Appraisal Institute of Canada and has been a member for a period of not less than five (5) years. Each appraiser shall proceed with the appraiser's appraisal independently of the other appraisers.

### **11.03 Access to Records**

Each appraiser shall have access to all books of account, records, vouchers, cheques, papers and documents of each of the Parties which may relate to the Property and the Joint Venture. Each Party shall co-operate with each appraiser for the purpose and provide to all appraisers all information and documents requested by any one of them. In the determination of an appraisal, each appraiser shall have regard to all relevant considerations including historic and potential performance and shall make all proper and necessary allowances for contingent or other liabilities, but shall make no allowance for goodwill. Each appraiser shall have the right to retain the experts the appraiser deems necessary to assist in the appraisal. Where the subject of any appraisal is the value of a Party's interest in the Property, each appraiser shall first determine the fair market value of the whole Property.

### **11.04 New Appraiser**

In case of failure, refusal or inability of any appraiser to act, a new appraiser shall be



appointed in the same manner as provided for the appointment of the appraiser so failing, refusing or unable to act. Within forty-five (45) days after the appointment of the third appraiser, each appraiser shall give written notice to the Parties, signed by the appraiser, of the amount of the fair market value of the Property. Any appraisal, the amount of which differs by more than five percent (5%) from the amount of that appraisal which is neither the highest nor lowest in amount, shall be disregarded and the average of the amounts of the remaining appraisals, or the amount of the remaining appraisal, if two of the appraisals are to be disregarded, shall be deemed the appraised value. The fair market value of the Party's Joint Venture Interest shall be equal to the fair market value of the Joint Venture as determined, multiplied by the proportion that the Party's Percentage Interest is of the entire Joint Venture.

#### 11.05 Conclusion

The fair market value determined in the foregoing manner shall be conclusive on the Parties and judgment in that regard may be entered in any court having jurisdiction. The costs and expenses of the appraisals, including the fees of the appraiser or appraisers, shall be borne by the Party in respect of whom an event of bankruptcy or of default has occurred.

### ARTICLE XII FRUSTRATION OF PURPOSES

#### 12.01 Frustration

In the event that the Joint Venture is prevented, after all reasonable efforts, from carrying out the purposes of the Joint Venture, the Parties shall attempt to restructure the Joint Venture, redefine the purposes of the Joint Venture and/or agree to the dissolution of the Joint Venture; and either the acquisition of one Party's Joint Venture Interest by the other, or the sale of the Property on joint account, each of which decisions shall be attempted to be arrived at in accordance with the original principles of the Joint Venture enunciated in Article III above.

#### 12.02 Participation

Both Parties agree to participate in the decision-making process provided for by this Agreement and to participate diligently and in good faith in the Joint Venture in accordance with the principles enunciated in Article III above. A failure to participate in the decision-making process or to attempt diligently and in good faith to further the purposes of the Joint Venture in accordance with the said principles, shall be an Event of Default under this Agreement.

### ARTICLE XIII MEDIATION

#### 13.01 Mediation

In the event that a dispute arises between the Parties, or if the Parties should be unable

to arrive at an agreement on any matter requiring decision, and if such dispute cannot be resolved, or such a decision made, the Parties agree to attempt to resolve the dispute or to make the decision in accordance with the following procedures:

- (a) The Parties agree that in the event that any dispute, disagreement on interpretation of this Agreement, or any matter on which agreement cannot be reached, arises, that the Parties will attempt in good faith to negotiate a resolution of such matter;
- (b) If the Parties are unable to resolve such matter, then the Parties agree to jointly appoint a mutually acceptable mediator within twenty (20) days. If they are unable to agree upon a mediator they will seek assistance from the Arbitration and Mediation Institute of Ontario;
- (c) The Parties agree to participate in at least four (4) hours of mediation (unless the mediation is terminated earlier by the mediator) during which time the mediator will attempt to facilitate a resolution of the dispute which is acceptable to both Parties. The mediator will not have the power to render a decision nor to force an agreement on the Parties but the Parties shall make all reasonable efforts to resolve their dispute, or to make the required decision, by amicable negotiations and hereby agree to provide, without prejudice, frank, candid and timely disclosure of all relevant facts, information and documents to facilitate these negotiations.

#### ARTICLE XIV ARBITRATION

##### 14.01 Requirement of Arbitration

In the event the Parties are not able to reach a resolution of a matter in dispute, or make a required decision, during mediation, nor within ten (10) days following the termination of mediation, then the matters remaining in dispute shall be finally settled by arbitration in accordance with the provisions of the Arbitrations Act of Ontario, as amended or replaced.

