

## **A Template for Forests Conservation By-laws**

*For upper tier municipalities to protect forests 1 ha in size and over.*

**Uses a combination of the Permit and Notice Systems as described in the “Guide to Developing Forest Conservation By-laws”**

*(Other templates are available for the other by-law options such as using either a notice or permit system.)*

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NOTE: The information provided here is intended to assist in the development and upgrading of forest conservation by-laws.

**Information contained herein has not been legally verified.**

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FORESTS CONSERVATION BY-LAW NO. [            ]

To prohibit or regulate the destruction or injuring of trees in woodlands in the  
[Name of Municipality]

WHEREAS s.135(2) of the *Municipal Act*, R.S.O. 2001, S.O. 2001, c.25, as amended, permits the enactment of a By-law by the Council of [Name of Municipality] to prohibit or regulate the destruction or injuring of trees in woodlands;

The power to “*prohibit* or *regulate*” means that an upper tier municipality has the ability to promote sustainable forest management activities (traditionally referred to in tree cutting By-laws as Good Forestry Practices) and prohibit activities known to be detrimental to woodlands. Note that the municipalities must adopt the harsh wording of “*destruction or injuring*” because the Municipal Act uses these terms, but we recognize that it generally refers to harvesting, cutting and logging.

AND WHEREAS Council may require that a Permit be obtained to injure or destroy trees in woodlands specified in the By-law and impose conditions on a Permit, including conditions relating to the manner in which destruction occurs and the qualification of persons authorized to injure or destroy trees. [see s.135(7)]

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

This section is optional and provides the Council an opportunity to state its purpose and intent of the By-law which may help to increase the public’s understanding of the purpose of the By-law and may increase the public’s 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.

- preserve and improve the woodlands in [Name of Municipality] through Good Forestry Practices;
- promote Good Forestry Practices that sustain healthy woodlands;
- minimize the destruction or injuring of trees;
- regulate and control the removal, maintenance and protection of trees;
- minimize and guard against dangerous conditions which may result in injury;
- protect, promote and enhance the aesthetic values of woodlands;
- contributing to human health and quality of life through the maintenance of woodland cover;
- provisions for habitat

Now, therefore, the Council of [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 can be included for clarity.

The By-law must define the terms that will be used in the By-law, its forms and 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 and provided for information purposes. However this information should not be incorporated as part of the By-law.

In this By-law:

- (a) "Basal area" means the area of the cross-section of the stem of a tree taken at a point of measurement 1.37 metres above the highest point on the tree where the ground meets the stump.

The phrase previously used in By-laws "above the highest point of ground in an undisturbed state at the base of the tree" has been replaced with plain language.

Metric has been used throughout this template, but some municipalities may prefer to include the imperial measurements in brackets.

- (b) "Building Permit" means a Building Permit issued under the *Building Code Act*, 1992, S.O. 1992, c23, as amended.
- (c) "Business day" means any day falling on or between Monday and Friday of each week but does not include [list selected holidays].
- (d) "Circumference" means the measurement of the perimeter or outer boundary of a stem or trunk of a tree with such measurement including the bark of the stem.
- (e) "Coppice growth" means where more than one tree stem grows from a single tree stump.
- (f) "Council" means the Council of [Name of Municipality].

"Destroy" and "injure" has been previously 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 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.

Should a municipality chose to use these terms, definitions used in the past include;

“Destroy” means any action which causes or results in the irreversible injury or death of a tree.

“Injury” means any action which causes physical, biological, or chemical damage to a tree.

“Harvest” means the removal of a tree or trees by cutting which results in destruction of a tree by design for the purposes of extraction of some type of product.

- (g) "Diameter" means the diameter of the stem of a tree measured outside the bark at a specified point of measurement.
- (h) “DBH” means the diameter of the stem of a tree measured at a point that is 1.37 metres above the ground.
- (i) “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;

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

Legislative Council has advised that the definition of Good Forestry Practices may be expanded as long as the list expands upon the definition and does not include substantive provision that should stand alone. We have therefore chosen and hereby recommend to further explain the definition as follows:

And Good Forestry Practices permits the destruction or injuring of trees that:

- have been damaged by disease, insects, wind, ice, fire, lightning, or other natural causes to an extent that the health of such trees is likely to further deteriorate;
- should be cut or removed to prevent disease or insects from spreading to other trees;
- are cut in accordance with the Provincial Silvicultural Guidelines as referred to in the Forest Operations and Silviculture Manual and its revisions prepared under the authority of the *Crown Forest Sustainability Act*, S.O. 1994, c. 25.

