

CORPORATION OF THE COUNTY OF NORTHUMBERLAND

BY-LAW NO. 54-09

BEING A BYLAW TO PROMOTE GOOD FORESTRY PRACTICES AND THE MAINTENANCE OF NORTHUMBERLAND'S WOODLANDS

WHEREAS the Council of The Corporation of the County of Northumberland recognizes the ecological and aesthetic value of trees and is desirous of managing the injury and destruction of trees;

AND WHEREAS it has become expedient for the general and long term welfare of the inhabitants of the County of Northumberland to manage the injury and destruction of trees;

AND WHEREAS pursuant to Section 135 of the **Municipal Act 2001**, S.O. 2001, c.25 as amended, the Council of a County may pass by-laws restricting and regulating the destruction or injuring of trees by cutting, burning or other means, and may appoint officers to enforce such by-laws;

AND WHEREAS the legislation enabling the regulation of the injuring of trees has changed sufficiently to necessitate the updating of the Northumberland County Tree Conservation By-law No. 51-00.

NOW THEREFORE THE COUNCIL OF THE COUNTY OF NORTHUMBERLAND ENACTS THE FOLLOWING:

1. DEFINITIONS

In this By-law:

- 1) **“Basal area”** means the area of the cross-section of the stem of a tree taken at a point of measurement 1.37 metres above the point on the tree where the ground meets the stump;
- 2) **“Basal area of woodlands”** means the average of the sum of the basal areas of the individual trees in a woodland which have a diameter greater than 10 centimetres at a point of measurement 1.37 metres above the point on the tree where the ground meets the stump;
- 3) **“Council”** means the municipal council for the Corporation of the County of Northumberland
- 4) **“County”** means the Corporation of the County of Northumberland

- 5) **“Cut area”** means that portion of the woodlands for which a permit application has been filed by the owner or person acting on the owners behalf, and in which trees have been destroyed or injured pursuant to the permit that has been issued;
- 6) **“Circumference”** means the measurement of the outer boundary of the stem or trunk of a tree, including the bark, taken at the highest possible point of measurement;
- 7) **“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 eco-systems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and the aesthetics’ and recreational opportunities of the landscape;
- 8) **“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;
- 9) **“Officer”** means a person designated by By-law by Council as an Officer for the purposes of enforcing this By-law;
- 10) **“Owner”** means a person having any right, title, interest or equity in land or any such person’s authorized representative;
- 11) **“Own Use”** means any use by the Owner that does not include a sale, exchange or other disposition of the trees to a person other than the Owner at the time of cutting or any time thereafter;
- 12) **“Permit”** means a permit to destroy or injure trees issued under Section 5 of this By-law;
- 13) **“Person”** includes an individual, a corporation, and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
- 14) **“Point of Measurement”** means that point on the tree trunk measured above the highest point on the tree where the ground meets the stump;
- 15) **“Qualified Associate Member”** means a person designated under the by-laws of the Ontario Professional Foresters Association (OPFA) as an Associate Member who holds an appropriate certificate of registration in the OPFA.

- 16) **“Qualified Tree Marker”** means:
1. an individual who is a Certified Tree Marker in good standing as designated by the Ontario Ministry of Natural Resources Certified Tree Marker Training Program, or;
 2. a Registered Professional Forester qualified to do tree marking or;
 3. a qualified Associate Member of the Ontario Professional Foresters Association qualified to do tree marking;
- 17) **“Registered Professional Forester”** as defined in the *Professional Foresters Act, 2000, S.O. 2000, c. 18 as amended*;
- 18) **“Silvicultural prescription”** means a site-specific operational plan that describes the existing forest conditions and the forest management objectives for an area, and professional recommendations for harvesting and controlling the establishment, composition, constitution, and growth of forests from seedlings though to the desired endpoint of the forest stand in a manner that accommodates other resource values as identified;
- 19) **“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;
- 20) **“Woodlands”** means a parcel of land having an area of not less than 1 hectare with at least:
- (1) 1,000 trees of any size per hectare; or
 - (2) 750 trees, measuring over 5 centimetres in diameter per hectare; or
 - (3) 500 trees, measuring over 12 centimetres in diameter per hectare; or
 - (4) 250 trees, measuring over 20 centimetres in diameter per hectare
- but does not include a cultivated fruit or nut orchard or plantation established for the purpose of producing Christmas trees.
- For the purpose of the definition of “woodlands”, all measurements of trees are to be taken at 1.37 metres from the ground

2. APPLICATION

This By-law applies to woodlands greater than one (1) hectare in the County of Northumberland.

