

BY-LAW NUMBER 31-2012

OF

THE REGIONAL MUNICIPALITY OF DURHAM

being a by-law to prohibit or regulate the destruction or injuring of Trees in Woodlands in the Regional Municipality of Durham.

WHEREAS the Council of the Regional Municipality of Durham deems it desirable to enact a Regional Tree By-law for the purposes of:

- conserving and improving the Woodlands in the Region through Good Forestry Practices;
- promoting Good Forestry Practices that sustain healthy Woodlands and related natural habitats and environments;
- helping to achieve the objectives of the Regional Official Plan in ensuring the long term health and productivity of Woodlands;
- minimizing the destruction or injuring of Trees in Woodlands;
- regulating and controlling the removal and protection of Trees in Woodlands;
- minimizing and guarding against conditions which may result in injury;
- protecting, promoting and enhancing the aesthetic values of Woodlands; and
- contributing to ecosystem health, human health, recreation, enjoyment and quality of life through the maintenance of woodland cover.

NOW, THEREFORE, the Council of the Regional Municipality of Durham hereby enacts as follows:

1. DEFINITIONS

1.1 In this By-law:

- a) "Agricultural Operation" means the commercial production of crops or raising of livestock, and includes cultivation, seeding, and harvesting;
- b) "Area Municipality" means any one of the municipalities of the Town of Ajax, Township of Brock, Municipality of Clarington, City of Oshawa, City of Pickering, Township of Scugog, Township of Uxbridge and Town of Whitby;
- c) "Building Permit" means a building permit issued by an Area Municipality under the Building Code Act, 1992, S.O. 1992, c.23, as amended;
- d) "Business Day" means any day falling on or between Monday and Friday of each week but does not include statutory holidays;
- e) "Certified Tree Marker" means a person currently certified to mark Trees through the Ministry of Natural Resources Certified Tree Marker Program;
- f) "Commissioner" means Commissioner of Planning and Economic Development of the Regional Municipality of Durham or his designate;
- g) "DBH" or "Diameter at Breast Height" means the diameter of the stem of a Tree measured at a point that is 1.37 metres above the ground;

- h) "Farmer" means a person who has a current and valid farm registration number under the Farm Registration and Farm Organizations Funding Act, 1993, S.O. 1993, c.21, as amended;
- i) "Fence Row" means a narrow linear strip of Trees that defines a laneway or boundary between fields or properties;
- j) "Forest Management Prescription" means the site specific operational plan prepared by, or under the direction of a Qualified OPFA Member, 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 treatments that will be carried out to establish a free-growing stand in a manner that accommodates other resource values as identified;
- k) "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 aesthetic and recreational opportunities of the landscape;
- l) "Injury" means lasting damage to a Tree which may include, but is not limited to:
 - i) broken branches in the crown of a Tree;
 - ii) the breaking off or splitting of the stem of any Tree and the noticeable tipping of any Tree;
 - iii) the splitting of, removal of, or damage to the bark of a Tree; or
 - iv) damage to the root structure of a Tree;
- m) "Multiple Offence" means an offence in respect to two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this By-law;
- n) "Officer" means an individual appointed by Regional Council for the administration and enforcement of this By-law;
- o) "Owner" means the Person who is the registered owner on title to the land;
- p) "Permit" means the written authorization from the Officer or the Commissioner to injure or destroy Trees issued under Section 5 or 6 of this By-law;
- q) "Person" means an individual or a corporation and their respective heirs, executors, administrators or other duly appointed representatives;
- r) "Region" means the Regional Municipality of Durham;
- s) "Qualified OPFA Member" means a Registered Professional Forester or Associate Member of the Ontario Professional Foresters Association under the Professional Foresters Act 2000, c. 18, as amended, to practice professional forestry, unless a suspension, term, condition or limitation of certification applies which would restrict the Member from carrying out responsibilities under this By-law;

