

## THE CORPORATION OF HALDIMAND COUNTY

By-law Number 2204/20

### **Being a by-law to prohibit or regulate the injury or destruction of trees in woodlands (Forest Conservation By-law)**

**WHEREAS** Section 10 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended ('the Act') authorizes Haldimand County to pass by-laws necessary or desirable for municipal purposes;

**WHEREAS** Section 135 of the Act authorizes Haldimand County to prohibit or regulate the destruction or injuring of trees;

**AND WHEREAS** the Council of the Corporation of Haldimand County has determined that it is desirable to enact a by-law to prohibit or regulate the destruction or injuring of trees for the purposes of:

- achieving the objectives of the Haldimand County Official Plan to preserve and improve woodlands through the application of good forestry practices;
- the production of wood, wood products and sustaining the local forest economy;
- minimizing the Injury or destruction of trees in woodlands; and
- contributing to ecosystem health, human health, recreation, enjoyment and improving quality of life through the conservation of woodlands.

**NOW THEREFORE, the Council of The Corporation of Haldimand County enacts as follows:**

### **1 DEFINITIONS**

In this by-law:

- 1.1 "Agricultural Operation" means the commercial production of crops or raising of livestock including ploughing, seeding and harvesting as part of a conventional rotational cycle;
- 1.2 "Building Permit" means a building permit issued under the *Building Code Act, 1992*, S.O. 1992, c.23 as amended;
- 1.3 "Business Day" means any day falling on or between Monday and Friday of each week but does not include a Statutory Holiday;
- 1.4 "Calendar Year" means January 1 through December 31 of any given year;
- 1.5 "Certified Arborist" means an individual who is currently certified by the International Society of Arboriculture or the Ontario Ministry of Colleges and Universities, unless a suspension, term, condition or limitation of certification applies which would restrict the individual from carrying out responsibilities under this by-law;

- 1.6 “Certified Tree Marker” means an individual who is currently certified through the Ontario Ministry of Natural Resources and Forestry Certified Tree Marker Program unless a suspension, term, condition or limitation of certification applies which would restrict the individual from carrying out responsibilities under this by-law;
- 1.7 “Clerk” means the Clerk of The Corporation of Haldimand or their designate;
- 1.8 “Council” means the Council of The Corporation of Haldimand County;
- 1.9 “County” means The Corporation of Haldimand County;
- 1.10 “Cultivated Fruit or Nut Orchard” means the intentional planting of Trees that are maintained for food production as part of an Agricultural Operation, this does not refer to orchards that have ceased being managed or harvested for their intended purpose for a period of fifteen (15) years or more;
- 1.11 “Destruction”, “Destroy” or “Damage” means the irreversible injury or the death of a Tree;
- 1.12 “Diameter at Breast Height” (DBH) means the diameter of the stem of a Tree measured outside the bark at a point of measurement that is 1.37 metres above the ground;
- 1.13 “Drip Line” means an imaginary line defined by the outermost branches of a Tree canopy;
- 1.14 “General Manager” means the General Manager of Public Works Operations of The Corporation of Haldimand County or their designate;
- 1.15 “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 detriment to forest values including significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity, health, esthetics and recreational opportunities of the landscape;
- 1.16 “Injury” or “Injuring” means any action that causes physical, biological or chemical damage to a Tree which has the effect of inhibiting or terminating growth, but does not include:
- i. pruning Tree branches in accordance with the arboricultural industry *ANSI A300 (Part 1) – 2017 Pruning*, as amended; or
  - ii. the act of tapping a Tree for syrup production following recommended tapping guidelines as outlined by industry best practices.
- 1.17 “Normal Farm Practice” means a practice that is recognized by the Normal Farm Practices Board which is conducted in a matter 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;

- 1.18 "Officer" means a Municipal Law Enforcement Officer appointed by the County;
- 1.19 "Owner" includes the Person or Persons shown as the registered Property owners on the Land Registry Office or the Municipal tax roll as having title to the land or responsibility for it, as well as any tenant or Person or Persons lawfully in possession of or exercising control over a Property;
- 1.20 "Permit" means written authorization for the Injury or Destruction of Trees issued pursuant to this by-law by the County;
- 1.21 "Person" includes an Owner, individual or corporation, their respective heirs, executors, administrators or other duly appointed representatives;
- 1.22 "Plantation" means the intentional planting of Trees that are maintained or established for the purpose of producing Christmas trees as part of an Agricultural Operation, this does not refer to Plantations that have ceased being managed or harvested for their intended purpose for a period of fifteen (15) years or more;
- 1.23 "Property" means a parcel of land having specific boundaries, which is capable of legal transfer;
- 1.24 "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, 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;
- 1.25 "Silvicultural Prescription" means the site specific operational plan, signed and sealed by 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 silvicultural treatments that will be carried out to establish a free-growing stand in a manner that accommodates other resource values as identified;
- 1.26 "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 metres at physiological maturity, 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 measure 1.37 metres from the ground;
- 1.27 "Statutory Holiday" means a public holiday recognized by Haldimand County including New Year's Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving, Remembrance Day, Christmas Day and Boxing Day;
- 1.28 "Woodlands" means land one (1) hectare or more in area with at least:

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

## **2 ADMINISTRATION**

- 2.1 The short title of this by-law is the "Forest Conservation By-law".
- 2.2 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.