These Provincial Silvicultural Guidelines include, but are not limited, to: A

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- Silvicultural Guide to Managing Southern Ontario Forests, Silvicultural Guide for the Tolerant Hardwood Forest in Ontario, A Tree Marking Guide for the Tolerant Hardwood Working Group in Ontario, A Silvicultural Guide for the Great Lakes – St. Lawrence Conifer Forest in Ontario;
- are marked and cut as part of a woodlands management plan approved by a Registered Professional Forester.

Note that by including the Silvicultural Guide for the Great Lakes – St. Lawrence Conifer Forest, we are including Good Forestry Practices for conifer plantations.

- (j) "Officer" means an individual appointed by Council for the administration and enforcement of this By-law.
- (k) "Owner" means a person having any right, title, interest or equity in land.
- (l) "Own Use" means use that does not include a sale, exchange or other disposition of trees destroyed or injured.
- (m) "Permit" means the written authorization from the Officer as provided in Schedule "F".
- (n) "Point of Measurement" means that point on the tree trunk measured above the highest point on the tree where the ground meets the stump. For coppice growth the point of measurement shall be at the point on the tree trunk where the tree stems separate provided that such point of separation is less than 1.27 metres from where the ground meets the stump.
- (o) "Registered Professional Forester" as defined in the *Professional Foresters Act, 2000*, S.O. 2000, c.18.
- (p) "Sensitive Natural Areas" means the:

You may wish to identify areas that are of municipal importance such as areas designated within your Official Plan. You may also wish to consider showing these areas on a map in an additional Schedule. The following are examples.

- Greenland's Systems
- Oak Ridges Moraine
- Significant Forest Cover
- provincially or regionally identified Significant Wetlands
- areas under the jurisdiction of the Niagara Escarpment Commission.
- any portion of woodlands located within 30 metres of the water's edge of a locally, regionally, or provincially significant wetland, lake, river, stream or intermittent stream. Intermittent stream means a stream which flows for fewer than 9 consecutive months per year under average annual precipitation conditions and which has defined banks.
- Provincial or Regional Life Science Areas of Natural and Scientific Interest identified by the Ministry of Natural Resources, 1982, as amended.
- Natural Heritage Systems
- Special Recharge Areas
- Significant Policy Areas

- Environmentally Sensitive Areas identified by [list Conservation Authorities or other appropriate authorities in your area]
- habitat of Vulnerable, Threatened or Endangered Species, as identified by [authority as appropriate].
- Lands receiving property tax reduction under the Conservation Land Tax Incentive Program.

**Another** approach is to create a section in the By-law that prohibits any person from destroying or injuring trees in a list of areas within the municipality. This may be easier to enforce. E.g. "The destruction or injuring of trees in the following areas is prohibited:" and list the areas within the municipality.

- (q) "Silviculture" means the theory and practice of controlling forest establishment, composition, growth and quality of forests to achieve the objectives of management.

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

- (r) "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.

- (s) "Woodlands" means land at least one hectare and more in area with at least:

- (i) 1000 trees, of any size, per hectare;
- (ii) 750 trees, measuring over five (5) centimetres in diameter at DBH, per hectare;
- (iii) 500 trees, measuring over twelve (12) centimetres, in diameter at DBH, per hectare; or
- (iv) 250 trees, measuring over twenty (20) centimetres, in diameter at DBH, per hectare;

but does not include a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas trees.

It would be preferable if the definition of Woodlands was not limited by property boundaries. Although this concept is important from a landscape protection perspective, Legislative Council has advised that the definition from the *Forestry Act* cannot be expanded to go beyond property boundaries. Note that the Town of Oakville's by-law does not limit woodlands by property boundaries.

## 2. **GENERAL PROHIBITION**

- (a) Except as provided in section 3, no person through their own actions or through any other person shall destroy or injury any living tree unless;

Section 2 provides for two main provisions to allow tree cutting: through good forestry practices; or through circumference limits. Additional exceptions for specific situations are listed in Section 3.

