

Forest Conservation By-law – Office Consolidation
By-law No. 5635 as amended by By-law No. 6086

BY-LAW NO. 5635
OF
THE CORPORATION OF THE COUNTY OF SIMCOE

A By-law to promote Sustainable Forest Management Practices and to prohibit or regulate the harvest, injuring or destruction of trees in woodlands in the County of Simcoe and to Repeal and Replace By-law No. 5289.

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

AND WHEREAS Section 135(7) of the *Municipal Act, S.O. 2001, c. 25*, as amended, permits Council to require that a permit be obtained to harvest, injure or destroy trees in woodlands specified in the By-law and impose conditions on a permit, including conditions relating to the manner in which destruction occurs and the qualification of persons authorized to injure or destroy trees.

AND WHEREAS Council has determined that it is desirable to enact such a By-law for the purpose of maintaining and improving the woodlands of the County;

NOW THEREFORE the Council of The County of Simcoe hereby enacts as follows:

Part 1 - DEFINITIONS

1.1 In this By-law:

"Basal Area" means the area of the cross-section of the stem of a tree taken at a point of measurement 1.37 metres (54 inches) above the point on the tree where the ground meets the stump.

"Building permit" means a building permit issued under the *Building Code Act, S.O. 1992, c. 23*, as amended.

"Business day" means any day falling on or between Monday and Friday of each week but does not include a statutory holiday.

"Circumference" means the measurement of the perimeter or outer boundary of a stem or trunk of a tree with such measurement including the bark of the stem or trunk.

"Clerk" means the Clerk of the County of Simcoe and his or her designate.

“Conifer Plantation” means an artificially reforested area established by planting or by direct seeding of trees belonging to the order Coniferae, usually evergreen with cones, needle-shaped leaves and producing wood known commercially as softwood.

“Coppice Growth” means more than one tree stem grows from a single tree stump.

"Council" means the Council of the County of Simcoe.

“County” means the Corporation of the County of Simcoe.

"Diameter" means the diameter of the stem or trunk of a tree measured outside the bark at a specified point of measurement.

“DBH or dbh” means the diameter of the stem or trunk of a tree measured at a point that is 1.37 metres (54 inches) above the ground.

“Forest Stand” means that part of a woodlands that is a continuous group of trees sufficiently uniform in species composition, arrangement of age classes and condition to be a homogeneous and distinguishable unit.

“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. Good Forestry Practices also includes the forestry management practices set out in the Provincial Silvicultural Guidelines as referred to in the Forest Operations and Silviculture Manual and its revisions prepared under the authority of the Crown Forest Sustainability Act, S.O. 1994, c. 25. These Provincial Silvicultural Guidelines include, but are not limited to: A Silvicultural Guide to Managing Southern Ontario Forests, Silvicultural Guide for the Tolerant Hardwood Forest in Ontario, A Tree Marking Guide for the Tolerant Hardwood Working Group in Ontario, A Silvicultural Guide for the Great Lakes – St. Lawrence Conifer Forest in Ontario.

“Harvest” means to fell or cut a tree.

“Injure” a tree means irrevocable and lasting damage done to a tree which has the effect of inhibiting or terminating its growth, but does not include pruning or removing branches for maintenance purposes. This may include the destruction or elimination of a tree by cutting, burning, bulldozing or other means.

“Municipality” means a local municipality within the County of Simcoe or a local board thereof.

“Officer” means a police officer, a Municipal Law Enforcement Officer, County Forester or other person appointed by Council to administer and enforce this By-law.

“Owner” means a person having any right, title, interest or equity in land 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.

“Own Use” means use that does not include a sale, exchange or other disposition of trees harvested, injured or destroyed.

“Permit” means a permit issued pursuant to this By-law by the County.

“Person” includes an individual, a corporation, and their respective heirs, executors, administrators, or other duly appointed representatives.

“Point of Measurement” means that point on the tree trunk measured above the point on the tree where the ground meets the stump. For coppice growth the “Point of Measurement” shall be at the point on the tree trunk where the tree stems separate provided that such point of separation is less than 1.37 metres (54 inches) from where the ground meets the stump.

“Qualified Tree Marker” means:

- (a) an individual who is certified through the Ontario Ministry of Natural Resources Certified Tree Marker Program; or
- (b) a Registered Professional Forester qualified to do tree marking; or
- (c) an associate member of the Ontario Professional Foresters Association qualified to do tree marking; or
- (d) a forest technician qualified to do tree marking.