- t) "Sensitive Natural Area" means lands that are in a Woodland and within:
- i) provincially or regionally identified Significant Wetlands; or
 - ii) lands that are designated Environmentally Sensitive Area in either the Durham Regional Official Plan or area municipal Official Plans; or
 - iii) 30 metres of the water's edge of a locally, regionally, or provincially significant wetland, lake, river, stream or intermittent stream; or
 - iv) Provincial or Regional Life Science Areas or Natural and Scientific Interest identified by the *Ministry of Natural Resources Act, 1982*, as amended; or
 - v) key natural heritage features identified by the Durham Regional Official Plan and/or the Oak Ridges Moraine Conservation Plan.
- u) "Tree" or "Trees" means any living 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;
- v) "Woodland" or "Woodlands" means land on one or more properties with a density of:
- i) at least:
 - 1) 1,000 Trees, of any size, per hectare;
 - 2) 750 Trees, measuring over five (5) centimetres at DBH, per hectare;
 - 3) 500 Trees, measuring over twelve (12) centimetres, at BH, per hectare; or
 - 4) 250 Trees, measuring over twenty (20) centimetres, at DBH, per hectare.
 - ii) but does not include:
 - 1) a cultivated fruit or nut orchard;
 - 2) a plantation established for the purpose of producing Christmas Trees and which is being actively managed and harvested for the purposes for which it was planted, except that this does not refer to plantations that have ceased being managed or harvested for their intended purpose for a period of 15 years or more;
 - 3) a bona fide tree nursery that is being actively managed and harvested for the purposes for which it was planted;
 - 4) a fence row; or
 - 5) land previously cleared and used for agricultural purposes, which has become overgrown with young (less than 15 years old) and early successional tree species common on disturbed fields (e.g. Sumac, Hawthorn, Apple, Scots Pine, Poplar, White Birch, Ash) and which is intended to be used again as part of an Agricultural Operation.

2. APPLICATION OF THE BY-LAW

- 2.1 This By-law shall apply to all Woodlands one (1) hectare or more in size.
- 2.2 Applicants are encouraged to consult with the Officer prior to the submission of any Permit application.

3. GENERAL PROHIBITIONS

- 3.1 No Person through their own actions or through any other Person shall injure or destroy any Tree located in a Woodland:

- a) Unless exempted by Section 4; or
- b) Unless in possession of a valid Good Forest Practice Permit issued under Section 5 of this By-law or a Clear Cutting Permit issued under Section 6 of this By-law, and pursuant to any applicable terms or conditions.

3.2 No Person through their own actions or through any other Person shall:

- a) Contravene the terms or conditions of a Permit issued under this By-law or cause or permit the contravention of the terms or conditions of a Permit issued under this By-law;
- b) Fail to comply with an Order issued under Section 7 of this By-law; or
- c) Remove or deface any Order that has been posted pursuant to Section 7 of this By-law.

4. **EXEMPTIONS**

4.1 Despite Section 3 of this By-law, this By-law does not apply to:

- a) activities or matters undertaken by a municipality or a local board of a municipality;
- b) activities undertaken by Conservation Authorities on lands owned by the Authorities; or
- c) activities or matters undertaken under a licence issued under the Crown Forest Sustainability Act, 1994, S.O. 1994, c.25, as amended.

4.2 The Injury or destruction of Trees by a person licensed under the *Surveyors Act*, R.S.O. 1990, c. s.29, as amended, to engage in the practice of cadastral surveying or his or her agent, while making a survey.

4.3 The Injury or destruction of Trees imposed after December 31, 2002:

- a) as part of a Tree Preservation Plan required as a condition of approval in a plan of subdivision that has received draft approval under Section 51 of the *Planning Act*;
- b) as part of a Tree Preservation Plan required as a condition on a consent approved under Section 53 of the *Planning Act*;
- c) as a requirement in a Tree Preservation Plan approved and included in a site plan control agreement or a subdivision agreement entered into under Sections 41 and 51 respectively of the *Planning Act*;
- d) in a development agreement between an Owner and an Area Municipality or the Region; or
- e) 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.