- Provision for tree cutting through good forestry practices appears first in Section 2 (a)(i). The intent is to promote this option first and foremost in the bylaw. Tree conservation bylaws and information developed to support the bylaw should always promote the use of good forestry practices as the preferred method of ensuring the sustainability of a woodland's economic and environmental values.
- Provision for tree cutting through circumference limits has appears second in Section 2 (a) (ii). Circumference or diameter limits have been the traditional approach to regulating tree cutting in

municipal bylaws. Including provisions for circumference limit cutting recognizes this past approach as well as the rights of private landowners to make choices as to how their woodlots are managed. However, circumference or diameter limit cutting is generally detrimental to the economic and ecological values of the forest and is generally not consistent with good forestry practices. Circumference or diameter limit cutting is also not recommended by the Ontario Ministry of Natural Resources Silvicultural Guide to Managing Southern Ontario Forests.

- (i) the person who is destroying or injuring trees does so in accordance with good forestry practice as prescribed by:
- (a) a Registered Professional Forester or;
  - (b) a member in good standing of the Ontario Professional Foresters Association; and
  - (c) the person who is destroying or injuring trees has abided by the requirements of section 5 ; or

The *Professional Foresters Act*, provides that these are the only people qualified to practice professional forestry, including writing silvicultural prescriptions. Local municipalities should be encouraging local industry to apply for associate membership in the Ontario Professional Foresters Association to ensure private landowners have access to qualified individuals.

Note: There has been a trend to provide an exemption where woodlands are marked by Certified Tree Markers, with the assumption that this would ensure Good Forestry Practices. Although Certified Tree Markers are trained to mark according to a prescription, prescriptions are often not prepared and Certified Tree Markers are not necessarily trained in the preparation of prescriptions. For these reasons, we do not recommend providing an exemption for the use of Certified Tree Markers.

Note: There has also been a trend to allow exemptions where Woodlands are receiving a tax reduction under the Managed Forest Tax Incentive Program. Although this program requires a management plan, it does not ensure that good forest management practices are carried out at the time of cutting. We do not recommend providing an exemption for Woodlands under the Managed Forest Tax Incentive Program.

ii) the person who is destroying or injuring trees, has only destroyed or injured those trees which have attained, at the specified point of measurement, the Circumference measurement which equals or is greater than the minimum Circumference prescribed for the species in Schedule “A”;and

a) the person who is destroying or injuring trees has abided by the requirements of Section 5; and

b) the destruction or injuring of trees will not reduce the number of trees per hectare below the minimum number of trees per hectare required to be considered Woodlands;

Diameter limits have been replaced by Circumference limits because Circumferences are easier to measure and the measurement procedure is easier to describe to lay people.

OPTIONAL SECTION as follows:

c) the injuring or destruction of trees has not reduced the Basal area in that part of the Woodlands, where trees have been destroyed or injured below \_\_\_ m<sup>2</sup>/ha; and

Square meters/ha can be adjusted appropriately for the municipality and currently ranges between 15 and 20 m<sup>2</sup>/ha. This refers to trees 10 cm diameter and larger.

b) No person through their own actions or through any other person shall;

- (i) fail to comply with an Order issued under this By-law;
- (ii) remove or deface any Order that has been posted pursuant to this By-law;
- (iii) contravene the terms or conditions of a Permit issued under this By-law.

c) No person through their own actions or through any other person shall destroy or injure a tree located in an identified Sensitive Natural Area;

This clause could be adapted to suit local needs. 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, cutting might need to be done in a Red oak ANSI.

OTHER OPTIONAL SECTIONS as follows:

d) A person shall not:

- (i) destroy or injure any tree that is to remain standing after the destruction or injuring of trees is completed;

Although this is enforceable it is not really practical because realistically residual trees are always damaged to some degree during harvesting. (The municipality may wish to have a policy or guideline about good forest practices or a Code of Practice instead of these provisions.)

- (ii) operate a vehicle, machinery or equipment or conduct their operations in such a manner or at such a time that results in excessive damage to 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. This should perhaps be looked at during the development of a site alteration By-law.

- (iii) 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*.