“Registered Professional Forester” means a member of the Ontario Professional Foresters Association entitled to use the designation “Registered Professional Forester” under the Professional Foresters Act, S.O. 2000, c.18.

“Sensitive Natural Area” includes:

- (a) provincially or regionally identified Significant Wetlands; or
- (b) any portion of woodlands located within 30.5 metres (100 feet) of the water’s edge of a lake, river, stream, or provincially or regionally identified significant wetland; or
- (c) provincially designated Life Science Areas of Natural and Scientific Interest.

“Silviculture” means the theory and practice of controlling forest establishment, composition, growth and quality of forests to achieve the objectives of forest management.

“Silvicultural Prescription” means a site specific operational plan 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;

“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 (15 feet) at physiological maturity;

"Woodlands" means lands with at least:

- (a) 1000 trees per hectare (400 trees per acre) of any diameter at DBH; or
- (b) 750 trees per hectare (300 per acre) measuring over 5 centimetres (2 inches) in diameter at DBH; or
- (c) 500 trees per hectare (200 per acre) measuring over 12 centimetres (5 inches) in diameter at DBH; or
- (d) 250 trees per hectare (100 per acre) measuring over 20 centimetres (8 inches) in diameter at DBH

but does not include a cultivated fruit or nut orchard, or a plantation established for the purpose of producing Christmas trees unless said plantation has not been managed for its intended purpose for a period of 15 years or more.

Part 2 - APPLICATION OF BY-LAW

- 2.1 This By-law shall apply to all Woodlands within the County having an area of one (1) hectare (2.47 acres) or more.

Part 3 - GENERAL PROHIBITION

- 3.1 No person shall harvest, cause or permit to be harvested or injure, cause or permit to be injured, or destroy, cause or permit to be destroyed any tree located in Woodlands or Sensitive Natural Area:
- (1) unless exempted under the provisions of this By-law; or
 - (2) except in accordance with a valid permit issued by the County pursuant to the provisions of this By-law.
- 3.2 No person shall contravene, cause or permit the contravention of the terms or conditions of a permit issued under this By-law.
- 3.3 No person shall operate a vehicle, machinery or equipment or conduct their operations in such a manner or at such a time that results in excessive damage to the soil, wetlands or other portions of the Woodlands or a Sensitive Natural Area.
- 3.4 No person shall operate a vehicle, machinery or equipment or conduct operations in a manner or a time, that results in the leaving of any part of a tree in a watercourse and this includes a tree that has been cut, pushed, knocked over or otherwise ended up in a watercourse, unless such operation is part of an approved water course restoration project.
- 3.5 No person shall fail to comply with an Order issued under this By-law.
- 3.6 No person shall remove or deface an Order that has been posted pursuant to this By-law.

- 3.7 No person shall fail to notify the County twenty-four (24) hours prior to the commencement of cutting.

Part 4 - APPLICATION FOR A PERMIT

- 4.1 The County hereby delegates to an Officer the power to issue a permit under this By-law, and to impose such terms and conditions in accordance with Good Forestry Practices.
- 4.2 An application to the County for a **Good Forestry Practices permit** to allow for the harvesting of trees is subject to the following:
- (1) submission of a completed application form as provided by the County at least five (5) business days prior to harvesting; and
 - (2) submission of a Silvicultural Prescription prepared by a qualified member of the Ontario Professional Foresters Association for the Woodlands or Sensitive Natural Area in which the trees are to be harvested; and
 - (3) the Woodlands or Sensitive Natural Area being marked by a Qualified Tree Marker in accordance with the Silvicultural Prescription as submitted.
- 4.3 An application to the County for a **Conifer Plantation permit** to allow for the harvesting of trees is subject to the following:
- (1) submission of a completed application form as provided by the County at least five (5) business days prior to harvesting; and
 - (2) the Officer is satisfied that the harvesting of trees is consistent with Good Forestry Practices.
- 4.4 An application to the County for a **Harvesting permit** to allow for the harvesting of trees is subject to the following:
- (1) submission of a completed application form as provided by the County at least five (5) business days prior to harvesting; and
 - (2) the trees subject to this permit have attained, at the specified Point of Measurement, the circumference measurement which is equal to or greater than the minimum circumference prescribed for the species as outlined in Schedule "A" attached to and forming part of this By-law; and
 - (3) the trees subject to this permit are marked with paint to the satisfaction of the Officer; and
 - (4) the harvesting of trees subject to this permit shall not reduce the number of trees per hectare below the minimum number of trees per hectare required to be considered Woodlands; and
 - (5) the harvesting of trees subject to this permit shall not reduce the Basal Area in the Forest Stand below an average of 20m²/ha, and at no point below 15m²/ha, measuring 10 centimeters (4 inches) or more at DBH when sampled using recognized forest sampling procedures.

