

## **Forest Conservation By-law Template** Using only Good Forestry Practices

January 7, 2011

### **Introduction:**

This template has been developed for upper tier counties/municipalities. This template should be read in conjunction with the Tree By-law Information Package. The *Municipal Act* allows upper tier counties or municipalities to protect Woodlands 1 ha in size and over (or smaller if delegated from lower tier.) This template may also be used by a lower tier municipality or township if the authority for the protection of Woodlands has been delegated from the upper tier.

Lower tier municipalities and townships may prohibit or regulate the destruction or injuring of Trees (not Woodlands). This would include Trees within Woodlands less than 1 ha in size. Single tier municipalities may prohibit or regulate the destruction or injuring of Trees and Trees in Woodlands. A separate template is being prepared to assist in the development or updating of Tree By-laws for lower tier municipalities.

In this template the regular text is suggested wording for a Tree By-law and the shaded boxes, provide advice, explanations and suggestions for consideration.

This template provides for the provision of harvesting using only Good Forestry Practices. A separate template is available that provides for tree cutting through either Good Forestry Practices or through circumference limits (previously called diameter limits).

The Forest Conservation By-law Committee discourages the continued use of the circumference limit approach in Tree By-laws. Several counties/municipalities are no longer providing this option. Circumference limit cutting is not a good forest management practice as it removes the largest and best trees without regard for what should be retained for the future health of the forest. Circumference limit cutting is also not recommended by the Ontario Ministry of Natural Resources Silvicultural Guide to Managing Southern Ontario Forests. Regulation of cutting by tree circumference or diameter has traditionally been used in earlier by-laws as an easily enforceable approach that ensured forest cover remained on the landscape. With the increased awareness of the importance of healthy forests for the long-term future of the environment and the economy, the alternate application of thoughtful Good Forestry Practices has become a critical tool. However, some counties or municipalities may wish to include the Circumference limit option in their by-law.

This template and the associated Tree By-law Information Package has been developed by the Forest Conservation By-law Committee and the Ministry of Natural Resources and is provided with the intention to assist in the development and upgrading of Tree By-laws and to encourage more consistent format between Tree By-laws making it easier to adhere to across municipal boundaries.

The information is for discussion purposes only. Although this template has been reviewed by a licensed paralegal, it has not been otherwise legally verified. Neither the Committee, its members, the Ministry of Natural Resources, nor the counties and municipalities participating on the Committee provide any representation, warranty or guarantee of any kind as to the suitability, accuracy or validity, legal or otherwise, of the document, the information contained therein or the use of either. Any by-laws or action based on the use of this document should be undertaken only after consultation with county/municipal legal counsel.

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**ACKNOWLEDGEMENTS**

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Also special thanks to Paul Dray of Paul Dray Legal Services for his review of this document.

FOREST CONSERVATION BY-LAW NO. [            ]

To prohibit or regulate the Harvesting of Trees in Woodlands in the  
[Name of County/Municipality]

WHEREAS s.135(2) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, hereinafter referred to as the Act permits the enactment of a By-law by the Council of [Name of County/Municipality] to prohibit or regulate the Harvesting, Destruction or Injuring of Trees in Woodlands;

The power to “*prohibit or regulate*” means that a county/municipality has the ability to promote Good Forestry Practices and prohibit activities known to be detrimental to Woodlands. The *Municipal Act* requires by-laws to have regard to Good Forestry Practices as defined in the *Forestry Act*.

Note that the *Municipal Act* uses the terms “*destruction or injuring*”, however, some counties/municipalities prefer to add the term “*harvesting*” to their by-law, as Simcoe County has done. This may depend on the legal advice that you receive. Using the term destruction or injuring has caused some communities concern. This template uses the term harvest but includes Injure and Destroy within the definition.

AND WHEREAS s.135(7) of the Act provides that the By-law may require that a Permit be obtained to Harvest, Destroy or Injure Trees and impose conditions on a Permit, including conditions relating to the manner in which Harvesting, Injuring or Injuring occurs and the qualification of persons authorized to Harvest Trees;

AND WHEREAS Council has determined that it is desirable to enact such a By-law for the purpose(s) of:

This section is optional but provides the Council an opportunity to state its purpose and intent of the by-law which may help to increase the public’s understanding and support for the by-law. The following are examples which may be included. Be thoughtful as you want to ensure that the by-law is within the jurisdiction of Council and consistent with proper municipal purposes.

- achieve the objectives of the Official Plan by sustaining a healthy natural environment;
- conserve and improve the Woodlands through Good Forestry Practices;
- promote Good Forestry Practices that sustain healthy Woodlands;
- ensure a sustainable local wood supply to sustain the local forest economy (especially as the bioeconomy grows);
- regulate and control the removal, maintenance and protection of Trees;
- protect, promote and enhance the value of Woodlands (e.g. economic, aesthetic other.) ;
- contribute to human health and quality of life through the maintenance of Woodland cover;
- protect wildlife habitat and the ecosystem services necessary to maintain our community’s quality of life;
- enhance biodiversity and forest resilience to help our community adapt to climate change

Now, therefore, the Council of [County/Municipality] HEREBY ENACTS as follows:

## **1. DEFINITIONS**

Where definitions appear in the *Municipal Act*, they do not need to be repeated in the by-law. However, they should be included for clarity. Terms from other legislation such as “*Good Forestry Practices*” from the *Forestry Act* should also be defined in the by-law.

The by-law must define the terms that will be used in the by-law, its forms and its schedules. This section should be carefully drafted to ensure that the by-law can be enforced. Use plain language whenever possible.

Technical terms that are defined should be capitalized throughout the by-law.