- 4.4 The Injury or destruction of Trees by a transmitter or distributor, as those terms are defined in Section 2 of the *Electricity Act, 1998* S.O. 1998, c.15, Sched. A, as amended, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section.
- 4.5 The Injury 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*; R.S.O 1990, c. A.8, as amended.
- 4.6 The Injury or destruction of Trees that is required in order to erect any building, structure or thing, including yard areas, in respect of which a Building Permit has been issued, provided that no Tree is removed that is located more than 15 metres from the outer edge of the building, structure or things and that only those Trees necessary to accommodate the building, structure or thing, including yard areas, are removed.
- 4.7 The Injury 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, including the installation of a primary septic bed, in respect of which a Building Permit has been issued.
- 4.8 The Injury or destruction of Trees that is required in order to install, provide or maintain a single lane driveway for vehicular access to the building, structure or thing in respect of which a Building Permit has been issued.
- 4.9 The Injury or destruction of Trees on lands, including buffer lands, used for the purpose of a licensed waste disposal site that has been approved, where applicable, under the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended; the *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40, as amended; the *Environmental Assessment Act*, R.S.O. 1990, c. E.18, as amended; and the *Planning Act* and/or the Oak Ridges Moraine Conservation Plan.
- 4.10 The Injury or destruction of Trees for the construction of drainage works under the *Drainage Act*, R.S.O. 1990, c. D.17, as amended.
- 4.11 The Injury or destruction of Trees that:
- a) are dead; or are significantly diseased; or
 - b) pose a hazard to human safety or property.
- 4.12 Normal Farm Practices carried on as part of an Agricultural Operation which retains existing woodland cover, but includes activities such as:
- a) the removal of Trees for personal use;
 - b) the removal of Trees for farm-related uses such as fence posts and rails; and
 - c) the removal of fence rows where required.
- 4.13 Normal Farm Practices does not include Clear Cutting as defined in Section 6 of this By-law.

5. GOOD FORESTRY PRACTICE PERMITS

- 5.1 Every Person who intends to injure or destroy a Tree or Trees, in a manner that does not constitute Clear Cutting as defined in Section 6 of this By-law, shall first complete and submit to the Region, an application for a Good Forestry Practice Permit. The

Officer may, at his or her discretion, waive the requirement for a Good Forestry Practice Permit where the Tree removal being proposed involves a very small number of Trees and the impact of the removal is deemed to be negligible or imperceptible to the integrity of the overall Woodland.

5.2 Each Good Forestry Practice Permit application must be accompanied by the following:

- a) a copy of the completed application form signed by the Owner;
- b) the required fee;
- c) such additional information as the Officer may require;
- d) for applications which propose to injure, destroy or remove more than 50 Trees, a Forest Management Prescription, prepared by a qualified Registered Professional Forester or an associate member in good standing of the Ontario Professional Foresters Association, shall accompany the application. The Forest Management Prescription shall include a detailed map of the Woodland and the area of proposed tree removal. Tree marking must be completed by a "Certified Tree Marker".
- e) for applications which propose to injure, destroy or remove less than 50 Trees, a plan showing the location of the trees to be affected shall be submitted, together with a description of how Good Forestry Practices are to be followed should the application be approved; and
- f) if the area to which the application applies contains a Sensitive Natural Area, a Forest Management Prescription shall be prepared and submitted with the application, regardless of the number of Trees to be injured, destroyed or removed. The Forest Management Prescription shall identify the environmental protection measures necessary to protect that Sensitive Natural Area feature.

5.3 Upon review and consideration of the application, an Officer may issue a Good Forestry Practice Permit to permit the injuring, destruction or removal of Trees in a Woodland.

5.4 The Officer may impose conditions on the Permit that relate to, but are not restricted to:

- a) the location, number, size and type of Trees that are to be injured, destroyed or removed;
- b) the manner and timeframe within which the affected Trees are to be injured, destroyed or removed;
- c) the marking, with paint or other material, of the Trees that are to be injured, destroyed or removed;
- d) the qualifications of the Persons authorized to injure, destroy or remove the Trees;
- e) the measures to be implemented to mitigate the direct and indirect effects of the injuring, destruction or removal of Trees within Sensitive Natural Areas; and
- f) such additional information as may be required before the Permit becomes effective.

- 5.5 Prior to the injury, destruction or removal of any Trees pursuant to the Permit, a copy of the Permit shall be posted and displayed in a prominent location along an open public road at the nearest practical location to the affected site area. The posted Permit shall remain on display until the work for which the Permit was issued, has been completed.
- 5.6 A Good Forestry Practice Permit shall generally be in effect for a period of two years, and is not transferable. If the activity for which the Permit was issued has not taken place within that two year period, the Permit shall lapse and be of no effect.
- 5.7 Prior to the expiry of the Permit, the Owner may request in writing, that the Permit be renewed for a period of up to one year from the expiry date of the original Permit. Such requests shall not be unreasonably denied. Permits may be renewed one time only.
- 5.8 Where a Good Forestry Practice Permit application has been denied, the Officer will notify the applicant in writing by registered mail within 10 business days of the decision, and shall provide reasons for the denial.

