

Forest Conservation By-law Template Using only Good Forestry Practices

January 14, 2013

Introduction:

This template has been developed for regulating treatment of Trees in forests, generally by upper tier municipalities (Counties or Regions). This template should be read in conjunction with the Tree By-law Information Package. The *Municipal Act* allows upper tier 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 for Treed areas less than 1 ha in size, or for larger Woodlands if the authority for the protection of Woodlands has been delegated from the upper tier.

Single tier municipalities may prohibit or regulate the Destruction or injuring of Trees both inside and outside of Woodlands. A separate template entitled "*Tree Conservation By-Law Template*" has been prepared for use by municipalities interested in prohibiting or regulating the Destruction or Injuring of Trees not in woodlands on private property under the Municipal Act.

In this template the regular text is suggested wording for a Tree / Forest Conservation 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 Harvesting 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 / Forest By-laws. Several 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 Harvesting is also not recommended by the Ontario Ministry of Natural Resources Silvicultural Guide to Managing Southern Ontario Forests. Regulation of Harvesting 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 municipalities may wish to include the Circumference limit option in their by-law as they develop capacity towards acceptance and/or implementation of Good Forestry Practices within their jurisdiction.

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 municipal legal counsel.

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.

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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 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, Destruction 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 the 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 Woodlands 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) “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 applicable Provincial Guidelines:

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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

And Bulletins # 1 and #10, from the Ontario Professional Foresters Association.

- (f) “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.

- (g) “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.
- (h) “Normal Farm Practice” means a practice that is recognized by the Normal Farm Practices Board which 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.

Normal Farm Practices are recognized by the Normal Farm Practices Board under the authority of the Farming and Food Production Protection Act (FFPPA). For more information please refer to

www.omafra.gov.on.ca/english/engineer/nfppb/nfppb.htm

In specific cases where the Normal Farm Practices Protection Board rules that a particular agricultural practice is a “Normal Farm Practice”, this practice is exempt from the Tree / Forest Conservation By-law for that property and practice.

The Normal Farm Practices Protection Board (NFPPB) is the adjudicative agency established by the *Farming and Food Protection Act, 1998* (FFPPA) to determine what is or is not a Normal Farm Practice. In arriving at a decision in each case, the Board takes several factors into consideration as it seeks to balance the needs of the agricultural community with provincial health, safety and environmental concerns. This is especially relevant in cases involving municipal by-laws. The Board is required to consider the purpose of the by-law, the effect of the farm practice on adjoining lands and neighbours, and whether the by-law reflects a provincial interest under any other piece of legislation or provincial policy statement. Consequently, there is no definitive list of Normal Farm Practice. **A practice may be ruled as a Normal Farm Practice at a particular location under a particular set of circumstances; the same practice could be ruled as not a Normal Farm Practice at a different location under a different set of circumstances.** A description of Normal Farm Practice can be found at the OMAFRA website at: <http://www.omafra.gov.on.ca/english/engineer/nfppb/guide.htm#1>.

In situations requiring clarity – where an exemption may be questioned by a municipality - the applicant or the municipality can request consideration by the Normal Farm Practices Protection Board (NFPPB), as the practice may be considered Normal Farm Practice in this specific instance.

Any of the parties in a hearing of the Normal Farm Practices Protection Board can appeal the board's decision regarding "Normal Farm Practice". The appeal must be made to Divisional Court within 30 days of the decision. The appeal must be based on a question of fact, law or jurisdiction.

Note also that an "agricultural operation" includes growing Trees, not only in the FFPPA but also in the *Nutrient Management Act, 2002*, (NMA) and its General Regulation (267/03). The NMA is referenced in subs. 2(1.1) of FFPPA, which states that "a practice that is inconsistent with a regulation made under the [NMA] is not a Normal Farm Practice." In the NMA reg 267/03 "agricultural crops" includes Trees and there are various NMA requirements e.g.: for vegetated buffer zones (including Trees), or vegetated filter strip systems, as well as re anaerobic digesters.

- (i) "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.
- (j) "Order" means a Work Order or an Order to Discontinue an Activity.
- (k) "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.
- (l) "Own Use" means any use by the Owner that does not include a sale, exchange or other disposition of Trees Harvested.
- (m) "Permit" means a permit issued pursuant to this By-law by the (insert County or Municipality).
- (n) "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, certified 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 suspension, terms and conditions and/or limitations of a member's certification are publicly available and can be obtained from the Ontario Professional Foresters Association. A Temporary Member is an RPF from another provincial jurisdiction who has been temporarily certified by OPFA. All Associate and Temporary Members have terms, conditions and/or limitation applied to their certification.

- (o) "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.
- (p) "Silvicultural Prescription" means the site specific operational plan, signed and sealed by 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;
- (q) "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 m from the ground;

- (r) "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 Woodlands definitions may exclude:

- Fencerows/hedgerows;
- 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.

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."

DEFINING WOODLAND AREAS LESS THAN 1 HECTARE

Some municipalities are developing a separate definition for areas smaller than the Municipal Act definition of "Woodlands" which would include "treed" areas less than 1.0 hectare.

eg: "*Woodlots*" for the purpose of this By-law, means land at least 0.2 hectares in area and no greater than 1 hectare in area, with at least:

- (i) 200 trees, of any size, per 0.2 hectare; or
- (ii) 150 trees, measuring over five (5) centimetres in diameter at DBH, per 0.2 hectare; or
- (iii) 100 trees, measuring over twelve (12) centimetres, in diameter at DBH, per 0.2 hectare; or,
- (iv) 50 trees, measuring over twenty (20) centimetres, in diameter at DBH, per 0.2 hectare;

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

It should be noted that if such is adopted the "whereas" preambles and all appropriate sections which refer to "Woodlands" may need to be edited appropriately to recognize this definition.