All measurements within the by-law should be in metric. A separate sheet of conversions could be prepared for information purposes. Be aware that conversions have been challenged.

In this By-law:

- (a) “Building Permit” means a Building Permit issued under the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended.
- (b) “Clerk” means the Clerk of the (Name of County/Municipality) or his/her designate.
- (c) “Council” means the Council of [Name of County/Municipality].
- (d) “Destroy” means any action which causes or results in the irreversible injury or death of a Tree.

“*Destroy*” and “*injure*” are terms used in the *Municipal Act*.

“*Destroy and injure*” has been defined in some by-laws, however defining these terms may limit enforceability of parts of the by-law. It is possible that other actions may destroy or injure Trees that do not fall within the definition and as a result it is possible for an enforcement proceeding to fail. It is recommended not to define these terms and instead leave the definition to the discretion of the By-law Enforcement Officer. If a county/municipality wishes to use other terms, refer back to the original terms of destroy and injure.

In this template Harvest has been defined to include “Destroy” or “Injure”.

- (e) “Diameter” means the width measured outside the bark at a specified point of a Tree stem or trunk.
- (f) “Good Forestry Practices” means the proper implementation of Harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape;

This definition is from the *Forestry Act*. The *Municipal Act* refers to Good Forestry Practices as defined in the *Forestry Act*. Always use the plural term Good Forestry Practices, to be consistent with the *Forestry Act*.

Understanding the term 'good forestry practices' has been somewhat challenging in the past. However, several documents now exist to provide guidance, such as the Ontario Professional Foresters Association Bulletins # 1 and #10, and the applicable Provincial Guidelines: A Silvicultural Guide to Managing Southern Ontario Forests, Silvicultural Guide for the Tolerant Hardwood Forest in Ontario, Ontario Tree Marking Guide and A Silvicultural Guide for the Great Lakes – St. Lawrence Conifer Forest in Ontario

- (g) "Harvest" means the injury or destruction of a tree through cutting or other mechanized means;

"Destroy" and "injure" are the terms used in the *Municipal Act*. However, these terms are often considered an inaccurate representation of the activity and sometimes even considered offensive. The use of the term 'harvesting' is often more acceptable to the community developing the by-law. If the county/municipality wishes to return to the terms 'destroy or injure' due to legal advice, many of the references to harvesting within this template may need to be replaced. Application forms could continue to use the term "harvesting". It is recommended that the terms be included in the by-law as part of the definition to harvest.

- (h) "Injure" means any action that causes physical, biological or chemical damage to a Tree and does not include pruning or removing branches for maintenance purposes.
- (i) "Normal Farm Practices" means a farm practice that is conducted in a manner consistent with proper and acceptable customs and standards, as established and followed by similar agricultural operations under similar circumstances, or makes use of innovative technology in a manner consistent with proper advanced farm management practices.

There have been cases where farmers have made interpretations about their rights under the Normal Farm Practices. It is recommended that agriculture situations be carefully considered in by-law development. See suggestions in the Optional Exemptions Section 3.

- (j) "Officer" means a Police Officer, a Municipal Law Enforcement Officer or other person appointed by Council for the administration and enforcement of this By-law.
- (k) "Order" means a Work Order or an Order to Discontinue an Activity.
- (l) "Owner" means a person having any right, title, interest or equity in land or any such person's authorized representative and includes the person for the time being managing or receiving the rent of the land and includes a lessee or occupant of the land.
- (m) "Own Use" means any use by the Owner that does not include a sale, exchange or other disposition of Trees Harvested.
- (n) "Permit" means a permit issued pursuant to this By-law by the (insert County or Municipality).
- (o) "Qualified OPFA Member" means a Registered Professional Foresters or Associate Member of the Ontario Professional Foresters Association under the *Professional Foresters Act 2000*, c.18, as amended, to practice professional forestry, unless a suspension, term, condition or limitation of certification applies which would restrict the Member from carrying out responsibilities under this By-law.

Any terms and conditions and limitations of a member's certification are publicly available and can be obtained from the Ontario Professional Foresters Association.

- (p) "Qualified Tree Marker" means:
- i) An individual who is currently certified through the Ontario Ministry of Natural Resources Certified Tree Marker Program; or
  - ii) A Qualified OPFA Member qualified to do tree marking.
- (q) "Silviculture" means the theory and practice of controlling forest establishment, composition, growth and quality of forests to achieve the objectives of forest management.

This is the definition found in MNR's "A Silvicultural Guide to Managing Southern Ontario Forests".

- (r) "Silvicultural Prescription" means the site specific operational plan prepared by, or under the direction of, a Qualified OPFA Member (unless otherwise exempted under the *Professional Foresters Act*), that describes the existing forest conditions and the forest management objectives for an area, and which prescribes the methods for harvesting the existing forest stand and a series of silvicultural treatments that will be carried out to establish a free-growing stand in a manner that accommodates other resource values as identified;
- (s) "Tree" means any species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 meters at physiological maturity.

Some by-laws have added "provided that where multiple stems grow from the same root system, the number of trees shall be the number of stems that can be counted at a point of measurement 1.37 metres from the ground;"

- (t) "Woodlands" means land with at least:
- (i) 1000 Trees, of any size, per hectare; or
  - (ii) 750 Trees, measuring over five (5) centimetres in Diameter, per hectare; or
  - (iii) 500 Trees, measuring over twelve (12) centimetres in Diameter, per hectare; or
  - (iv) 250 Trees, measuring over twenty (20) centimetres in Diameter, per hectare; or
- but does not include a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas Trees.