3. EXEMPTIONS

- 1) Despite section 2 of this By-law, this By-law does not apply to:
 - a) the destruction or injury of trees by the Owner of the woodlands that has destroyed or injured trees for his or her own use, such destruction or injury shall not reduce the number of trees below the minimum level stated in the definition of a woodland pursuant to section 1 (20) herein;
 - b) trees which have been destroyed or injured in order to establish roads, driveways and recreational trails;
 - c) activities or matters undertaken by a municipality or a local board of a municipality;
 - d) the injuring or destruction of trees by a person licensed under the *Surveyors Act R.S.O. 1990 as amended* to engage in the practice of cadastral surveying, or his or her agent, while making a survey;
 - e) 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 R.S.O. 1990 as amended* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
 - f) 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 R.S.O. 1990 as amended* or as a requirement of an agreement entered into under the regulation;
 - g) the injuring or destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998 as amended*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - h) 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 R.S.O. 1990 as amended*;
 - i) the injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land, that has not been designated under the *Aggregate Resources Act R.S.O. 1990 as amended* or a predecessor of that Act; and on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*;
 - j) 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, including the installation of a primary septic bed;
- 2) Provisions of this Bylaw shall not interfere with any rights or powers conferred upon the County by the provisions of the Municipal Act as amended.

4. GENERAL PROHIBITION

- 1) No person shall destroy or injure any tree or permit or cause any other person to destroy or injure any tree in any woodland located in an area described in Section 2 of this By-law unless:
 - a) the owner of the woodland upon which the tree is located has a valid permit for the destruction or injury of trees issued pursuant to the provisions of this By-law;
or
 - b) exempted by Section 3 of this By-law; or
 - c) County council grants relief to the owner pursuant to Section 6 of this By-law.
- 2) No person shall:
 - a) contravene or cause the contravention of the terms and conditions of a permit issued this By-law;
 - b) fail to comply with an order issued under this By-law or remove or deface any order that has been posted pursuant to this By-law.
- 3) No person shall destroy or injure any tree or permit or cause any other person to destroy or injure any tree in any Woodland located in an area described in Section 2 of this By-law;
 - a) that is located in a Provincially Significant Wetland designated as such by the Ministry of Natural Resources;
 - b) which would have the effect of reducing the basal area in the cut area of a Woodland below 15 square metres per hectare (65 square feet per acre);
 - c) that is located within 15 metres (50 feet) of the high water mark of any river, lake or watercourse or within 15 metres (50 feet) of any open and maintained public road;
 - d) that has not attained the minimum diameter at the point of measurement specified for that species of trees as set out in Table 1 of this By-law.

(Table 1) - Minimum Circumference - Selected Species

	Point of Measurement inches (cm)	Minimum Circumference inches (cm)
Hard (Sugar) Maple, Soft (Red) Maple, Yellow Birch, Basswood, White Ash, Black Cherry, American Beech, Hickory, White Oak, Bur Oak, Red Oak, Black Oak, White Elm, Butternut, Hemlock, Red Pine, and White Pine	18" (45.72 cm)	57" (144.78 cm)
	12" (30.48 cm)	63" (160.02 cm)
	8" (20.32 cm)	69" (175.26 cm)
	4" (10.16 cm)	82" (208.28 cm)
Black Ash, Balsam Fir, White Birch, White Cedar, Poplar, Spruce	18" (45.72 cm)	25" (63.50 cm)
	12" (30.48 cm)	31" (78.74 cm)
	8" (20.32 cm)	38" (96.52 cm)
	4" (10.16 cm)	50" (127.00 cm)

- 4) Section 4 (3) shall not apply to the destruction or injury of trees in accordance with good forestry practices described in a silvicultural prescription approved by a Registered Professional Forester or a Qualified Associate Member, and tree marking, if required, carried out by a Qualified Tree Marker.

5. PERMITS

- 1) Upon application by the owner, the County may issue a permit to allow the destruction or injury of trees within a woodland described in Section 2 of this By-law provided that:
- a) trees which are to be destroyed or injured are to be cut in accordance with circumference limits and basal area requirements. Section 4, (3), (a), (b), (c), and (d) of this Bylaw or;
 - b) despite section 3, the officer is satisfied that the destruction or injuring of trees is consistent with good forestry practices or;
 - c) trees which are to be destroyed or injured are cut in accordance with good forestry practices and:
 - i. described in a silvicultural prescription approved by a Registered Professional Forester or a Qualified Associate Member and;
 - ii. marking of trees, if required, is carried out by a Qualified Tree Marker and;
 - iii. a copy of the silvicultural prescription is submitted with the application for a permit.
- 2) An application for a permit shall be deemed incomplete, and no permit shall be issued

if:

- a) the application as outlined in Schedule “A” attached to and forming part of this Bylaw has not been completed in full;
 - b) the owner of the woodlands has not signed the application;
 - c) the party who will be undertaking or responsible for the destruction or injury of trees has not signed the application.
- 3) The County may impose conditions to a permit that may include:
- a) Permits will be valid to a maximum of one-year from the date of issue with an expiry date of March 31, provided that an officer may, upon request of the owner, renew the permit for a further specified period;
 - b) the owner or person actively engaged in destroying or injuring the trees shall contact the County’s officer within 24 hours of the commencement of such permitted activity;
 - c) the owner or person actively engaged in destroying or injuring the trees shall contact the County’s officer within 24 hours of the resumption of such permitted activity after any four week period of inactivity;
 - d) other conditions related to the manner in which the destruction of trees occurs.

6. RELIEF

- 1) Where an owner of a woodland that is located in an area described in Section 2 of this By-law intends to destroy or injure any tree for the purpose of preparing the woodland or part thereof for a use other than a forestry use or forestry related use, the Owner may apply to Council for relief of this By-law.
- 2) Any owner of a woodland who intends to make an application to Council pursuant to Section 6 (1) of this Bylaw, shall, prior to the matter being heard by Council, complete a Minor Relief Application as contained in Schedule “B” attached to and forming part of this Bylaw and provide the County’s Officer with such documentation and information as may be required to enable Council to make a decision. The documentation and information shall include, but not be limited to:
 - a) a statement in writing sworn by the owner setting out the proposed use and the portion of the woodland that will be affected by the proposed use;
 - b) a sketch or plan showing the part of the woodland that forms the subject matter of the application and which sketch shall show the boundaries of the woodland, any natural features such as streams or water courses, any buildings or structures, and such other information as may assist Council in making its decision; and
 - c) a statement indicating the owner’s estimate of the area of land that will be cleared

for the proposed use.

- 3) The County's Officer shall provide to Council copies of all information and documentation received from the owner pursuant to Section 6 (2) of this Bylaw and shall provide Council with a written report.
- 4) In the event that Council decides to grant relief from the provisions of this By-law for a portion of a woodland, pursuant to an application under Section 6 (1) of this Bylaw, Council may impose such conditions as, in its opinion, are reasonable in the circumstances.
- 5) Without limiting the generality of Section 6 (3) of this Bylaw, Council may, in addition to any other condition, require that security be posted by the owner so as to ensure that any trees that are destroyed or injured by the owner can be replaced should the owner not proceed with the proposal within one year of Council granting relief from this By law.

7. ORDERS

In the event the County's Officer is satisfied that a contravention of this By-law has occurred, the County's Officer may issue a Stop Work Order as outlined in Scheduled "C" attached to and forming part of this Bylaw requiring the person who contravened the By-law or who caused or permitted the injuring or destruction of trees in contravention of the By-law to stop the injuring or destruction of trees and the Order shall set out:

- 1) the Municipal address or legal description of the land;
- 2) reasonable particulars of the contravention; and
- 3) the period within which there must be compliance with the Order.

8. BY-LAW ENFORCEMENT OFFICER

The Council for the Corporation of the County of Northumberland shall appoint by By-law Officer (s) to enforce the provisions of this By-law pursuant to its provisions and the provisions of the Act, and amendments thereto.

An Officer, 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.

9. OFFENCE

- 1) Any person who contravenes any provision of this Bylaw or an Order issued pursuant to Section 7 of this Bylaw is guilty of an offence and upon conviction is liable to a fine of not less than \$500 and not more than \$100,000.
- 2) Despite subsection 9(1), the Corporation of the County of Northumberland designates that the injury or 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 the 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 9(1), the total of all fines for each included offence is not limited to \$100,000.
- 3) In the event a person is convicted of an offence for contravening this By-law or an Order issued under Section 7 of this By-law, the Court may order the person to rehabilitate the land or to plant or replant trees in such manner and within such period as the Court considers appropriate including any Silvicultural treatment which may be necessary to re-establish the trees.

10. In the event any Court of competent jurisdiction should adjudge that any section or sections of this by-law may not be valid for any reason, such section or sections shall be deemed to be severable from the remainder of the By-law and the remainder of the by-law shall stand and be enforceable to the same extent as if the offending section or sections had not been included therein.

11. County of Northumberland By-law No. 51-00 is repealed and in the event of any conflict between the provisions of this and any other by-law, the provisions of this by-law prevail.

12. This By-law shall be known as the Northumberland County Forest Conservation By-law.

13. This By-law shall come into force and take effect upon the final passing thereof.

THAT By-law 54-09 be introduced and be deemed to be read a first , second and third time and be properly signed and sealed, at the Town of Cobourg, this 9th day of December , 2009.

Warden

Clerk