##### 14.02 Arbitration Tribunal

The arbitration tribunal shall consist of one (1) arbitrator appointed by mutual agreement of the Parties or, if they are unable to agree within thirty (30) days, then either Party may apply to a judge of the Ontario Court (General Division) to appoint an arbitrator. The arbitrator shall be qualified by training as an arbitrator and shall have some knowledge or experience pertaining to the matters to be decided. The rules of evidence will not apply during the arbitration but the arbitrator may in the arbitrator's discretion give less weight to evidence which would not otherwise be admissible. The arbitrator's award is not subject to appeal. The arbitrator may deal with the question of costs of the arbitration and all related matters.

**ARTICLE XV**  
**GENERAL PROVISIONS**

**15.01 Insurance**

The Parties agree to attempt to obtain and maintain one policy of insurance to provide liability coverage for the Parties, and if the Parties are unable to do so, each Party shall maintain a policy of insurance for liability coverage in an amount of not less than \$2,000,000.00 per occurrence. The Parties further agree that the cost of any claims advanced against one or more of the Parties in any way relating to the Joint Venture and/or the Project and/or the Property shall be allocated to the Parties in accordance with the Percentage Interest of each Party.

**15.02 Re-routing**

In the event that any of the Parties wishes to relocate that portion of the utility corridor and/or bicycle path and/or cross-country ski trail and/or recreation trail and/or related uses located within the Municipality of such Party, the Parties agree that such re-routing shall be permitted on such terms and conditions as determined by the Board and that such re-routing shall be completed at the sole cost of the Party requesting such re-routing.

**15.03 Motorized Vehicles**

The Parties agree that at no time shall any motorized vehicles of any description be permitted on the Property, except with the authorization of the Board.

**15.04 Notices**

Any demand, notice or other communication to be given in connection with this Agreement (hereinafter referred to as a "Notice") shall be given in writing and shall be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:

**To The Corporation of the Village of  
Port Burwell**

**21 Pitt Street  
Port Burwell, Ontario  
N0J 1T0**

**Fax No:  
Attention:**

**(519) 874-4948  
Administrator/Clerk-Treasurer**



To The Corporation of the Town of  
Tillsonburg:

200 Broadway  
2nd Floor, Suite 204  
Tillsonburg, Ontario  
N4G 5A7

Fax No:  
Attention:

(519) 842-9431  
Administrator-Clerk

or to such other address, individual or electronic communication number as may be designated by notice given by either Party to the other. Any Notice given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the fourth (4th) business day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if transmitted prior to 4:30 p.m. on such day and otherwise on the day next following the date of transmission, provided that if such day falls on a weekend or statutory holiday, then the Notice shall be deemed to have been given and received on the business day next following such day. If the Party giving any Notice knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such Notice shall not be mailed but shall be given by personal delivery or by electronic communication.

15.05 Amendments and Waiver

No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both of the Parties hereto and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.

15.06 Planning Act

Any provisions of this Agreement requiring compliance with the Planning Act of Ontario are subject to the condition that such provisions shall be effective to create an interest on land only if a consent under the Planning Act, if required, is obtained by and at the expense of the Party obtaining an interest in land.

15.07 Further Assurances

Each Party hereto agrees to do all acts and things and to make, execute and deliver such written Instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

15.08 Burden and Benefit

This Agreement shall enure to the benefit of and be binding upon the permitted successors and assigns of the Parties hereto.



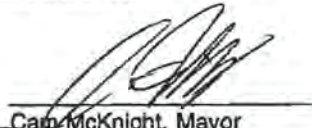

15.09 Time of Essence

Time shall be of the essence of this Agreement and of every part thereof.