WOODLANDS / MUNICIPAL AUTHORITY

According to the Municipal Act, the power to pass a by-law respecting the destruction or injuring of trees within or outside Woodlands may be delegated between upper and lower tier municipalities with mutual agreement.

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And where a lower tier would want an upper tier to enforce a by-law that would include “treed” areas less than 1.0 hectare, such can also be delegated through a by-law authorizing such.

In instances where an upper tier municipality would want to delegate the authority to a lower tier, such maybe undertaken by a by-law authorizing such.

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) and such is defined and applicable sections reflect inclusion of these defined smaller areas.

Jurisdictions in eastern and northern Ontario may prefer to regulate only larger Woodlands. For instance Haliburton regulates Woodlands 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 do not 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;

- activities or matters undertaken or authorized by a municipality or a local board of a municipality; or
- 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.

- 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
- 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
- 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

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In reference to sections 3 d & e above, consider your own internal policies to ensure issues such as retention (Tree Preservation or Conservation) or compensation is addressed during pre-consultation of planning applications.

- (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 municipality.

- (i) the Injuring or Destruction of Trees undertaken as Normal Farm Practices, as ruled by the Normal Farm Practices Protection Board for the subject land.
- (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 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. Using a septic bed as an example, 15 meters is suggested. A range between 15 – 25m has been used in other by-laws – in development of such it is advisable to consult with your local building department.

- (k) 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
- (l) 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
- (m) the Injuring or Destruction of Trees that is reasonably required in order to install a single non-perforated pipe through Woodlands but without clearing of the Woodlands, to serve as an outlet for a private agricultural tile drainage system on existing crop or pasture land; or
- (n) the Injury or Destruction of Trees for the construction, improvement, maintenance or repair 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.

- (o) 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

Additional limitations such as the following could be considered:

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

This exemption is used by some municipalities, but applicability should be considered.

- (p) 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 contracts negotiated under the terms of the previous Tree / Forest Conservation By-law.

Items which have also previously been granted exemptions within some jurisdictions:

• **Harvesting diseased or infected trees**

Be cautious about providing an exemption for Harvesting diseased or infected Trees, or trees in poor health. 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 diseased or infected trees through the personal use exemption.

• **Certified Tree Markers**

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 Woodlands were marked by a 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 Silvicultural Prescription, a prescription may not have been prepared. Certified Tree Markers are not necessarily trained in the preparation of Silvicultural Prescriptions.

• **Lands enrolled in the Managed Forest Tax Incentive Program**

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 Harvesting.

4. GENERAL PROHIBITION

Offences can be created in any section of the by-law but if you intend to write fines under this by-law it may be 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 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 Harvesting 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 Significant Wetlands, or other 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 provincially significant wetland (or other wetland), lake, river, or stream; or
- Provincial or Regional Life Science Areas of Natural and Scientific Interest identified by the Ministry of Natural Resources.

Trees Protected Under the provincial Endangered Species Act

Since there have been regulations and an administrative process already set out for certain endangered tree species, municipalities/cities/towns/townships may wish to consider incorporating this into their Permit review and approval process.

In the application of Good Forestry Practices, the Qualified OPFA Member should be aware of Trees protected under the Endangered Species Act – it maybe advisable that the Permit application be screened for such species e.g.: Butternut, Eastern Flowering Dogwood, American Chestnut, Kentucky Coffee Tree, Common Hoptree, Red Mulberry, Cherry Birch or Cucumber-tree should they be included in the inventory tally of potential effects. There may be merit in producing as a resource to landowners, OPFA members and the forest industry in general, a locally developed extension note that lists these species and encourages documentation of their locations and health.

For example: 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.

However, note that all Butternut trees retainable & non-retainable as well as other provincially protected species must be reported to the OMNR before they are harmed.

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 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 sealed by a Qualified OPFA Member;
- OPTIONAL >>>** (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 sealed by 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).
- 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.
- Operator certifies that WSIB and liability coverage are in place and Ministry of Labour obligations will be met.
- No unauthorized third 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 31st, which simplifies enforcement.

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.

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.

Another approach is to develop a separate municipal policy, as York Region has done, that is referred to when making decisions on exemption applications.

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.

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; and
 - 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

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.

- (c) the applicant objects to a term or condition of the Permit.
- (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 7.1(a) or 7.1(c) or 7.1(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 7.1(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.

7.5 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.

7.6 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
 - iii) refuse to issue a Permit.

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

7.7 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; and
 - (e) contact information of the Officer.

10. SERVICE OF AN ORDER

This section is not necessary as it describes the legal process to serve an order, however some municipalities may wish to include it for the benefit of the users of the by-law.

- 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 10.1, 10.2 or 10.3 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 Tree By-Law Information Package 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) of the Municipal Act 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 have 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 Tree / 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 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 X “Remedial Action” 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 X 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.

It is recommended that there be no Schedules be included in this by-law. The application forms, permits or orders should not be schedules to the by-law. Having them separate enables changes and updates to be made without undergoing by-law revisions and Council approval. If schedules are included, they must be referred to in this section. (e.g. “Schedules ‘x’, ‘y’, and ‘z’ shall form part of this by-law.”).

READ A FIRST, SECOND AND THIRD TIME

AND PASSED this day of , 20XX .

Mayor

Clerk