6. CLEAR CUTTING PERMITS

- 6.1 For the purposes of this Section, "Clear Cutting" means the removal of all Trees within all or a portion of a Woodland, where the area of the Woodland to be cut is in excess of 0.1 hectare.
- 6.2 Every Person who intends to Clear Cut a portion of a Woodland greater than 0.1 hectare in size shall first complete and submit to the Region, an application for a Clear Cutting Permit. Such an application will be circulated to the area municipality and consulting agencies for comment. Every Person who intends to clear cut a portion of a Woodland 0.1 hectare or less, shall first complete and submit a Good Forest Practice Permit application pursuant to Section 5 of this By-law.
- 6.3 Each Clear Cutting Permit application must be accompanied by the following:
- a) a copy of the completed application form signed by the Owner;
 - b) the required fee;
 - c) a plan or drawing having sufficient detail to clearly show the extent and location of the Trees to be Clear Cut;
 - d) such additional information as the Commissioner may require; and
 - e) if the portion of the Woodland to which the application applies contains a Sensitive Natural Area, the application shall be accompanied by a report prepared by a qualified natural heritage expert which shall identify the environmental protection measures necessary to protect that Sensitive Natural Area feature.
- 6.4 For applications that seek to Clear Cut between 0.1 hectare and 1 hectare of Woodland, the Commissioner, upon review and consideration of the application, may issue a Clear Cutting Permit. In making a decision on whether or not to issue the Permit, the Commissioner will give consideration to the effect of the Clear Cutting on the integrity of the Woodlot as a whole.

- 6.5 The Commissioner may impose conditions on the Permit that relate to, but are not restricted to:
- a) the location and number of Trees to be clear cut;
 - b) the manner and timeframe within which the Trees are to be cut;
 - c) the marking with paint or other material, the location of the Trees to be cut;
 - d) the qualifications of the Persons authorized to clear cut the Trees;
 - e) the measures to be implemented to mitigate the direct and indirect effects of the Clear Cutting on a Sensitive Natural Area;
 - f) the re-planting of Trees;
 - g) a requirement that land cleared for farm purposes must be put into agricultural use within a specified time period (e.g. 3 years); and
 - h) any such additional information as may be required before the Permit becomes effective.
- 6.6 Prior to the Clear Cutting taking place, a copy of the Permit shall be posted and displayed in a prominent location along an open public road at the nearest practical location to the affected site area. The posted Permit is to remain on display until the work for which the Permit was issued has been completed.
- 6.7 A Clear Cutting Permit may be issued for an effective period of up to one year, and is not transferable. If the Clear Cutting for which the Permit was issued has not taken place within that one year period, the Permit shall lapse and be of no effect.
- 6.8 Prior to the expiry of the Permit, the Owner may request in writing, that the Permit be renewed for a period of up to one year from the date of the original Permit. Such requests shall not be unreasonably denied. Permits may be renewed one time only.
- 6.9 Where a Clear Cutting Permit application has been denied, the Commissioner will notify the applicant in writing by registered mail within 10 business days of the decision, and shall provide reasons for the denial.
- 6.10 For applications that seek to Clear Cut an area of Woodland that is greater than 1 hectare in size, a public meeting before the Regional Planning Committee shall be required, and Regional Council approval shall be required before the Commissioner will be authorized to issue the Clear Cutting Permit.
- 6.11 For the purposes of determining the area of Woodlot to be Clear Cut in subsection 6.10 above, consideration shall be given to the cumulative amount of Woodland Clear Cut from the date that this By-law has come into effect. At the discretion of the Commissioner, a public meeting may be required for an application less than 1 hectare in area, if the cumulative amount of treed area to be Clear Cut from that Woodland since the coming into effect of this By-law, exceeds 1 hectare.
- 6.12 Within 10 days of receipt of an application for a Clear Cutting Permit for a Woodland greater than 1 hectare in size, the Commissioner or his designate shall send by regular mail or by personal delivery, written notice of the public meeting to the

applicant, to all assessed Owners of each parcel of land that abuts the subject property from which Trees are proposed to be Clear Cut, and to any other such Person or agency as the Commissioner deems appropriate.