### **3. EXEMPTIONS**

This section includes two types of exemptions: mandatory exemptions found in the *Municipal Act* and exemptions granted by the 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 re-written into the By-law, it is preferable to have them re-stated to eliminate confusion.

This By-law does not apply to;

- (a) activities or matters undertaken 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 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 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
- (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 construction 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,

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- 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*.

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

- (i) the injuring or destruction of trees where the owner of the Woodlands has been granted an exemption by Council pursuant to section 4; or
- (j) 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 destroyed or injured 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. Consult with your local building department.

- (k) the injuring or destruction of trees that is 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
- (l) the injuring or destruction of trees that is required in order to install and provide utilities to a single lane driveway for vehicular access to the building, structure or thing in respect of which a Building Permit has been issued; or
- (m) the owner of the Woodlands that has destroyed or injured trees for his or her own use where the owner has been the registered owner of the Woodlands for at least two years prior to the date of the commencement of the destruction or injury of the trees; or

The requirement of ownership for 2 years does not restrict an owner from commercial harvesting. This clause is optional as it maybe too restrictive for owners who wants to apply good silvicultural operations on their own.

A variation to this clause is to require an owner to own the woodland for at least 2 years before commercial harvesting is to occur, except in instances where good forestry practices are to be applied. Such restriction would be inserted under Section 2 (a) (ii) indicating that they would have to own the woodland for at least 2 years. This prevents individuals from stripping the forest resources from a property and re-selling the land.

Other Variations: Some municipalities have limited the personal use to a certain number of trees per year/hectare to be sold commercially. Some municipalities have limited the personal use to a certain number of trees per year/hectare, to be sold commercially.

- (n) the destruction or injury of trees where the trees are destroyed or injured pursuant to a legally binding contract if:
- (i) the owner of the Woodlands has given notice under section 5; 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;
  - (iv) the trees are injured or destroyed in a manner consistent with By-law No \_\_\_\_ and;

## **4. COUNCIL EXEMPTION**

This section allows the owner to apply for an exemption other than those listed in the previous section. The same Permit would be used, but the exemption would have to be granted through this process. This also describes the process for objecting to decisions regarding an application for a Permit or exemption.

- (a) In order to be considered for an exemption to Section 2 the owner of the Woodlands must apply to the Clerk for an exemption at least \_\_\_\_ months prior to the anticipated commencement of injury or destruction of trees by submitting;
- i) a completed application form as described in Schedule “B”; and
  - ii) the applicable fee as set out in Schedule “C”.
- (b) At least \_\_\_\_ Business days prior to consideration of the application for an exemption the Clerk shall send, by regular mail, written notice in the form of Schedule “D” to the applicant and all assessed owners of each parcel of land that abuts the applicant’s Woodlands for which an exemption is being sought and to such other persons as prescribed by Council.

- (c) The applicant shall erect and display a public notice regarding the exemption application at the entrance to the Woodlands in a position that ensures that it is clear and visible to all persons, and the notice shall be in the form of Schedule “E”.
- (d) The notice shall be posted at least \_\_\_\_\_ Business days prior to consideration of the application.
- (e) Provided that there have been no objections filed with the Clerk and the Officer agrees that the general purpose and intent of this By-law is maintained, the Clerk may grant the Permit for the exemption in the form of Schedule “F”.

The Officers’ agreement has been added because otherwise there is a concern whether the Clerk has the expertise to determine whether the activities proposed are consistent with the purpose of the By-law. The fact that no objections have been made does not ensure this. Ensure that the Officer has had sufficient training to make this judgement.

- (f) When granting a Permit for an exemption, the Clerk may include terms or conditions.
- (g) When denying an exemption, the Clerk must notify the applicant.
- (h) The applicant may object to the terms and conditions on the Permit for the exemption.
- (i) Where there have been objections filed with the Clerk or where the applicant objects to the terms and conditions on the Permit for the exemption, Council will consider the application for exemption, any conditions to the Permit and make a decision whether to grant the exemption and therefore a Permit.
- (j) The Council shall hear any person who wishes to speak to the exemption for which objections have been filed.
- (k) When granting an exemption Council may include terms or conditions on the Permit.