The definition of woodlands in the *Municipal Act* is "woodlands as defined in the *Forestry Act* that are one hectare or more in area." This definition must be used. However, some counties/municipalities have further elaborated on this definition. For instance, some woodland definitions exclude:

- Fencerows/shelterbelts,
- plantations established for producing nursery stock unless the plantation has not been managed for its intended purpose for a period of 15 years or more, or
- regrowth of early successional trees less than 15 years old on temporarily fallow agricultural fields intended to be used again as part of an agricultural operation.

It has been suggested to expand the definition of “Woodlands” by adding (v) tree crown cover of over 60% of the ground, determinable from aerial photography“. This is being used by the province in some of its planning legislation however, at this time, no by-laws have included it and it has been questioned how it would stand up in court depending on the age of the photography.

Some municipalities are developing a separate definition for the term “Woodlot” that defines treed areas smaller than the Municipal Act definition of “Woodland” of > 1 hectare. Note: The “whereas” preambles at the beginning of the by-law may need to be edited appropriately if this is done. Also being used is wording such as “Woodlots shall include the area up to the drip line of the Woodlots and any corridors measuring up to and including 30 metres in width.”

Note that some by-laws have explicitly stated or been interpreted not to limit Woodlands by property boundaries. Halton Region has stated this as follows:

“For the purpose of this By-law, the boundary of Woodland shall be defined by the ecological limit of the Woodland and not by property boundaries. Where a potential Woodland is dissected by a road or path not wider than 20m or by a natural feature such as a creek, the boundary of the Woodland shall be deemed to cross the road, path or natural feature, but the area of the Woodland shall be calculated exclusive of the area of the road, path or natural feature.”

## **2. APPLICATION**

This By-law applies to Woodlands that are XX hectare or more in area in the (County/ Municipality of XX).

The *Municipal Act* defines Woodlands as Woodlands defined in the *Forestry Act* that are one hectare or more in area. The regulated area may be smaller if delegated from the lower tier (e.g, 0.2 hectare in York Region).

Jurisdictions in Eastern and northern Ontario may prefer to regulate only larger woodlands. For instance Haliburton regulates woodland 4 hectares and larger.

## **3. EXEMPTIONS**

This section includes two types of exemptions: mandatory exemptions found in the *Municipal Act* and exemptions developed and granted by the county/municipality.

**The following are the legislated exemptions** that are set out in the Municipal Act and cannot be changed by by-law. Although these don't have to be written into the by-law, it is preferable to have them re-stated to ensure clarity.

This By-law does not apply to;

- (a) activities or matters undertaken or authorized by a municipality or a local board of a municipality; or
- (b) activities or matters undertaken under a licence issued under the *Crown Forestry Sustainability Act*, 1994; or

This would include Trees on private land that the Province has retained timber rights to.

- (c) the Injuring or Destruction of Trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his or her agent, while making a survey; or

- (d) the Injuring or Destruction of Trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51, or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections; or
- (e) the Injuring or Destruction of Trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation; or

Consider your own exemption for situations where cutting occurs at the draft plan approval stage.

- (f) the Injuring or Destruction of Trees by a transmitter or distributor, as those terms are defined in Section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms as defined in that Section; or
- (g) the Injuring or Destruction of Trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*, or
- (h) the Injuring or Destruction of Trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
  - i. that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act; and
  - ii. on which a pit or quarry is a permitted land use under a By-law passed under section 34 of the *Planning Act*; or

**The following are examples of OPTIONAL EXEMPTIONS** that can be included at the discretion of the County/Municipality.

- (i) the Injuring or Destruction of Trees that is required in order to erect any building, structure or thing in respect of which a Building Permit has been issued and has taken into consideration the protection of Trees surrounding the structure or work within the building envelope, provided that no Tree is Harvested that is located more than 15 metres from the outer edge of the building, structure or thing; or

“Thing” could be a septic bed. 15 meters is suggested. There is a range used between 15 – 25m. Consult with your local building department.

- (j) the Injuring or Destruction of Trees that is reasonably required in order to install and provide utilities to the construction or use of the building, structure or thing in respect of which a Building Permit has been issued; or

- (k) the Injuring or Destruction of Trees that is reasonably required in order to install a single lane driveway for vehicular access to the building, structure or thing in respect of which a Building Permit has been issued; or
- (l) the Injury or Destruction of Trees for the construction of drainage works authorized under the *Drainage Act, R.S.O. 1990, c. D.17*, as amended; or

This exemption should be used with caution. The Drainage Act does not apply to all drains, drainage ditches or swales found on agricultural landscapes. The Act is specific to certain designated drains which are constructed under the authority of the Act. That is, only works (maintenance or construction) as authorized under the Drainage Act would be exempt from the by-laws jurisdiction. People reading this exemption may assume their drainage work is authorized under the Drainage Act when in fact it is not.

- (m) the Harvesting of Trees by the Owner of Woodlands for the Owner's Own Use, provided the Harvesting does not reduce the density of Trees below that which is defined as Woodlands; or

These variations may be considered, However they may be very difficult to enforce.:

- i) "and the amount of wood harvested does not exceed 24 cubic meters in volume in any calendar year"
- ii) "and in accordance with Good Forestry Practices;
- iii)"and no more than five Trees per hectare, to a maximum of 30 Trees, within a one year period;

- (n) the Harvesting of Trees where the Trees are Harvested pursuant to a legally binding contract if:
  - (i) the Owner of the Woodlands has given notice under this By-law; and
  - (ii) the contract was signed within one year immediately preceding the date on which this By-law was passed; and
  - (iii) proof of the signed contract and payment in full has been submitted to the Officer and;the Trees are Harvested in a manner consistent with By-law No \_\_\_\_\_ .

This is an optional clause that provides for grandfathering of logging contract negotiated under the terms of the previous forest conservation by-law.