## **3 APPLICATION OF THE BY-LAW**

- 3.1 This by-law applies to all Woodlands;
- 3.2 For the purpose of this by-law, the boundary of a Woodlands shall be defined by the ecological limit of the Woodlands and not by Property boundaries. The Woodlands boundary shall include the area up to the Drip Line and the boundary of the Woodland shall be deemed to cross any corridors, natural features, roads, trails, or paths up to and including twenty (20) meters in width.
- 3.3 Applicants are encouraged to consult with an Officer prior to the Injury or Destruction of any Trees in Woodlands and the submission of any Permit applications.

## **4 GENERAL REGULATION**

- 4.1 No Person shall cause, permit, allow or perform Injury or Destruction to any Tree located in a Woodlands, unless:
  - a) exempted under the provisions of this by-law; or
  - b) they are in possession of a valid Permit issued pursuant to the provisions of this by-law and in accordance with its terms or conditions.
- 4.2 No persons shall contravene any term or condition of a Permit issued under this by-law.
- 4.3 No person shall remove or deface any order that has been posted pursuant to this by-law.
- 4.4 No Person shall fail to comply with an order issued under this by-law.

## 5 EXEMPTIONS

This by-law shall not apply to:

- 5.1 activities or matters undertaken by a municipality or a local board of a municipality;
- 5.2 activities or matters undertaken under a license issued under the *Crown Forest Sustainability Act, 1994*;
- 5.3 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;
- 5.4 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;
- 5.5 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;
- 5.6 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 are defined in that section;
- 5.7 the Injuring or Destruction of Trees undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*; or
- 5.8 the Injuring or Destruction of Trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
  - a) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
  - b) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act, 2001*, c. 25, s. 135 (12); *2002*, c. 17, Sched. A, s. 27 (3, 4).
- 5.9 The Injuring or Destruction of Trees for the construction of drainage works under the *Drainage Act*, R. S. O. 1990, c. D.17, as amended;
- 5.10 the Injuring or Destruction of Trees required in order to erect a building, structure, or septic bed in respect of which a Building Permit has been issued, provided that the total area within which Trees are Injured or Destroyed is within fifteen (15)

metres of the outer edge of the building, structure or septic bed or proposed building, structure or septic bed;

- 5.11 the Injuring or Destruction of Trees that is reasonably required in order to install and provide the minimum required industry standard clearances for utilities to the construction or use of a building or structure in respect of which a Building Permit has been issued;
- 5.12 the Injuring or Destruction of Trees that is reasonably required in order to install and provide a single lane driveway, not greater than five (5) metres in width, and being the shortest possible distance for vehicular access to a building or structure in respect of which a Building Permit has been issued;
- 5.13 the Injuring or Destruction of Trees undertaken as Normal Farm Practices as part of an Agricultural Operation;
- 5.14 the Injuring or Destruction of Trees regulated as noxious weeds by the Ontario Ministry of Agriculture, Food and Rural Affairs;
- 5.15 the Injuring or Destruction of not more than twenty (20) Trees within a Calendar Year by an Owner of a Woodlands and for the Owner's use on the Owner's Property that does not include a commercial sale, exchange or other disposition of Trees and doesn't reduce the number of Trees below the minimum number of Trees necessary to constitute a Woodlands;
- 5.16 the Injuring or Destruction of Trees that are in the written opinion of a Qualified OPFA Member or Certified Arborist, in hazardous condition to human safety or property, doesn't reduce the number of Trees below the minimum number of trees necessary to constitute a Woodlands and where a copy of the written opinion of the Qualified OPFA Member or Certified Arborist has been provided to and approved by the Officer.