## **5. NOTIFICATION/APPLICATION**

*Requiring submission of a Notice of Intent when Good Forestry Practices are to be carried out;*

- (a) Every owner of Woodlands who intends to destroy or injure trees personally or through another person, under Section 2(a) (i) of this By-law shall complete and submit a notice to the Officer or their designate no less than \_\_\_\_ Business days prior to the start of destruction or injury, all the information as prescribed in Schedule “G”.

*Requiring application for a Permit when a Circumference harvest is planned;*

- (b) Every owner of Woodlands who intends to destroy or injure trees personally or through another person, under Section 2 (a) (ii) of this By-law shall make application for a Permit to the Officer or their designate by submitting all of the information as prescribed in Schedule “H” and the appropriate fee as outlined in Schedule “C”.

NOTE: This clause is optional.

- (c) Any person who is required to file a Notice under subsection (a) or has obtained a Permit under subsection (b) shall also erect and display a sign at the entrance at the adjoining roadway to the land where the destruction or injury of the trees is to occur, in a position that is clear and visible to all persons, and such sign shall in the format as outlined in Schedule “OPTIONAL –Notice of Timber Harvesting”.

## **6. PERMIT APPLICATIONS**

1. Applications for Permits will not be processed if;
  - i) applications have not been completed in full; and
  - ii) the substantive requirements that must be submitted with an application have not been included; and

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- iii) applications are not in keeping with the general purpose and intent of this By-law; and
- iv) the prescribed application fee, as set forth in Schedule “C” has not been paid in full, and
- v) will be returned to the applicant with the prescribed fee within 30 days.

The *Municipal Act* permits fees to be charged on a full cost recovery basis so that the costs of the application are entirely borne by the applicant. CAUTION: A new fee may discourage compliance.

- i) A Permit in the form of Schedule “F” may be;
  - i) issued to the applicant for a term of up to \_\_\_ years.
  - ii) renewed by an Officer for one term of \_\_\_ year(s).
  - iii) renewed by Council for an exemption Permit for one term of \_\_\_year(s).

In *The Municipal Act*, the municipality may delegate the power to issue Permits to Officers, but it is silent on whether Officers can renew Permits. It may be that the municipality has to renew Permits rather than Officers. Something that needs to be checked out with a municipal lawyer.

- ii) An Officer may impose conditions to a Permit that relate to;
  - i) the manner in which destruction or injury is to occur; and
  - ii) the qualifications of persons authorized to destroy or injure trees.

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. For instance, a review of the prescription should be done by a member of the Ontario Professional Foresters Association.

Ideally, qualified Officers should be grandfathered as Associate Members of the OPFA to review applications and set conditions which are in keeping with good forestry practices. However concerns with the application of good forestry practices within a prescription could be deferred to the OPFA, MNR or another qualified body should the municipality not have a qualified RPF on staff.

4. When denying a Permit, the Clerk must notify the applicant.

## **7. APPEALS TO THE MUNICIPAL BOARD**

An applicant for a Permit under Section 6 may appeal to the Municipal Board if;

- (a) the municipality refuses to issue a Permit, within 30 days after the refusal; or
- (b) the municipality fails to make a decision on the application, within 45 days after the application is received by the Clerk; or
- (c) If the applicant objects to a condition of the Permit, within 30 days after the issuance of the Permit.

## **8. ORDERS TO DISCONTINUE ACTIVITY**

- (a) Where an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make an Order requiring the person who contravened the By-law or who caused or Permitted the injuring or destruction of trees in contravention of the By-law to stop the injuring or destruction of trees. The order shall set out the information contained in Schedule "I".

Note that Schedule I must contain the three items in s.137 (3) of the Municipal Act in addition to other items as indicated in the template.
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- (b) An Order issued under this section may be served personally or served by sending it by mail to the last known address of;
  - i) the owner of the Woodlands; and
  - ii) the person identified as injuring, destroying or harvesting a tree or trees.
- (c) Where service of an Order is made by mail, service shall be deemed to have been served on the fifth day after the order is mailed.
- (d) Where service cannot be carried under section 8, subsection (b), it is deemed sufficient if the Officer places a placard containing the terms of the Order in a conspicuous place on the affected lands 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.