- (o) Normal Farm Practices carried out as part of an agricultural operation which does not reduce the density of Trees below that which is defined as Woodlands .

Under the current wording above, if a farmer/owner wants to remove trees as a Normal Farm Practice that would reduce the density of Trees below that which is defined as a Woodland, they would need to apply to Council for an Exemption under Section 7. An addition to the above (that has recently been used in practice but not yet written into a by-law) is to add "or by written agreement between the owner, an Ontario Ministry of Agriculture and Food Crop or Livestock Specialist and the Officer." This addition would enable a farmer to utilize a Normal Farm Practice under an exemption without having to apply to council for an exemption. The process of developing an agreement would also develop a better understanding of forestry and farming interests between parties and build relationships. It would also be recommended that this agreement clearly indicate the location where this exemption will occur and the precise details of what will occur to ensure there is no misunderstanding.

#### **Some other considerations about Normal Farm Practices**

It is worthy of recognition by the municipality that farmers may benefit from the management of trees and woodlands on or adjacent to agricultural land. For example – the periodic management of woody species may be deemed necessary by the farm operator or by guidance from a qualified agricultural advisor or a Qualified OPFA

Member to ensure the sustainability and the good health of farm crops, livestock, woodlands and natural areas. Many of these activities are consistent with the intent of a Forest Conservation By-law and should therefore follow the same by-law application process as all other forestry operations. However, there may be situations where the management treatment being considered by the farmer is not consistent with the by-law but may be considered a Normal Farm Practices. This would require an exemption from the Forest Conservation By-law. Such exemptions may be written into the by-law or could be provided through the exemption application process. Municipalities that have provided exemptions include Durham Region, Halton Region, Niagara Region and the County of Wellington. Another approach is to develop a separate municipal policy, as York Region has done, that is referred to when making decisions on exemption applications,

Exemptions to consider for Normal Farm Practices **from the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA)** include:

Managed tree orchards – Managed tree orchards usually have a specific economic purpose for the landowner, where the landowner is required to make the decisions on the establishment and the management of tree crops. For example, economic purposes may include; planted maple syrup orchards, other tree syrup orchards (walnut, white birch), christmas trees, biomass energy crops or integrated combinations, such as sawlogs plus annual crops but does not typically include Red Pine plantations. Such trees would have been planted and are managed by the farmer for a specific economic purpose without a ecological restoration objective. Therefore, giving such orchards an exemption from tree-cutting by-laws, similar to fruit and nut orchards, could encourage development of new industries and new tree-based land management practices. Note that the term 'orchard' is used above, but farmers may use the term plantation instead.

Reclaiming of uncultivated farmland – fields which were once cultivated or pastured for agricultural purposes and have been left fallow and uncultivated for a period of time could have a limited exemption. An exemption could allow a reasonable period of time, for example -within 10 or 15 years since previous cultivation for agricultural purposes, or, reclamation prior to successional development of trees reaching a specific diameter or height.

Field perimeters, including treed fence rows could be exempted with regard to thinning, trimming or removal of encroaching large trees or specific toxic tree species from the perimeters of farm fields, for a distance of (10 metres, or at a 45 degree angle upwards) from the normal cultivated area which may otherwise, by their own educated judgement, impede or be harmful to agricultural practices. The actions could be referred to as thin, trim or cut and not referred to as injure or destroy. The affected modified area must remain, after completion of the work, as woodland or naturalized land by definition, and is not an excuse or reason to clear the land for agricultural purposes. Therefore, farm field perimeters cannot be expanded into the affected area as a result of the work. Treed fence rows would remain intact but modified to sustain crop production.

The reasons may include: loss of crop growth or loss of normal crop maturation due to excessive shading of crops by tree canopies, excessive encroachment and competition for nutrients and moisture by tree / shrub roots into crop rooting zones, dense tree cover may prevent adequate air-circulation leading to crop diseases or frost injury, disruption of tile drains by aggressive roots (e.g. poplars, willows, soft maple), acting as co-host of specific crop pests or crop diseases (e.g. red cedar & apple, juglone on various crops, pests of orchard crops), species that are known to be poisonous to livestock (e.g. Prunus species, black locust, yew shrubs, red maple to horses, walnut toxins, horse-chestnut).

Removal or clearing of invasive non-native woody species. Examples – maple syrup producers may wish to remove invasive Norway maples, European buckthorn or other invasive species from their sugar bush at their own discretion.

Windbreaks and shelterbelts that where established and maintained by the farmer are managed, renovated, removed or sometimes relocated to a new site,.

**Cautions:**

Be cautious about providing an exemption for cutting diseased or infected Trees. This has been abused in the past. These situations can be dealt with using the Good Forestry Practices permit. Also, landowners can usually deal with their Hazard Trees through the personal use exemption.

We do not recommend providing an exemption for the use of Certified Tree Markers. There have been some by-laws that provide an exemption for harvesting if the Woodland is marked by Certified Tree Marker, with the false assumption that this would ensure Good Forestry Practices. Although Certified Tree Markers are trained to mark according to a prescription, a prescription may not have been prepared. Certified Tree Markers are not necessarily trained in the preparation of prescriptions.

It is also not recommended to allow exemptions for harvesting in Woodlands that are receiving a tax reduction under the Managed Forest Tax Incentive Program (MFTIP). Although this program requires a management plan, having a management plan does not ensure that good forest management practices are carried out at the time of cutting.

In northern rural communities, exemptions for trail and road development may be considered.

## **4. GENERAL PROHIBITION**

Please note offences can be created in any section of the by-law but if you would like the ability to write fines under this by-law it is preferable to keep them in one area of the by-law.