By-law No. 5635

- 4.5 Despite subsection 4.4 of this By-law, the County may issue a Harvest permit provided that an Officer is satisfied that the harvesting of trees is consistent with Good Forestry Practices.
- 4.6 A permit issued by the County is valid for up to one (1) year and may be renewed by an Officer for one (1) additional year.
- 4.7 An Officer may impose such terms and conditions on a permit that relate to the manner in which the harvesting or injury is to occur.
- 4.8 An application which is not complete will be returned to the applicant within thirty (30) days.
- 4.9 An application for a permit shall be deemed incomplete if:
 - (1) the application has not been completed in full; or
 - (2) the owner of the lands has not signed the application; or
 - (3) the party who will be undertaking or responsible for the harvesting, injuring or destruction of trees has not signed the application; or
 - (4) other application requirements have not be met.
- 4.10 An applicant will be notified by an Officer within thirty (30) days of filing an application, when an application is denied.

Part 5 - SPECIAL PERMIT - COUNCIL

- 5.1 An application for a Special Permit to be approved by Council shall be completed on a form provided by the County and shall be submitted to the Clerk at least three (3) months prior to the anticipated commencement of work.
- 5.2 At least fifteen (15) business days prior to consideration of the application for a Special Permit, the Clerk shall send, by regular mail, written notice to the applicant, all assessed owners of each parcel of land that abuts the subject lands and to such other persons as prescribed by Council.
- 5.3 Council shall hear any person who wishes to speak for or in objection to an application for a Special Permit.
- 5.4 Council may authorize the issuing of a Special Permit for a one (1) year period where the general purpose and intent of this By-law is maintained.
- 5.5 Council may impose such terms and conditions as it deems appropriate to a Special Permit.
- 5.6 The Clerk shall notify the applicant in writing of Council's decision to issue or not issue a Special Permit.
- 5.7 Council may renew a Special Permit for a further one (1) year period.

Part 6 - EXEMPTIONS

6.1 This By-law does not apply to:

- (1) activities or matters undertaken or authorized by a municipality.
- (2) activities or matters undertaken under a licence issued under the Crown Forest Sustainability Act, 1994.
- (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.
- (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) 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.
- (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 as defined in that section.
- (7) 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.
- (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.
- (9) the injuring or destruction of trees that is required in order to erect a building or structure in respect of which a building permit has been issued, provided that the total area within which trees are injured or destroyed is within 25 metres (82 feet) of the outer edge of the building or structure or proposed building or structure.
- (10) the injuring or destruction of trees that is reasonably required in order to install and provide utilities to the construction or use of a building or structure in respect of which a building permit has been issued.

- (11) the injuring or destruction of trees that is reasonably required in order to install and provide utilities to a driveway for vehicular access to a building or structure in respect of which a building permit has been issued.
- (12) the harvesting, injury or destruction of trees by the owner of Woodlands for the owner's own use, provided the harvesting, injuring or destruction does not reduce the density of trees below that which is defined as Woodlands.
- (13) the harvesting or injury or destruction of trees where the trees are harvested, injured or destroyed pursuant to a legally binding contract if:
 - (a) the owner of the Woodlands has made application under By-law 5289 prior to the passing of this By-law; and
 - (b) the contract for the work was signed within one year immediately preceding the date on which this By-law was passed; and
 - (c) proof of the signed contract has been submitted to the Officer; and
 - (d) the trees are injured, destroyed or harvested in accordance with the terms and conditions of By-law No. 5289 and in compliance with any permit issued.
- (14) the injuring or destruction of trees that is required to install and operate a Renewable Energy Project pursuant to a successful application under the Green Energy Act. (amended October 2011)

Part 7 - ORDERS

- 7.1 Where an Officer is satisfied 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 destruction of trees in contravention of the By-law to stop the harvesting, injuring or destruction of trees.
- 7.2 An Order issued under this By-law may be served in the following manner:
 - (1) personally; or
 - (2) by posting it on the property; or
 - (3) by sending it by mail to the last known address
- 7.3 An Order issued under this By-law may be served on:
 - (1) the owner of the woodlands; and/or
 - (2) the person identified as harvesting, injuring or destroying a tree or trees.
- 7.4 Where service of an Order is made by mail, service shall be deemed to have been made five (5) days after the order is mailed.
- 7.5 If the person to whom the Order is directed is not satisfied with the terms of the Order, the person may appeal to Council by filing a notice of appeal by personal service or registered mail to the Clerk within 30 days of the date of the Order.