- (e) If the person to whom the Order is directed is not satisfied with the terms of the Order, the person may appeal to Council by filing a Notice of appeal by personal service or certified mail to the Clerk within 30 days of the date of the Order.
- (f) Where an appeal has been filed, Council shall hear the appeal and have all the powers and the functions of the Officer.
- (g) Before conducting a hearing under this section, the Clerk shall give notice to such persons or direct that notice be given to such persons as the Clerk considers should receive notice and in the manner directed by the Clerk.
- (h) After hearing an appeal, Council may confirm or revoke any Order issued under this By-law or may issue a Permit with conditions, provided that in the opinion of the Council, the general intent and purpose of this By-law has been maintained.
- (i) The proceedings at the hearing held by the Council shall be in accordance with the provisions of the *Statutory Powers Procedures Act*, R.S.O. 1990, c.22. The decision of the Council under this section is final.

There is no authority in the *Municipal Act* for an appeal of a stop work order.

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.

## **9. PENALTY**

- (a) Any person who contravenes any provision of this By-law, or an Order issued under section 8 is guilty of an offence and is liable:
- (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.
- (b) If a person is convicted of an offence for contravening this By-law or an Order issued under section 8, 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.

## **10. ENFORCEMENT**

- (a) This By-law shall be enforced by an Officer appointed by the municipality and listed in Schedule “J”.

Persons do not need to be appointed by a separate By-law. They can be listed within a separate schedule to this By-law. Individuals enforcing a by-law under the Municipal Act MUST be appointed as Provincial Offences Officers to legally enforce the enacted by-law.

A municipality is required to issue a Certificate of Designation to every Officer (sample attached).

There is nothing in the legislation that prohibits a municipality from retaining a private firm to enforce the By-law provided the names of the relevant employees are contained in the appointment schedule in the By-law. However, the 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 municipality, is supervised by an employee of the municipality.

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

The power to inspect any land does not extend to entry into any building and does not extend to the power of entry to a person acting under the Officer's instructions. See section 137 (2) of the *Municipal Act*.

- (c) Any person who obstructs or interferes with an Officer in the discharge of his or her duties under this By-law, shall be considered in violation of this By-law.

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



**SCHEDULE A**

**CIRCUMFERENCE LIMITS BY CATEGORY OF TREE SPECIES**

Species and circumferences must be verified and adjusted for the local forest conditions within the municipality being considered.

As a starting point to help develop this list, consult with the local forest industry, forest consultants, landowners and land managers as to what they consider appropriate circumference limits. Look at circumference limits in by-laws used by surrounding municipalities. Make sure you list every tree species you want to protect.

Increased circumference limits will promote the use of good forest practices, but may present a concern to the forest industry and landowners because it may place additional restrictions on them.

Note that circumference limit cutting is not considered good forestry practice but has been the most effective way to enforce minimum cutting standards to date.

**The following table is an EXAMPLE for the Greater Toronto Area**

These circumference limits and species may be quite inappropriate for other areas of Ontario.

In this table for example, a Sugar Maple found in Category 1 with a circumference of 280 cm or less at the point of measurement 2.5 cm from the ground cannot be cut.

<b>Category 1: Large Circumference Tree Species</b>	<b>Category 2: Medium Circumference Tree Species</b>	<b>Category 3: Small Circumference Tree Species</b>
<u>Acer saccharum</u> (Sugar Maple) <u>Acer nigrum</u> (Black Maple) <u>Acer rubrum</u> (Red Maple) <u>Acer saccharinum</u> (Silver Maple) <u>Quercus spp</u> (Oak species) <u>Juglans nigra</u> (Black Walnut) <u>Juglans cinerea</u> (Butternut) <u>Carya spp</u> (Hickory species) <u>Prunus serotina</u> (Black Cherry) <u>Fraxinus americana</u> (White Ash) <u>Tilia americana</u> (Basswood) <u>Fagus grandifolia</u> (Beech) <u>Pinus strobus</u> (White Pine) <u>Tsuga canadensis</u> (E. Hemlock) <u>Ulmus spp</u> (Native Elm species) <u>Betula alleghaniensis</u> (Yellow Birch)	<u>Pinus resinosa</u> (Red Pine) <u>Larix spp</u> (Larch) <u>Picea spp</u> (Spruce) <u>Fraxinus nigra</u> (Black Ash) <u>Fraxinus pennsylvanica</u> (Red & Green Ash) <u>Salix spp</u> (Willow species)	<u>Pinus banksiana</u> (Jack Pine) <u>Pinus sylvestris</u> (Scot's Pine) <u>Abies balsamea</u> (Balsam Fir) <u>Thuja occidentalis</u> (White Cedar) <u>Betula papyrifera</u> (White Birch) <u>Populus spp</u> (Native Poplar species) <u>Ostrya virginiana</u> (Ironwood) <u>Picea mariana</u> (Black Spruce) <u>Carpinus caroliniana</u> (Blue Beech) <u>Prunus pensylvanica</u> (Pin Cherry) <u>Amelanchier spp.,</u> (Service Berry) Red Cedar