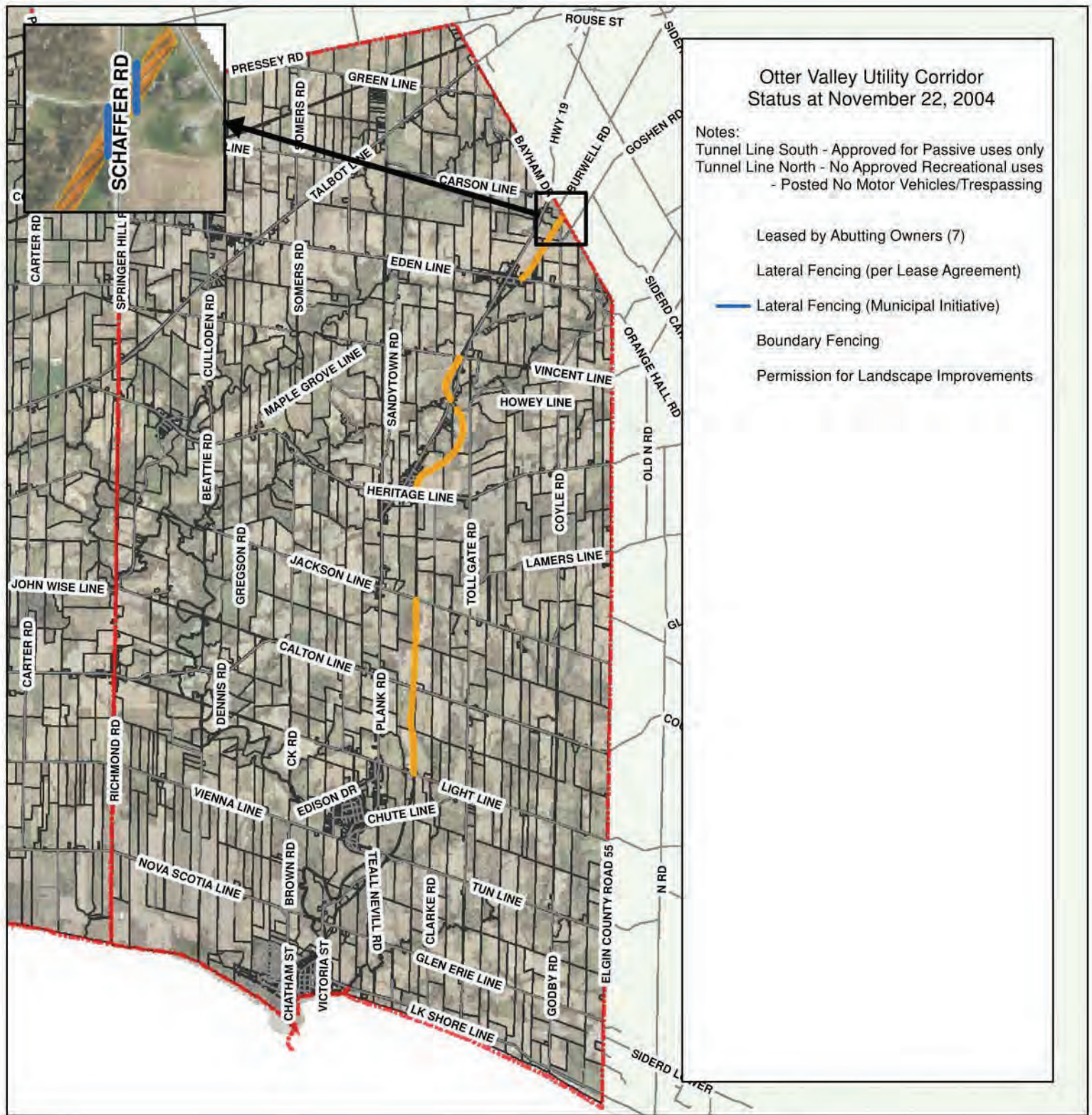
15.10 Execution in Counterparts

This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the Parties have executed this Agreement.

)	THE CORPORATION OF THE VILLAGE
)	OF PORT BURWELL
)	
)	Per: 
)	Tom Nesbitt, Reeve
)	
)	Per: 
)	David R. Free, Administrator/Clerk-Treasurer
)	
)	THE CORPORATION OF THE TOWN
)	OF TILLSONBURG
)	
)	Per: 
)	Cam McKnight, Mayor
)	
)	Per: 
)	David Morris, Administrator-Clerk
)	