- 4.1 No person shall Harvest, injure, or destroy, cause or permit to be Harvested, injured or destroyed, any Tree in Woodlands:
- (a) unless exempted under the provisions of this By-law; or
  - (b) except in accordance with a valid Permit issued pursuant to the provisions of this By-law.
- 4.2 No person shall;
- (a) fail to comply with an Order issued under this By-law; or
  - (b) remove or deface an Order that has been posted pursuant to this By-law.
- 4.3 No person shall contravene, cause or permit the contravention of the terms or conditions of a Permit issued under this By-law.

Some municipalities have incorporated the *Endangered Species Act* into their by-law. However some legislation or information such as the Endangered Species information may rapidly become out of date and many landowners have not welcomed the *Endangered Species Act*. It may be in the municipality's best interest to leave other legislation out of their by-law.

Another consideration is how harvesting is to be done in Sensitive Natural Areas. The by-law could require a permit for cutting in a sensitive natural area, or could require good forestry practices, or it may depend on the type of sensitive natural area. For instance, some tree cutting might need to be done in a Red Oak Area of Natural and Scientific Interest (ANSI) to retain the features for which it was identified as an ANSI. The requirement of good forestry practices in this template should provide protection for all sensitive areas. This is something the Qualified OPFA Member should evaluate before deciding to write a prescription. This section is more important to consider in a by-law that permits circumference limit cutting where professionals may not be involved.

Areas considered sensitive by the municipality could be listed or shown on a map. A term for such areas would need to be defined in the by-law. Examples of areas for consideration could include:

- Natural Heritage Systems
- Environmentally Sensitive Areas
- Significant Woodlands
- provincially or regionally Significant Wetlands
- areas under the jurisdiction of the Niagara Escarpment Commission.

- any portion of Woodlands located within xx metres of the water's edge of a locally, regionally, or provincially significant wetland, lake, river, or stream
- Provincial or Regional Life Science Areas of Natural and Scientific Interest identified by the Ministry of Natural Resources.

## **5. GOOD FORESTRY PRACTICES PERMIT**

- 5.1 The (County/Municipality) hereby delegates to an Officer the authority to issue a Good Forestry Practices Permit under this By-law, and to impose such terms and conditions in accordance with Good Forestry Practices.
- 5.2 An application for a Good Forestry Practices Permit shall be submitted at least XX weeks prior to the commencement date of Harvesting and shall include the following:

Providing the number of weeks the application should be submitted before harvesting will occur provides an awareness to the applicant that granting of a permit will take some time.

- (a) a complete signed application form as provided by the (County/Municipality); and
- (b) a copy of the Silvicultural Prescription prepared by or prepared under the direction of a Qualified OPFA Member;
- (c) proof that the marking of the Trees has been carried out by a Qualified Tree Marker; and
- (d) the prescribed fee.

The *Municipal Act* allows fees to be charged on a full cost recovery basis so that the administrative costs of the application are entirely borne by the applicant.

Some counties/municipalities may also wish to consider no fees in any case as these by-laws can be considered for the greater good of the rate payers of the county/municipality.

- 5.3 A Good Forestry Practices Permit issued under this by-law shall be subject to the following terms and conditions:
- (a) Trees which are to be Harvested are cut in accordance with Good Forestry Practices, and as described in a Silvicultural Prescription prepared by or prepared under the direction of a Qualified OPFA Member; and

Counties/municipalities should promote the involvement of a member of the Ontario Professional Foresters Association (OPFA) in managing Woodlands to ensure that the objectives of the by-law are met.

The *Professional Foresters Act* provides that only Members of the Ontario Professional Foresters Association (OPFA) may practice professional forestry (" - - -the development, management, conservation and sustainability of forests and urban forests - - -"), specifically including the writing of silvicultural prescriptions. The OPFA has several Member Categories. Full Registered Professional Foresters are licensed to practice any aspect of professional forestry in which they have competence. Associate Members have not qualified for Full status, but may have developed, through education and extensive experience, competence in some aspect of professional forestry and have been granted limited certification. Some are authorized to write silvicultural prescriptions.

While an exemption under the Act allows landowners to personally develop prescriptions, few are able to do so effectively and use of authorized professionals should be encouraged. Counties/municipalities could also

encourage competent persons in the local forest and logging industry to apply for Associate membership to ensure private landowners have access to legally authorized individuals.

(b) Any other terms and conditions deemed appropriate and imposed by the Officer.

Some examples of conditions that could be imposed on a permit include:

- Do not operate a vehicle, machinery or equipment or conduct operations in such a manner or at such a time that results in excessive damage to the residual trees, the soil, wetlands or other portions of the Woodlands. Excessive damage to soil is difficult to assess without criteria that can be measured in some objective manner (e.g. rutting more than 15 cm deep for a distance of more than xx meters. (See Templates for Forms Section)
- Do not operate a vehicle, machinery or equipment or conduct operations in a manner or at a time, that results in the leaving of any part of a Tree in a watercourse including any Trees that have not been cut, but have been pushed, knocked over or otherwise ended up in a watercourse. (This can also be enforced through the *Lakes and Rivers Improvement Act*.)
- Provide notification to the by-law Officer 48 hours before start of cutting and again upon resumption of activities after any 4 week period of inactivity.
- No harvesting during March 20 – July 31 period, based on Silvicultural Guide to avoid bird nesting.
- Erect and display a sign at the entrance at the adjoining roadway to the land where the harvesting of the Trees is to occur, in a position that is clear and visible to all persons (see Template for Forms section for an example of sign format).
- Operator certifies that WSIB and liability coverage are in place and Ministry of Labour obligations will be met.
- No unauthorized 3rd parties on site without the written permission of the landowner.
- Fire suppression equipment must be properly maintained and in place during fire season (dates can be specified).
- Property boundaries must be marked and agreed to by adjacent landowners.
- No piling of logs on road allowances.
- Operator will observe half loading restrictions.
- Property or portion of woodlot to be logged must be clearly identified.
- Landowner is required to certify their ownership of the woodlot.
- General statements requiring compliance with all applicable municipal, provincial and federal laws and regulations.