<b>Height above ground</b>	<b>Group 1 Species</b>	<b>Group 2 Species</b>	<b>Group 3 Species</b>
	280 cm	239 cm	183cm
2.54 cm	254 cm	208 cm	160cm
10 cm	230 cm	175 cm	127 cm
20 cm	208 cm	160 cm	112 cm
30 cm	198 cm	142 cm	96 cm
46 cm	175 cm	127 cm	79 cm
137 cm Breast Hght			

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

## **SCHEDULE B**

### **APPLICATION FOR COUNCIL EXEMPTION TO FOREST CONSERVATION BY-LAW**

#### Minimum Application Requirements

- ◆ Landowner and/or Agent Information
- ◆ Property Information
- ◆ Property and Forest Description including application area
- ◆ Purpose of Exemption Request
- ◆ Map of application area
- ◆ Details of the council request for exemption process

#### Optional Application Questions

- ◆ Restoration Plans
- ◆ Fees
- ◆ Other requirements e.g. Environmental Impact Study, or farm land quality assessment.

## **SCHEDULE D**

### **WRITTEN NOTICE OF APPLICATION MADE FOR EXEMPTION TO FOREST CONSERVATION BY-LAW**

The Clerk is to send a written notice to the applicant and all assessed owners of each parcel of land that abuts the applicant's woodlands for which an exemption is being sought and to such other persons as prescribed by Council.

Such written notice should include:

- ◆ the name and address of the owner who has made the application for an exemption;
- ◆ a description of the woodlands in respect of which the application has been made;
- ◆ a description of the nature and extent of the trees in the woodland;
- ◆ a description of the purpose, nature and extent of the exemption for which application has been made;
- ◆ a description of the process by which objections can be filed in regards to the exemption application; and
- ◆ the date, time and location of the {Insert title of Decision Making Body} meeting where objections to the application will be heard.

**SCHEDULE E**

# **PUBLIC NOTICE**

## **APPLICATION FOR COUNCIL EXEMPTION UNDER THE FOREST CONSERVATION BY-LAW**

This Public Notice should include:

- ◆ Description of application area
- ◆ Landowner Name
- ◆ Why the Public Notice is there
- ◆ Who to contact for further information
- ◆ Deadline for comments
- ◆ Reference to by-law

**SCHEDULE F**

**PERMIT TO DESTROY OR INJURE TREES**

This Permit should include:

- ◆ Applicants name
- ◆ Descriptions of application area
- ◆ Conditions
- ◆ Date of Expiry
- ◆ Notarized by municipal official
- ◆ Reference to by-law

## **SCHEDULE G**

### **NOTICE OF INTENT - GOOD FORESTRY PRACTICES TO BE USED**

The Notice Form should require:

(Make sure it is consistent with the by-law and consistent with the terms in the by-law.)

- ◆ Filing date
- ◆ Landowner information
- ◆ Forest Operations Prescription writer information and copy of prescription
- ◆ Tree marker information
- ◆ Cutting Contractor Information
- ◆ Property Description and locator map
- ◆ Sketch of area to be cut
- ◆ Signature of landowner and contractor cutting
- ◆ Reference to the by-law
- ◆ Estimated start date and completion date

Optional questions may include:

- ◆ Purchaser Information
- ◆ Tree harvest summary
- ◆ Notification by phone or fax 24 hours prior to cutting
- ◆ Basal area and basal area distribution by diameter
- ◆ Signature of prescription writer, tree marker.
- ◆ Estimated volume
- ◆ Colour of paint used on trees
- ◆ A statement noting that if cutting is taking place using circumference limits know that this method is generally not considered good forestry practices and may affect the health and economic return of the forest in the future.