Municipality of  
**BAYHAM**

## Rail Trail

Guide

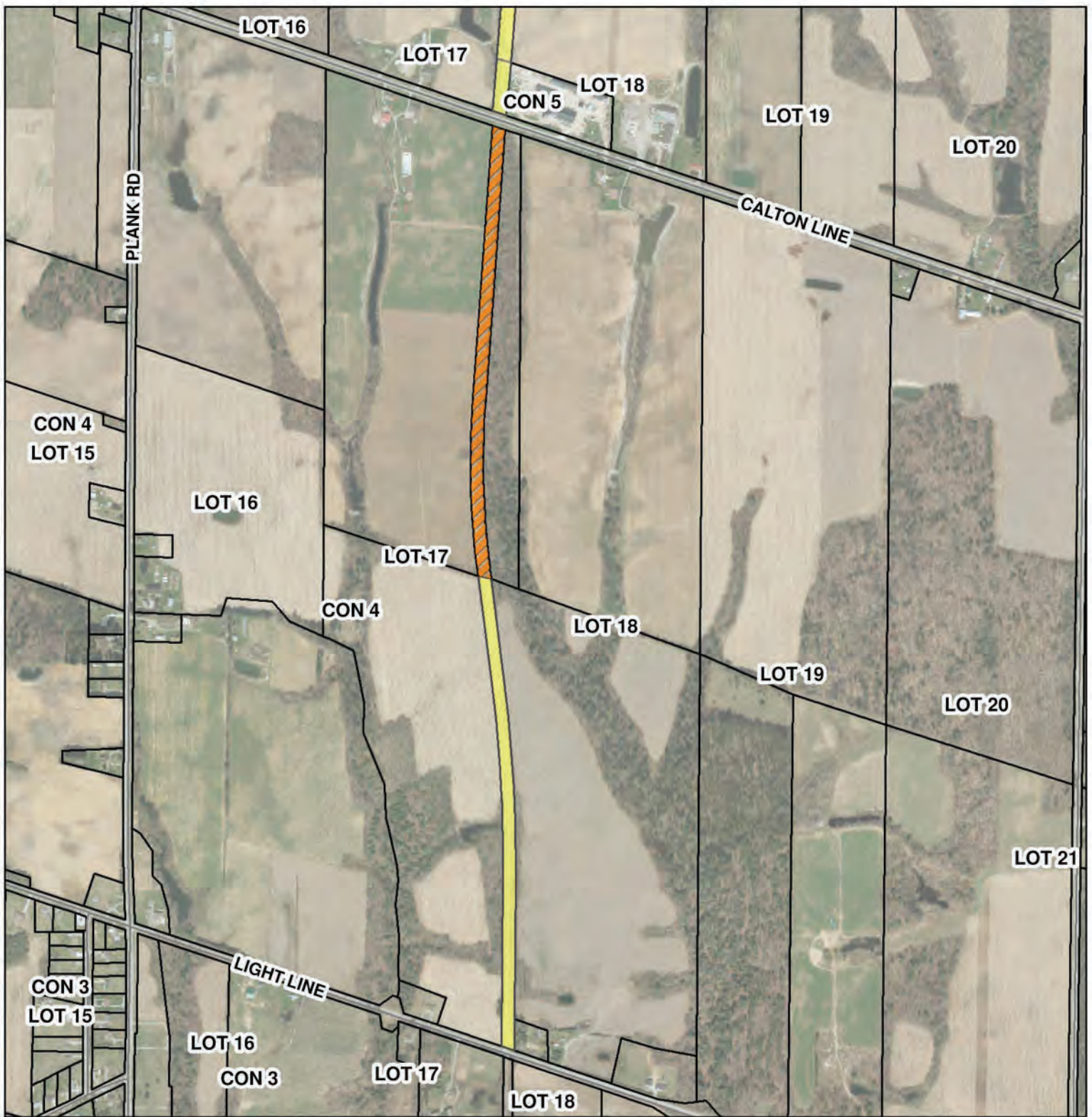


Subject Lands

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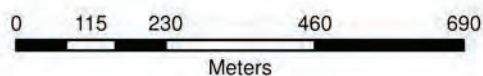
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**BAYHAM**

## Rail Trail

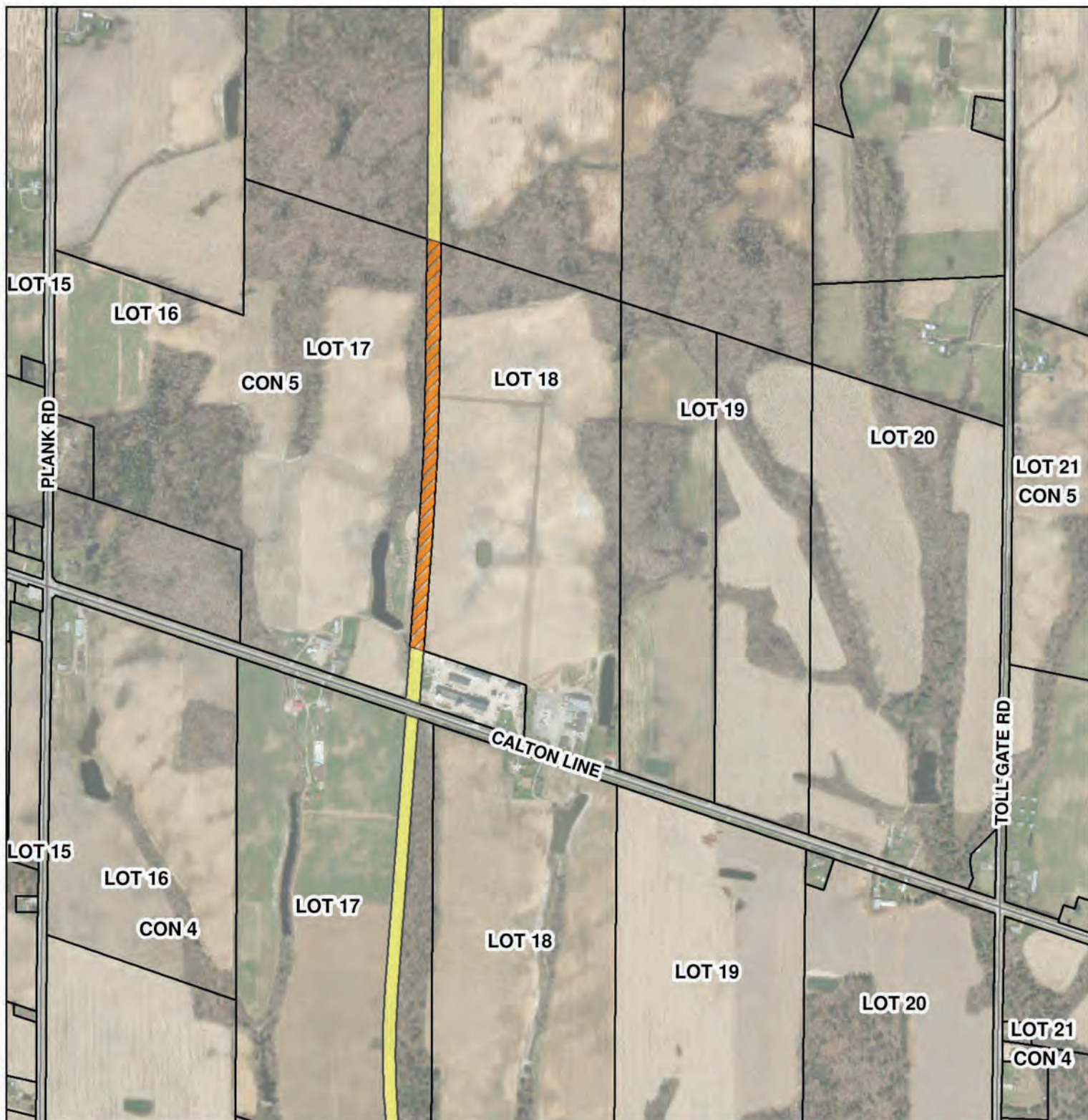
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By-law No. 2003-075