## **6 APPLICATION PROCESS**

- 6.1 Every Person who intends to Injure or Destroy a Tree in a Woodlands shall complete and submit either an application for Good Forestry Practices or an application for Minor Exception to the General Manager.
- 6.2 No application shall be accepted or considered that would have the effect of amending any part of the Haldimand County Official Plan.
- 6.3 An application for a Permit shall include:
  - a) any fees as set out in the County's User Fee By-law;
  - b) a completed application in the form prescribed by the County including:
    - i. a Silvicultural Prescription prepared by a Qualified OPFA Member and proof that the Trees to be Injured or Destroyed are marked with

paint by a Certified Tree Marker where an application is made for a Good Forestry Practices Permit; or

- ii. an Environmental Impact Study, where a Minor Exception application to Injure or Destroy an area of Woodlands equal to or greater than one (1) hectare in size.

- c) such additional information as the General Manager may require.

6.4 An application for a Permit shall be deemed incomplete and no Permit shall be issued if:

- a) the application has not been completed in full; or
- b) the application fee has not been paid.

6.5 Within fifteen (15) Business Days of receipt of an application for Minor Exception to Injure or Destroy an area of Woodlands equal to or greater than one (1) hectare in size, and at least fifteen (15) Business Days prior to consideration of the application, the General Manager shall send by regular mail or by personal delivery, written notice of the application to all assessed Owners of each parcel of land that abuts the subject property from which Trees are proposed to be Injured or Destroyed, and to any other such Person or agency as the General Manager deems appropriate.

6.6 Any person who has made an application for Minor Exception to Injure or Destroy an area of Woodlands equal to or greater than one (1) hectare in size shall erect and display a public notice, in form prescribed by the County, regarding the Minor Exception Permit Application in a position that is clear and visible to all Persons at least fifteen (15) Business Days prior to consideration of the application; the public notice shall remain on display until the application has been approved or denied.

6.7 Where a Permit application has been approved or denied, the General Manager will notify the applicant in writing, by regular mail within fifteen (15) Business Days of the decision and shall provide reasons if denied.

## **7 ISSUANCE OF A PERMIT**

7.1 Council hereby delegates to the General Manager the power to issue Permits pursuant to this by-law and to impose conditions on Permits that may include, but are not limited to:

- a) the location, number, size and type of Trees that are to be Injured or Destroyed;
- b) the manner, equipment and timing in which the Injuring or Destruction of Trees is to be carried out;
- c) the marking, with paint or other material of the Trees that are to be Injured or Destroyed;

- d) the qualifications of persons authorized to mark and Injure or Destroy trees;
  - e) the location, number, size and type of replacement Trees to be planted, cash-in-lieu payment of replacement Trees to be planted, or dedication of an interest in land, including a restrictive covenant registered on title of the property;
  - f) a requirement that any Injury or Destruction of trees for farm purposes must be put into agricultural use within a specified time period;
  - g) implementation of any recommendations included in an Environmental Impact Study or Silvicultural Prescription;
  - h) measures to be implemented to mitigate the direct and indirect effects of the Injuring or Destruction of trees on the natural environment; and
  - i) implementation of any conditions of Council, Committee of Council and the General Manager.
- 7.2 An application for Minor Exception to Injure or Destroy an area of Woodlands equal to or greater than one (1) hectare in size shall be subject to the approval of Council prior to the issuance of a Permit.
- 7.3 A Permit shall be in effect for a period of one (1) year from the date of issuance and is not transferable. Prior to the expiry of the Permit, the Owner may request in writing that the Permit be renewed for an additional one (1) year period. Permits may only be renewed once.
- 7.4 Prior to the Injury or Destruction of Trees under a 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.

## **8 APPEAL**

- 8.1 An applicant for a Permit may appeal to Council or a Committee of Council by filing a notice of appeal personally or by registered mail to the Clerk as follows:
- a) Where the General Manager refuses to issue a Permit, an appeal must be made within thirty (30) days after the refusal was issued; or
  - b) Where the General Manager fails to make a decision on the application within ninety (90) days after receipt of the complete application, but not prior to forty-five (45) days after receipt of a completed application; or
  - c) Where the applicant objects to a term or condition of the Permit, appeal must be made within thirty (30) days after the issuance of the Permit;



- 8.2 Any Person who objects to an order made pursuant to this by-law pertaining to a Permit may appeal the order to Council or Committee of Council within thirty (30) days of the order.
- 8.3 An appeal made under this section of the by-law does not act as a stay of any order issued, and any order issued shall take effect on the day it was served or deemed served and shall continue to be effective until Council or Committee of Council renders a decision indicating otherwise.