## **SCHEDULE H**

### **APPLICATION FOR PERMIT - CIRCUMFERENCE LIMIT CUTTING**

#### Minimum Application Requirements:

(Make sure this is consistent with the by-law and consistent with the terms in the by-law.)

- ◆ Filing date
- ◆ Landowner and/or Agent Information
- ◆ Cutting Contractor Information
- ◆ Property Description and locator map
- ◆ Sketch of area to be cut
- ◆ Signature of landowner and contractor cutting
- ◆ Reference to the by-law
- ◆ Estimated start date and completion date

#### Optional Application Questions:

- ◆ Purchaser Information
- ◆ Tree harvest summary
- ◆ Residual Basal area
- ◆ Estimated volume
- ◆ Marker information
- ◆ Notification by phone or fax 24 hours prior to cutting
- ◆ Colour of paint used on trees
- ◆ A statement near the owners signature reminding the owner that circumference limit cutting is generally not considered good forestry practices and may affect the health and economic return of the forest in the future.

SCHEDULE I

# STOP WORK ORDER

**YOU ARE HEREBY DIRECTED AND ORDERED TO forthwith stop, halt, cease, and desist from any and all works associated with the destruction of trees or removal thereof from those lands comprising;**

**MUNICIPAL ADDRESS / LEGAL DESCRIPTION OF THE PROPERTY:**

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LOT: \_\_\_\_\_ CONCESSION: \_\_\_\_\_ MUNICIPALITY: \_\_\_\_\_

**OWNER / INDIVIDUAL RESPONSIBLE FOR DESTRUCTION OR INJURY OF TREES:**

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**DESCRIPTION OF INFRACTION:**

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**Date of Inspection:** \_\_\_\_\_

**Effective Order Date:** \_\_\_\_\_ **TO** \_\_\_\_\_

**Signature of Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Pursuant to By-law **{insert No.}** Section 8, subsection (e) Where the person to whom the Order is directed has been served in accordance with this By-law is not satisfied with the terms of the Order, the person may appeal to Council by filing Notice of Appeal by personal service or certified mail to the Clerk within 30 days after the date of the Order.

**{Insert Contact Information, Phone Number}**

OPTIONAL SCHEDULE

# NOTICE OF TIMBER HARVESTING

SHOULD INCLUDE:

- ◆ Reference to By-law
- ◆ Property Location Description
- ◆ Municipal Contact name and number

OPTIONAL:

- ◆ Contractor name, phone number
- ◆ Owner
- ◆ Name of marker and phone number
- ◆ Do not enter during operations for your safety

## **OPTIONAL SCHEDULE**

### **LOGGING DAMAGE ASSESSMENT**

Municipality may wish to consider establishing a methodology to assess damage and acceptable standards to include either within the by-law or to be utilized outside of the by-law.

Benefit of being in the by-law is that it gives it legal credibility during a prosecution. Such standards have been used in several areas within the province already. Disadvantage is that it will require some consensus. It could cause too much restriction for some areas of the province especially in areas where tree by-laws are new. Education of these practices could be supplemental to the by-law in such areas.

Refer to A Silvicultural Guide to Managing Southern Ontario Forests and Forest Research Information Paper No. 117 – Logging Damage: The Problems and Practical Solutions – J.A. Rice ISSN 0319-9118;117.

Discuss what is locally acceptable and practical with your local industry, forest consultants, land owners and land managers.

**OPTIONAL SCHEDULE**  
**SHORT FORMED FINE SCHEDULE**  
**FOR TICKETABLE OFFENCES**

The Ministry of the Attorney General document **SET FINE "HOW TO" MANUAL** can be obtained from:

Devyani Anandjit  
Ministry of the Attorney General  
Crown Law Office – Criminal  
720 Bay Steet, 10<sup>th</sup> Floor  
Toronto, ON M5G 2K1  
416-326-2491  
416-326-1746 (fax)  
[devyani.anandjit@jus.gov.on.ca](mailto:devyani.anandjit@jus.gov.on.ca)