Subject Lands







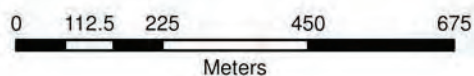
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**BAYHAM**

## Rail Trail

Section 2 – Froese – Agreement No. 0336  
By-law No. 2003-076



Subject Lands



Key Map





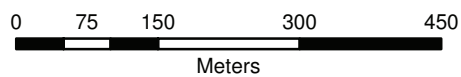
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**BAYHAM**

## Rail Trail

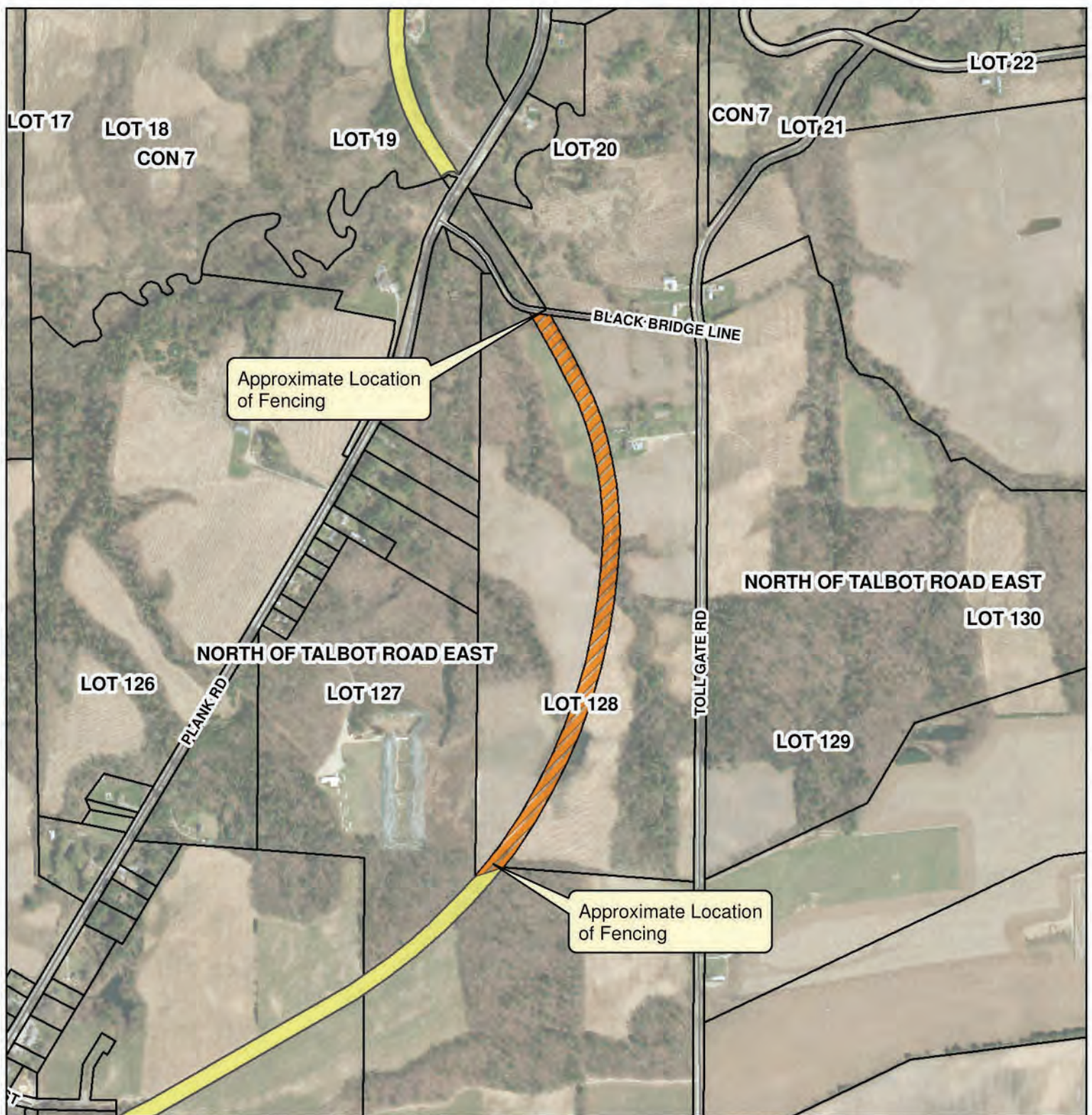
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Subject Lands