- 6.13 At least 20 days prior to the public meeting, the applicant shall erect a public notice sign in the form approved by the Commissioner, in a prominent location along an open public road at the nearest practical location to the affected site area.
- 6.14 Upon review and consideration of the application, and at least 20 days prior to the Public Meeting, the Commissioner shall prepare a report to Regional Planning Committee, which report shall recommend whether or not the application should be approved, and the reasons for the recommendation.
- 6.15 At the public meeting, the applicant and any interested Person shall be afforded an opportunity to address the Planning Committee. The Committee's recommendation shall be forwarded to Regional Council for consideration, and Council may authorize the Commissioner to issue the Clear Cutting Permit and impose conditions as deemed appropriate, or it may direct the Commissioner to deny the application. Any Clear Cutting Permits issued under this Subsection, shall also be subject to the provisions of subsections 6.6, 6.7, and 6.8.
- 6.15 Where Council directs the Commissioner not to issue a Clear Cutting Permit, the applicant will be notified in writing by registered mail within 10 business days of the Council meeting, and such notice shall provide reasons for the denial.

7. ENFORCEMENT

- 7.1 An Officer, appointed by by-law of Regional Council, or any person authorized by an Officer, may at all reasonable times enter upon and inspect any land and Woodland for the purposes of enforcing this By-law, determining compliance with this By-law, determining compliance with terms and conditions of a Permit issued under this By-law, or laying charges under this By-law.
- 7.2 Where an Officer has determined that a contravention of this By-law has occurred, the Officer may make an Order requiring the Person who contravened this By-law or who caused or permitted the injuring or destruction of Trees in contravention of this By-law, to stop the injuring or the destruction of Trees. The Order shall set out:
- a) the municipal address or the legal description of the land;
 - b) reasonable particulars of the contravention; and
 - c) the period within which there must be compliance with the Order.
- 7.3 Where an Officer has determined that a contravention of this By-law has occurred, the Officer may make an Order requiring the Person who contravened this By-law or who caused or permitted the injuring or destruction of Trees in contravention of this By-law, to rehabilitate the land or Woodland or to plant or replant trees. The Order shall set out:
- a) the municipal address or the legal description of the land;
 - b) reasonable particulars of the contravention;
 - c) the work to be done and the period within which there must be compliance with the Order; and

d) should the work not be done in compliance with the Order, the Region may have the work done at the expense of the owner.

7.4 No person shall hinder or obstruct or attempt to hinder or obstruct any person who is exercising a power or performing a duty under this By-law.

8. PENALTY

8.1 Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine of not less than \$500 and not more than \$100,000.

8.2 Despite subsection 8.1, the Region designates that the destruction of each Tree is one offence in a series of Multiple Offences. In the case of Multiple Offence, a Person found guilty of contraventions of this By-law constituting a Multiple Offence is liable upon conviction, for each offence included in the Multiple Offence, for minimum fine of \$500 and a maximum fine not exceeding \$10,000; however, despite Section 8.1, the total of all fines for each included offence is not limited to \$100,000.

8.3 If a Person is convicted of an offence for contravening 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.

9. ADMINISTRATION

9.1 Schedule "A" shall form part of this By-law.

9.2 If any section or part of this By-law is found by any court of competent jurisdiction to be illegal or beyond the power of Regional Council to enact, such section or part shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be enacted as such.

9.3 The short title of this By-law is the "Regional Tree By-law".

9.4 An Owner of a property shall be presumed to have injured or destroyed or caused or permitted to be injured or destroyed a Tree growing in a Woodland, or contravened or cause or permitted the contravention of the terms or conditions of a Permit issued under this By-law, as the case may be, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

9.5 By-law 27-2008 of the Regional Municipality of Durham and any amendments thereto, are hereby repealed.

9.6 Despite subsection 9.5, By-law 27-2008 shall continue to apply to:

- a) proceedings in respect of offences that occurred before its repeal; and
- b) Permits in compliance with By-law 27-2008, which were made prior to its repeal.

9.7 This By-law shall come into force and effect on September 1, 2012.

This By-law read and passed this 27th day June of 2012.

R. Anderson, Regional Chair and CEO

P.M. Madill, Regional Clerk

SCHEDULE A**FEES**

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| 1. Application for a Good Forestry Practices Permit | \$50.00 |
| 2. Application for a Clear Cutting Permit
(Between 0.1 Ha and 1 Ha) | \$ 75.00 |
| 3. Application for Clear Cutting Permit
(Greater than 1Ha) | <u>\$100.00 Excluding Advertising
Costs of a Public Meeting</u> |