Note: If the Officer is a Qualified OPFA Member or acting under the direction of a Qualified OPFA Member, they may also consider adding conditions relating to the forestry practices involved.

5.4 Notwithstanding sections 5.2 and 5.3, a Good Forestry Practices Permit may be issued where an exclusion provision under the *Professional Foresters Act* applies and a qualified member of the Ontario Professional Foresters Association provides an opinion that the Harvesting of Trees is consistent with Good Forestry Practices.

This can be used to provide permits to landowners who are actively involved with their Woodlands and that write their own good forestry practices prescriptions (as provided for in the *Professional Foresters Act* exemption), mark their own Trees, etc. or may be used in the case of large scale dieback or wind damage where Trees do not need to be marked by a professional. This should only be done where the By-law Officer is a qualified member of the Ontario Professional Foresters Association (OPFA) and thereby could by law provide an opinion on Good Forestry Practices. Alternatively, it could be used if the Officer has received sufficient advice from a qualified member of the OPFA

5.5 A Good Forestry Practices Permit is valid for up to XX year(s) and may be renewed by an Officer for an additional xx year(s).

Some by-laws end the term of all permits on March 31<sup>st</sup>, which simplifies enforcement.

NOTE: THIS IS A TEMPLATE TO GUIDE DISCUSSIONS ON DEVELOPING OR UPDATING A FOREST CONSERVATION BY-LAW – THIS TEMPLATE IS NOT INTENDED TO BE USED AS IS.

The *Municipal Act* provides the authority for the county/municipality to delegate the power to issue Permits to Officers. The authority to issue a permit includes the authority to issue the renewal of a permit.

Since there have been regulations and an administrative process already set out for the endangered Butternut tree, municipalities/cities/towns/townships may wish to consider incorporating this into their permit review and approval process. For instance if a butternut tree has been determined to be non-retainable by a Designated Butternut Health Assessor, the Officer may consider this in his/her decision to grant the permit.

## **6. Granting of an Exemption by Council**

This section allows the owner to ask Council for an exemption. There have been situations where the lack of this type of option for council to consider has caused some legal complications.

Some municipalities have developed “Special Permits”. Permits granted under this type of section tend not to meet any of the criteria of the by-law and are not consistent with the intent of the by-law. It is recommended that instead of granting a permit, that granting an exemption to the by-law is more appropriate.

Some municipalities have preferred not to provide a section such as this at all, and rather encourage such applicants to apply through the usual application process. Once the municipality denies the application, the applicant can then use the appeal process to gain permission.

- 6.1 Notwithstanding any provision contained in this By-law, an Owner may request an exemption to this By-law from Council.
- 6.2 Council may:
  - (a) grant an exemption request; or
  - (b) grant an exemption request with modifications; or
  - (c) refuse an exemption request.
- 6.3 Council when evaluating a request for an exemption shall consider if the activity proposed is consistent with the appropriate development or use of the land.
- 6.4 Council upon granting an exemption may impose such terms and conditions as it deems appropriate.
- 6.5 An Owner requesting an exemption to this By-law shall at least XX months prior to the commencement date of Harvesting submit to the Clerk of the (County/Municipality) the following:
  - (a) a complete signed request form as provided by the (County/Municipality); and
  - (b) the prescribed fee.

The *Municipal Act* allows fees to be charged on a full cost recovery basis so that the administrative costs of the application are entirely borne by the applicant, however a fee may discourage compliance and Good Forestry Practices.

- 6.6 Circulation of Notice of Exemption Request

- (a) The Clerk shall circulate by regular mail XXX days prior to the Council meeting notice that the exemption request will be considered by Council;
- (b) Notice shall be circulated to the applicant and all assessed owners of land that abut the lands subject to the exemption request;
- (c) The Owner shall post XXX days prior to the Council meeting notice that is clearly visible and legible from a public highway or other place to which the public has access on the property that is subject to the exemption request.
- (d) Notice shall contain the following information:
  - i) Name of the Owner
  - ii) The address of the lands subject to the exemption request
  - iii) Purpose of the exemption request
  - iv) The date or dates for which the exemption is sought
  - v) The date and time the matter will be considered by Council
  - vi) Contact information should an individual wish to address Council regarding the exemption request.

#### 6.7 Decision

- (a) In deciding whether to grant an exemption, Council shall give the Owner and any person opposed to or in favour of the request an opportunity to be heard and may consider such other matters including the Officer's comments as it deems appropriate.

Some municipalities would also seek advice from their local Conservation Authorities and Ministry of Natural Resources.

- (b) The Clerk shall notify the Owner in writing of Council's decision.

## **7. APPEAL**

There is no requirement under the *Municipal Act* to provide an appeal process. The public can always take issues to Council. However, a defined process for appeals is recommended. One acceptable process is outlined below. This section can be custom fit to your municipal process. It must, however, comply with the Statutory Powers Procedure Act 1990 as amended.

- 7.1 An applicant for a Permit may appeal to Council [or committee of Council] by filing a notice of appeal personally or by registered mail to the (County/Municipality) if;
  - (a) an Officer refuses to issue a Permit; or
  - (b) an Officer fails to make a decision on the application within 45 days after receipt of a complete application; or
  - (c) the applicant objects to a term or condition of the Permit.