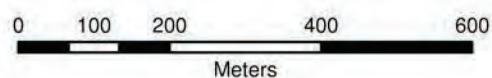


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**BAYHAM**

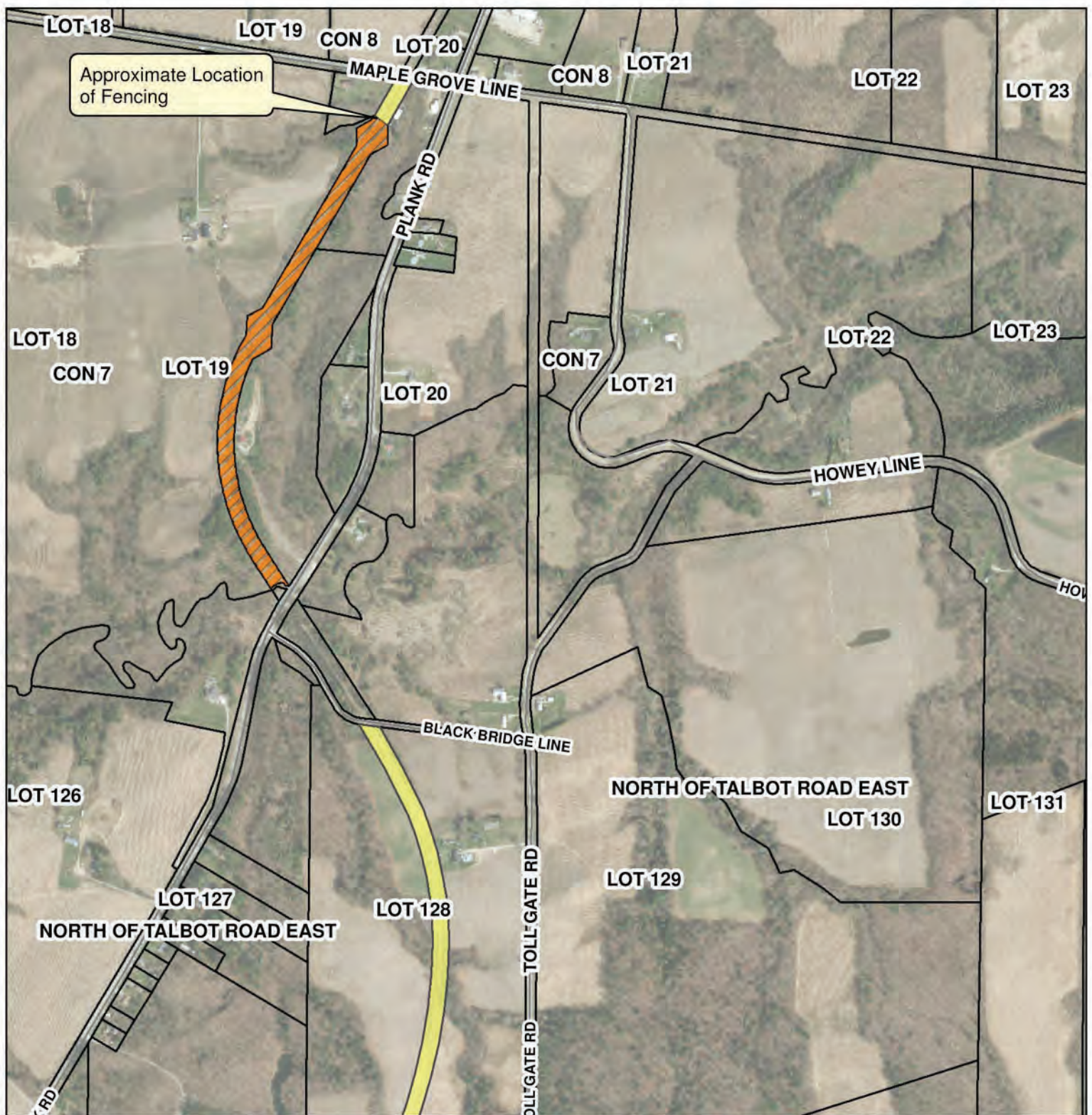
## Rail Trail

Section 4 – Howey – Agreement No. 0212-01  
By-law No. 2004-04

 Subject Lands







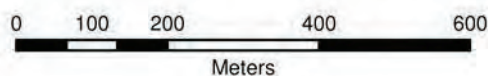
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**BAYHAM**