## **9 ENFORCEMENT**

- 9.1 The provisions of this by-law may be enforced by an Officer.
- 9.2 For the purpose of ensuring compliance with this by-law, an Officer may at all reasonable times, enter upon and inspect the land or Property to determine whether or not the following are being complied with:
- a) this by-law;
  - b) a direction or order made under this by-law; or
  - c) a prohibition order made under Section 431 of the Municipal Act, 2001.
- 9.3 An Officer may for the purposes of an inspection:
- a) require information in writing or otherwise as required by the Officer from any Person concerning a matter related to the inspection; or
  - b) alone or in conjunction with a Person possessing special or expert knowledge, undertake an inspection to determine compliance with this by-law.
- 9.4 An Officer may make an order, sent or served by prepaid regular mail to the last known address, posted on-site or personally delivered to a Person requiring the Person who contravened the by-law, within the time specified in the order to:
- a) discontinue the contravening activity; and/or
  - b) do work to correct the contravention.
- 9.5 If an order under Section 9 is served by regular mail, the service shall be deemed to have been made on the fifth (5<sup>th</sup>) day after the day of mailing.
- 9.6 An order may be served on a Person personally by handing it to the Person, but where the order cannot be given or served by reason of the Person's absence from the Person's Property or by reason of evasion of service, the order may be given or served:
- a) by handing it to an apparently adult person on the Person's Property;

- b) by posting it in a conspicuous place upon some part of the Owner's Property and by sending a copy by ordinary mail; or
- c) by sending it by prepaid registered mail to the Owner at the address where he/she resides.

9.7 If an order under Section 9 is served by registered mail, the service shall be deemed to have been made on the fifth (5<sup>th</sup>) day after the day of mailing.

9.8 An order under Section 9 shall set out:

- a) reasonable particulars of the contravention adequate to identify the contravention and the location of Property abutting adjacent boulevard where the contravention occurred;
- b) the work to be completed; and
- c) the date(s) by which the work must be complete.

## **10 RECOVERY OF COSTS**

10.1 Where the County, its employees or authorized agents or contractors have performed the work required to bring the Property into compliance with this by-law, all expenses incurred by the County in doing the work as well as any related fees, shall be deemed to be a debt to the County and may be collected by action or the costs may be added to the tax roll for the Property and collected in the same manner as municipal taxes.

## **11 OBSTRUCTION**

11.1 No Person shall or attempt to hinder, hinder or obstruct an Officer from carrying out his or her duties as described under this by-law.

11.2 No Person shall obstruct any employee or agent authorized to carry out work for the County required to bring the Property into compliance with this by-law.

## **12 PENALTY**

12.1 Any Person who contravenes any provision of this by-law, or an order issued under Section 9, is guilty of an offence, is liable for each occurrence of the contravention and upon conviction is liable to a fine, and such other penalties, as provided for in the Provincial Offences Act.

12.2 A Person convicted of an offence under section 12.1 is also liable to:

- a) on a first conviction, to a maximum fine of \$10,000 or \$1,000 per Tree, whichever is greater; and
- b) on any subsequent convictions, to a maximum fine of \$25,000 or \$2,500 per Tree, whichever is greater.

- 12.3 Any corporation who contravenes any provision of this by-law, or an order issued under Section 9, is guilty of an offence, is liable for each occurrence of the contravention and upon conviction is liable to a fine, and such other penalties, as provided for in the Provincial Offences Act.
- 12.4 A corporation convicted of an offence under section 12.3 is also liable to:
- a) on a first conviction, to a maximum fine of \$50,000 or \$5,000 per Tree, whichever is greater; and
  - b) on any subsequent convictions, to a maximum fine of \$100,000 or \$10,000 per Tree, whichever is greater.
- 12.5 The County designates that the Destruction or Injury of each Tree is one offence in a series of multiple offences.
- 12.6 If a Person or corporation is convicted of an offence for contravening this by-law or and order issued under Section 9, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the Person or corporation to rehabilitate the land, to plant or replant Trees in such a manner as within such a period as the court considers appropriate and to maintain the replanted Trees as appropriate, including and silvicultural treatment necessary to re-establish the Trees.

### **13 SERVERABILITY**

- 13.1 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 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 TRANSITIONAL RULES**

- 14.1 After the date of the passing this by-law, the Regional Municipality of Haldimand-Norfolk By-law 15-00 shall apply only to those Woodlands in which a Notice of Intent, Permit or an order to Comply has been issued prior to the date of passing of this by-law, and then only to such properties until such time as the work required by such Permit or order has been completed or any enforcement proceedings with respect to such Permit or order, including any work has been carried out by the municipality shall have been concluded.

### **15 REPEAL OF EXISTING BY-LAWS**

- 15.1 The Regional Municipality of Haldimand-Norfolk By-law 15-00 shall be repealed effective on the coming into force and effect of this by-law.

### **16 ENACTMENT**

16.1 This by-law comes into force and takes full effect on the date of its passage.

READ a first and second time this 13<sup>th</sup> day of October, 2020.

READ a third time and finally passed this 13<sup>th</sup> day of October, 2020.

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MAYOR

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CLERK