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- (d) a person objects to an order made under Section 9 or Section 10 of this By-law.

There is no authority in the *Municipal Act* for an appeal of an Order however case law requires the right of appeal to an Order.

7.2 Where an appeal is filed under 8.1(a) or 8.1(c) or 8.1(d), the notice of appeal shall be filed within thirty (30) days of the date of the decision.

7.3 Where an appeal is filed under 8.1(b), the notice of appeal shall be filed within seventy-five (75) days after receipt of the complete application but not prior to forty-five (45) days after receipt of a complete application.

7.4 An appeal made under this section does not act as a stay of any orders issued, which shall take effect on the day it is served or deemed served and shall continue to be effective until Council renders a decision indicating otherwise.

#### 7.4 Circulation of Notice of Hearing

(a) The Clerk shall circulate by regular mail XX days prior to the Council meeting notice of a hearing;

(b) Notice shall be circulated to the applicant and all assessed owners of land that abut the lands subject to the hearing;

(c) The Owner shall post XX days prior to the hearing notice that is clearly visible and legible from a public highway or other place to which the public has access on the property that is subject to the hearing.

(d) Notice shall contain the following information:

i) Name of the Owner

ii) The address of the lands subject to the hearing

iii) Purpose of the application/appeal

iv) The date or dates for which the application is sought

v) The date and time the matter will be heard by Council

vi) Contact information should an individual wish to address Council regarding the matter.

#### 7.5 Decision

(a) In hearing the matter, Council shall give the Owner and any person opposed to or in favour of the application an opportunity to be heard and may consider such other matters including the Officer's comments as it deems appropriate.

(b) Council may:

i) issue a Permit; or

ii) issue a Permit with terms and conditions; or

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iii) refuse to issue a Permit.

(c) The Clerk shall notify the Owner in writing of Council's decision.

7.6 The proceedings at the hearing held by Council shall be in accordance with the provisions of the *Statutory Powers Procedures Act*, R.S.O. 1990, c.22. The decision of Council is final and binding.

## **8. ORDER TO DISCONTINUE ACTIVITY**

This has been called a "Stop Work Order" in the past. There is no provision in the *Municipal Act* for a Stop Work Order but there is for an Order to Discontinue Activity.

8.1 Where an Officer believes that a contravention of this By-law has occurred, the Officer may issue an Order requiring the person who contravened the By-law or who caused or permitted the Harvesting, Injuring or Destroying of Trees in contravention of the By-law to stop and discontinue the Harvesting, Injuring or Destroying of Trees.

8.2 The Order to Discontinue Activity shall set out:

- (a) the municipal address or the legal description of the land; and
- (b) reasonable particulars of the contravention; and
- (c) the date by which there must be compliance with the Order.

## **9. WORK ORDER**

A Work Order is not as strong as a Court Order. Obtain a legal opinion regarding its authority before using a Work Order.

Also, note that the Officer has the power to issue the Work Order, but retention of qualified professionals (under the Professional Foresters Act) will likely be required to identify how rehabilitation or replanting should occur.

9.1 Where an Officer believes that a contravention of this By-law has occurred, the Officer may issue a Work Order requiring the person to rehabilitate the land or woodlands, or to plant or re-plant Trees.

9.2 The Work Order shall set out:

- (a) the name and the owner and the municipal address or the legal description of the land;  
and
- (b) reasonable particulars of the contravention; and
- (c) the work to be done and the date by which the work must be done and

- (d) a statement that if the work is not done in compliance with the order within a specified time period, the Municipality may have the work done at the expense of the owner.

## **10. SERVICE OF AN ORDER**

- 10.1 An Order issued under this By-law shall be served on the Owner of the property and such other persons affected by it as the Officer determines and a copy of the Order may be posted on the property.
- 10.2 An Order issued under this By-law may be served personally or by registered mail sent to the last known address of the person to whom the Order is to be given or that person's agent for service.
- 10.3 If an Order is served by registered mail, the service shall be deemed to have been made on the seventh day after the day of mailing.
- 10.4 Where service cannot be served as per 11.1, 11.2 or 11.3 the Officer shall place a placard containing the terms of the Order in a conspicuous place on the Owners property, and the placing of the placard shall be deemed to be sufficient service of the Order on the person to whom the Order is directed.

A copy of the by-law should be provided to the recipients of the Order. The Order should be served on all people who have been observed on site: the contractor, the site supervisor, the owner and any other adult individual who appears to have control over the activities on site. In addition, a copy of the Order should be posted prominently on the site.

## **11. REMEDIAL ACTION**

- 11.1 Where an Owner fails to comply with a Work Order issued under this By-law, the (Municipality or County) may do the work directed or required to be done at the person's expense.
- 11.2 The (Municipality or County) may recover the costs of doing a matter or thing under this section of the By-law from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.
- 11.3 Where the (Municipality or County) chooses to do the work directed or required to be done in a Work Order it shall serve notice to the person personally or by registered mail sent to the last known address of the person to whom the notice is to be given or that person's agent for service.
- 11.4 The Notice shall set out:
- (a) the municipal address or the legal description of the land; and
  - (b) reasonable particulars of the contravention; and

- (c) the date the (Municipality or County) will be entering the property to do the work directed or required to be done; and
- (d) a statement that the work being completed will be at the Owner(s) expense.

11.5 If a Notice is served by registered mail, the service shall be deemed to have been made on the seventh day after the day of mailing.

11.6 The (Municipality or County) may enter upon land to complete the work three (3) days after service is affected.

If a Municipality or County wishes to utilize the Remedial Action section they should obtain a legal opinion regarding their authority to do so.