## Rail Trail

Section 5 – Wiebe – Agreement No. 2012-02  
By-law No. 2004-035

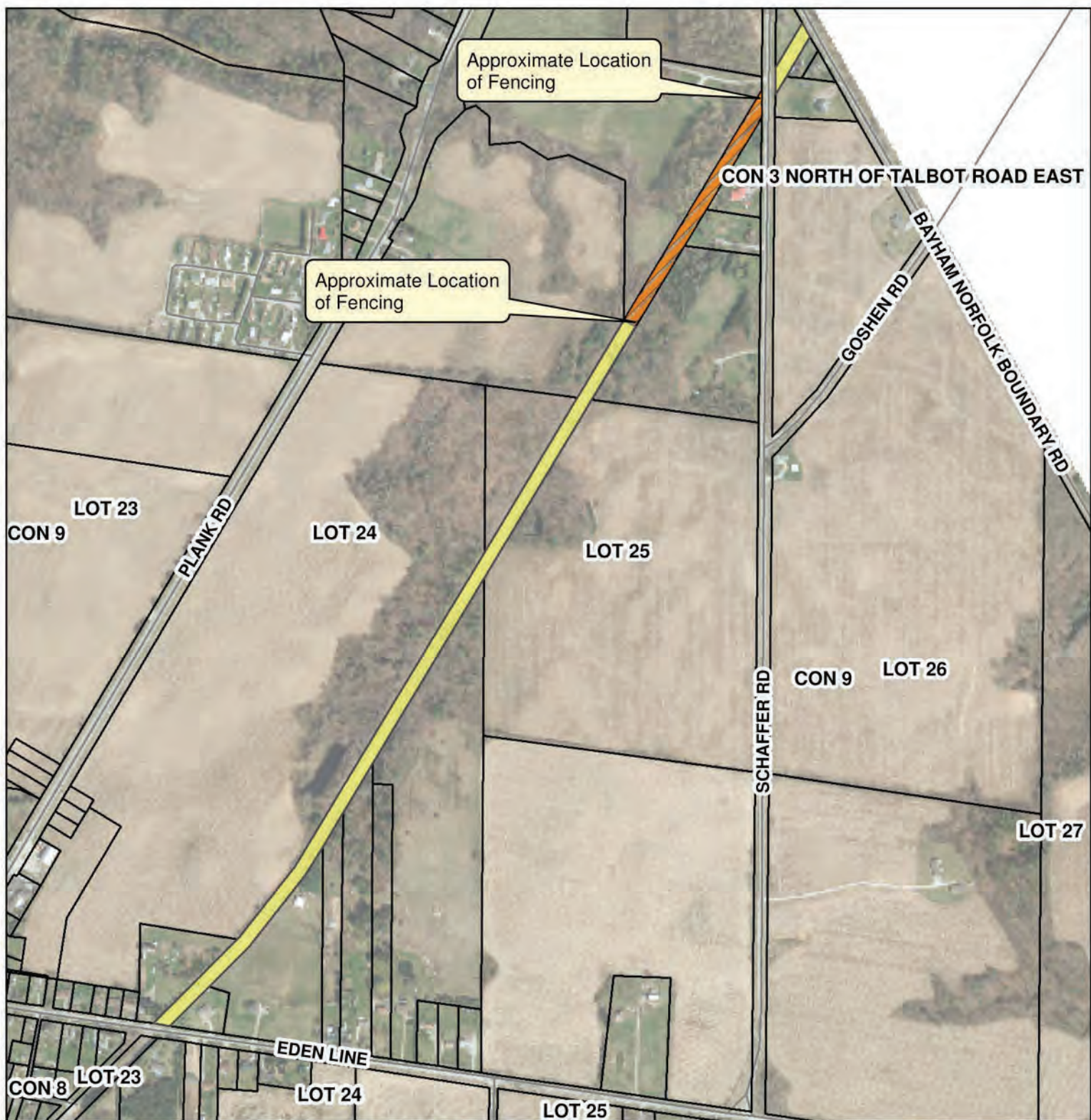


Subject Lands



Key Map





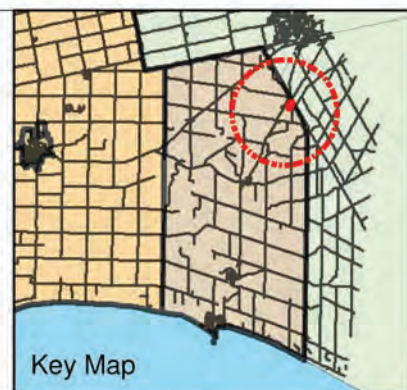
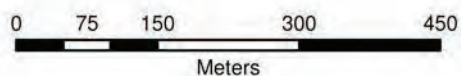
Municipality of  
**BAYHAM**