By-law No. 5635

- 7.6 Where a notice of appeal has been filed, Council shall hear the appeal and have all the powers and functions of the Officer.
- 7.7 Prior to conducting a hearing, the Clerk shall give notice to such persons or direct that notice be given to such persons as the Clerk considers should receive notice and in the manner directed by the Clerk.
- 7.8 After hearing an appeal, Council may confirm or revoke any Order issued under this By-law or may issue a Permit with conditions, provided that in the opinion of the Council, the general intent and purpose of this By-law is maintained.
- 7.9 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.

Part 8 - ENFORCEMENT & PENALTY

- 8.1 An Officer may enforce the provisions of this By-law.
- 8.2 Any person who contravenes any provision of this By-law, or an Order issued under of this By-law, is guilty of an offence and is liable:
 - (1) on first conviction, to a fine of not more than \$10,000 or \$1,000 per tree, whichever is greater; and
 - (2) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree, whichever is greater.
- 8.3 Despite Section 8.2, where the person is a corporation the maximum fines are:
 - (1) on first conviction, to a fine of not more than \$50,000 or \$5,000 per tree, whichever is greater; and
 - (2) on any subsequent conviction, to a fine of not more than \$100,000 or \$10,000 per tree, whichever is greater.
- 8.4 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.
- 8.5 Any person who is alleged to have contravened any section of this By-law shall identify themselves to the Officer upon request, failure to do so shall be deemed to have hindered or obstructed the Officer in the execution of their duties.
- 8.6 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.
- 8.7 No person shall hinder or obstruct an Officer in the enforcement of this By-law.

By-law No. 5635

- 8.8 An Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the By-law is complied with or whether an order issued under this By-law is complied with.

Part 9 - SEVERABILITY

- 9.1 If a court of competent jurisdiction declares any section or part of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue in force.

Part 10 - SINGULAR AND PLURAL USE

- 10.1 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.

Part 11 - ADMINISTRATION

- 11.1 The short title of this By-law is the "Forest Conservation By-law".
- 11.2 By-law 5289 is hereby repealed.
- 11.3 Despite Section 11.2 By-law 5289 shall continue to apply to proceedings in respect of offences that occurred before its repeal and for the purposes of Section 6.1(13).

This By-law has been read a first, second, third time and passed this day of ,
2008.

Chair

Clerk

SCHEDULE A

CIRCUMFERENCE LIMITS BY CATEGORY OF TREE SPECIES

Category 1: Large Circumference Tree Species	Category 2: Medium Circumference Tree Species	Category 3: Small Circumference Tree Species
<u>Acer saccharum</u> (Sugar Maple) <u>Acer nigrum</u> (Black Maple) <u>Acer rubrum</u> (Red Maple) <u>Acer saccharinum</u> (Silver Maple) <u>Quercus spp</u> (Oak species) <u>Juglans nigra</u> (Black Walnut) <u>Fraxinus americana</u> (White Ash) <u>Tilia americana</u> (Basswood) <u>Pinus strobus</u> (White Pine) <u>Betula alleghaniensis</u> (Yellow Birch)	<u>Pinus resinosa</u> (Red Pine) <u>Larix spp</u> (Larch) <u>Picea spp</u> (Spruce) <u>Fraxinus pennsylvanica</u> (Red & Green Ash) <u>Fagus grandifolia</u> (Beech) <u>Tsuga canadensis</u> (E. Hemlock) <u>Prunus serotina</u> (Black Cherry) <u>Carya spp</u> (Hickory species)	<u>Abies balsamea</u> (Balsam Fir) <u>Thuja occidentalis</u> (White Cedar) <u>Betula papyrifera</u> (White Birch) <u>Populus spp</u> (Native Poplar species) <u>Juniperus virginiana</u> (Red Cedar) <u>Fraxinus nigra</u> (Black Ash) <u>Ulmus spp</u> (Native Elm species)

<u>Height above ground</u>	<u>Category 1 Species</u>	<u>Category 2 Species</u>	<u>Category 3 Species</u>
4 inches (10 cm)	85 inches (216 cm)	69 inches (175 cm)	50 inches (127cm)
8 inches (20 cm)	75 inches (191 cm)	59 inches (145 cm)	37 inches (94 cm)
12 inches (30 cm)	66 inches (168 cm)	50 inches (127 cm)	31 inches (79 cm)
54 inches (137 cm)	50 inches (127 cm)	38 inches (96 cm)	25 inches (64 cm)