## **12. ENFORCEMENT**

There is nothing in the legislation that prohibits a county/municipality from retaining a private firm to enforce the by-law provided the relevant employees are properly appointed. The county/municipality is required to ensure that each Officer is properly trained to perform her or his duties, and if the Officer is not an employee of the county/municipality, is supervised by an employee of the county/municipality. This approach is being used very successfully in several counties/municipalities.

12.1 An Officer may enforce the provisions of this By-law.

Individuals enforcing a by-law under the *Municipal Act* MUST be appointed as Provincial Offences Officers or Peace Officers under a separate by-law to be able to legally enforce the by-law in question. (See Template for Forms section for a sample Appointment By-Law.

12.2 An Officer may at any reasonable time enter and inspect any land to determine whether this By-law, an Order, court order or a condition of a Permit is being complied with.

Section 435(1) does not restrict the number of times an administrative inspection is done. As long as the Officer is conducting an investigation, it is considered an administrative inspection. Once a decision is made to lay charges, then it is no longer an administrative inspection, but rather collection of evidence. Once the Officer has left the property after collecting evidence, he can't come back onto the property without the Owners permission. Where advised by an Owner not to come onto their property, the Officer may apply for an order under Section 238 of the *Municipal Act* or obtain a search warrant under Section 239 of the *Municipal Act* to re-enter the property.

The power to inspect land does not extend to entry into buildings and does not extend the power of entry to a person acting under the Officer's instructions. However, the Officer may bring experts with him/her when conducting administrative inspections. See section 137 (2) of the *Municipal Act*.

12.3 An Officer exercising a power may be accompanied by a person under his direction.

12.4 No person shall hinder or obstruct an Officer or attempt to hinder or obstruct an Officer who is performing a duty under this By-law.

12.5 Any person who provides false information to an Officer shall be deemed to have hindered or obstructed the Officer in the execution of their duties.

## **13. PENALTY**

It is our understanding that the *Municipal Act* provides municipalities with the opportunity and flexibility to develop their own penalties, however we not been able to secure a legal confirmation of this. Below are two examples. Example #1 was in the *Municipal Act* previously and is found in most of the existing forest conservation by-laws. Example #2 is from the most recent version of the *Municipal Act*.

### **Example #1:**

13. a) Any person who contravenes any provision of this By-law, or an Order issued under this By-law, is guilty of an offence and is liable for each occurrence of the contravention, infraction or violation:
- (i) on first conviction, to a fine of not more than \$10,000 or \$1,000 per tree, whichever is greater; and
  - (ii) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree, whichever is greater.
13. (b) Any corporation who contravenes any provision of this By-law, or an Order issued under this By-law, is is guilty of an offence and is liable for each occurrence of the contravention, infraction or violation:
- (i) on first conviction, to a fine of not more than \$50,000 or \$5,000 per tree, whichever is greater; and
  - (ii) on any subsequent conviction, to a fine of not more than \$100,000 or \$10,000 per tree, whichever is greater.
13. (c) If a person or corporation is convicted of an offence for contravening this By-law or an Order issued under this By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to rehabilitate the land or to plant or replant trees in such a manner and within such period as the court considers appropriate and to maintain the replanted Trees as appropriate, including any silvicultural treatment necessary to re-establish the trees.

### **Example #2**

- 13.1 Any person who contravenes any provision of this By-law, or an Order issued under this By-law is guilty of an offence and upon conviction is liable to:
- (a) A maximum fine of \$100,000;
  - (b) In the case of a continuing offence, for each day or part of a day that the offence continues, a maximum fine of \$10,000 for each day;

(c) Notwithstanding 14.1(a), in the case of a multiple offence, for each offence included in the multiple offence, a maximum fine of \$10,000 for each offence included in the multiple offence.

Note, An approach that is also used in some counties/municipalities is, as an example in (a) state “A fine of not less than \$500 and not more than \$100,000”. Similar wording would be replaced in (b) and (c). This provides an advantage in court for Part 3 fines. However, it creates an issue when applying for short form wording (Part 1) since \$500 tickets are not well received by some Regional Justice.

(d) In accordance with Subsection 429(2)(d) of the *Municipal Act* a special fine may be imposed and may exceed \$100,000 in circumstances where there is an economic advantage or gain from the contravention of this By-Law or an Order under this By-Law.

13.2 The (County/Municipality) designates that the Harvesting of each Tree is one offence in a series of multiple offences.

13.3 If a person is convicted of an offence for contravening this By-law or an Order issued under this By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to rehabilitate the land or to plant or replant Trees in such a manner and within such period as the court considers appropriate, including any Silvicultural treatment necessary to re-establish the Trees.

13.4 If a court makes an order under section 14.3 of this By-law, the (Municipality or County) relies on Section 446(3) and 446(4) of the *Municipal Act*, as amended, for the recovery of costs.

## **14. ADMINISTRATION**

14.1 If any section or sections of this By-law or parts thereof are found by any Court to be illegal or beyond the power of the Council to enact, such Section or Sections or parts thereof shall be deemed to be severable and all other Sections or parts of this By-law shall be deemed to be separate and independent there from and continue in full force and effect unless and until similarly found illegal.

14.2 In this By-law, unless the context otherwise requires words importing the singular shall include the plural and use of the masculine shall include the feminine, where applicable.

14.3 The short title of this By-law is the “Forest Conservation By-law”.

14.4 By-law {insert previous By-law no.} of the (County/Municipality) shall be repealed effective on the coming into force and effect of this By-law.

14.5 Despite subsection 5 of this section, By-law {insert previous By-law no.} of the (County/Municipality) shall continue to apply to proceedings in respect of offences that occurred before its repeal.