## Rail Trail

Section 6 – Stewart – Agreement No. 2012-03  
By-law No. 2004-036

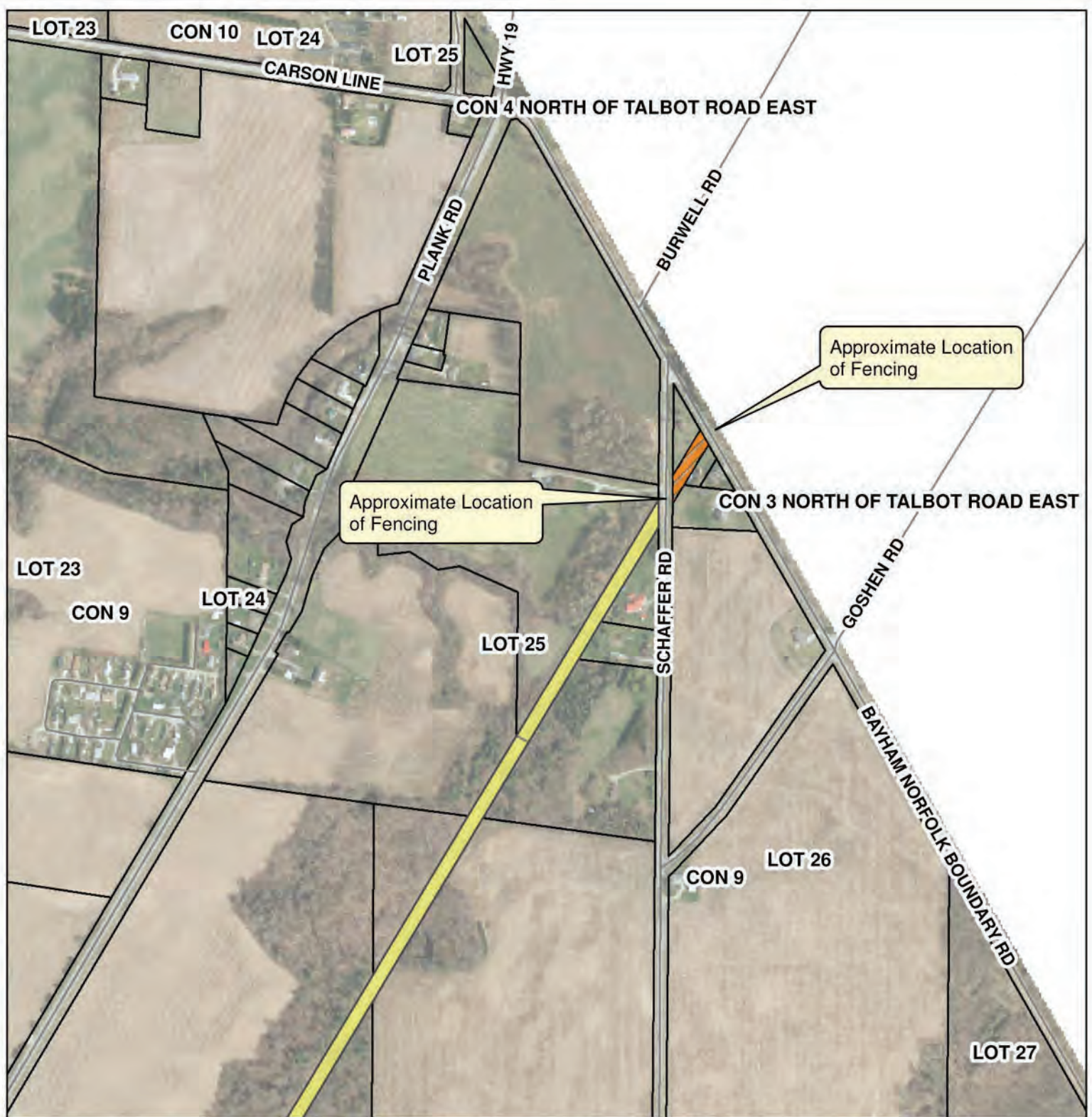


Subject Lands



Key Map





Municipality of  
**BAYHAM**

## Rail Trail

Section 7 – Burwell – Agreement No. 2012-04  
By-law No. 2004-037



Subject Lands

