

**THE CORPORATION OF
THE COUNTY OF HALIBURTON**

BY-LAW NO. 3505

BEING A BY-LAW TO CONSERVE, PROHIBIT, PROTECT, RESTRICT, AND REGULATE THE PROTECTION, PRESERVATION AND REMOVAL OF TREES ON SHORELINE PROPERTIES IN THE COUNTY OF HALIBURTON

WHEREAS, Section 135 of the *Municipal Act*, 2001, S.O., c. 25, as amended, authorizes a local Municipality to prohibit and regulate the destruction or injuring of trees; and

WHEREAS, pursuant to Section 135(7) of the *Municipal Act*, a municipality may require that a permit be obtained for the injuring or destruction of trees or any class of trees specified in the By-law and impose conditions including those relating to the manner in which destruction occurs and the qualification of persons authorized to destroy or injure trees; and

WHEREAS, pursuant to Section 135(10) of the *Municipal Act*, a lower-tier municipality may delegate all or part of its power to pass a by-law respecting the destruction or injuring of trees to its upper-tier municipality with the agreement of the upper-tier municipality; and

WHEREAS, the lower-tier municipalities, within the County of Haliburton, have indicated their intent to delegate to the County of Haliburton their power to pass a by-law respecting the destruction or injuring of trees in areas adjacent to shorelines; and

WHEREAS, the County of Haliburton has agreed to accept the delegation from the lower-tier municipalities to pass a by-law respecting the destruction or injuring of trees in areas adjacent to shorelines; and

WHEREAS, the Council for the County of Haliburton deems it desirable and in the public interest to enact a Shoreline Tree Preservation By-law for protecting trees in areas adjacent to the shorelines of lakes, rivers and navigable waterways for the purpose of:

- Achieving the objectives of the Official Plan for the County of Haliburton;
- Minimizing the destruction or injuring of trees;
- Regulating and controlling the removal, maintenance and protection of trees;
- Sustaining a healthy natural environment by maintaining and improving the ecosystem services provided by trees;
- Protecting significant and sensitive natural areas;
- Contributing to human health and quality of life through the maintenance of tree cover;
- Maintaining water quality;
- Reducing airborne pollution;
- Maintaining and enhancing natural habitat;
- Preventing soil erosion and water run-off;
- Protecting, promoting and enhancing the aesthetic values of land;
- Protecting fish habitat as defined in the Fisheries Act, Revised Statute of Canada 1985; and
- Minimizing the stress on watercourses.

NOW THEREFORE, the Council of the County of Haliburton enacts as follows:

1. DEFINITIONS

In this By-law:

“Body of water” means a lake, pond, river, stream, or any other area which is permanently covered by water but does not include a human-made drainage or irrigation channel, lands that are seasonally covered by water or lands which may be subject to intermittent flooding.

“Building Permit” means a building permit issued under the Building Code Act, 1992, S.O. 1992, c. 23, as amended;

“**Clerk**” means the Clerk of the County of Haliburton;

“**Contractor**” means a person or company who agrees to furnish materials or perform services at a specified price.

“**Council**” means Haliburton County Council;

“**County**” means the Corporation of the County of Haliburton;

“**Destroy**” means the removal of a tree or harm resulting in the death, ruin, or removal of a tree by cutting, burning, uprooting, chemical application or other means including irreversible injury that may result from neglect, accident or design and the term “destruction” shall have a corresponding meaning;

“**Diameter**” means the width measured outside the bark at a specified point of a tree stem or trunk;

“**Director**” means the Director of Planning for the County or his or her designate provided such designate is an officer appointed under this By-law.

“**DBH**” (refers to “diameter at breast height”) means the diameter of the stem of a tree measured at a point 1.37 metres from the ground;

“**Fish habitat**” means spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes;

“**Good arboriculture practice**” means the proper implementation of, renewal and maintenance activities known to be appropriate for individual trees to minimize detrimental impacts and includes pruning of trees to remove dead limbs, maintain structural stability and balance, or to encourage their natural form, provided that such pruning is limited to the appropriate removal of not more than one-third of the live branches or limbs of a tree,

“**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;

“**High water mark**” means the usual or average level to which a body of water rises at its highest point and remains for a sufficient time so as to change the characteristics of the land. On a body of water where the water level is regulated by control structures, this means the regulated high water mark.

“**Injure**” means to harm, damage or impair a tree and includes, but is not limited to, harm, damage or impairment caused by changing grades around a tree, compacting soil over root areas, severing roots, improper application of chemicals, improper pruning or the removal of branches and bark and the term “injury” and “injuring” shall have corresponding meaning;

“**Lower-tier Municipality**” means the “Township of Algonquin Highlands”, “Municipality of Dysart et al”, “Municipality of Highlands East”, or “Township of Minden Hills”.

“**Navigable Waterway**” means all bodies of water that are capable of being navigated by any type of floating vessel for transportation, recreation or commerce. Frequency of navigation may not be a factor in determining a navigable waterway.

“**Officer**” means a person designated by By-law by Council as an Officer for the purposes of enforcing this By-law;

“**OPFA Member**” means a Registered Professional Forester or Associate Member of the Ontario Professional Foresters Association (OPFA) as defined in the *Professional Foresters Act, 2000, S.O. 2000, c. 18, as amended*

“**Order**” means a directive requiring a person to stop the injuring or destruction of trees, rehabilitate the land or plant or replant trees in such a manner and within such a period as the Officer considers appropriate, including any treatment necessary to re-establish the trees.

“**Owner**” means a person having any right, title, interest or equity in land or any such person’s authorized representative;

“**Person**” means 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;

“**Qualified Arborist**” means an expert in the care and maintenance of trees and includes an arborist certified by the Ontario Ministry of Training, Colleges and Universities or the International Society of Arboriculture, or a consulting arborist registered with the American Society of Consulting Arborists;

“**Qualified Tree Marker**” means:

- (i) 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
- (ii) a Registered Professional Forester qualified to do tree marking; or
- (iii) an Associate Member of the Ontario Professional Foresters Association qualified to do tree marking;

“**Remove, Removes or Removal**” means to move from a place or position occupied; or

- (i) To transfer or convey from one place to another; or
- (ii) To take off; or
- (iii) To take away; withdraw; or
- (iv) To do away with; eliminate;

“**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 through to the desired endpoint of the forest stand in a manner that accommodates other resource values as identified;

“**Shoreline**” means an area 30 metres measured over a horizontal distance inland from the high water mark of a navigable waterway.

“**Site**” means the area of land containing any tree(s) proposed to be inured;

“**Spawning Ground**” means a spawning ground as documented by the Ministry of Natural Resources, County or a Lower-tier Municipality;

“**Steep Slope**” means any area with a slope of 25% or more, measured over a horizontal distance inland of 45 metres from the high water mark, along a continuous shoreline frontage of 25 metres;

“**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;

“**Tree Protection Plan**” means a plan prepared by a Qualified Arborist.

2. LAND SUBJECT TO THIS BY-LAW

This by-law applies to all lands within the County situated within 30 metres measured over a horizontal distance inland from the high water mark of a navigable waterway, but does not apply to trees in woodlands greater than 4 hectares that are regulated by County Forestry By-law 3196, as amended, or any successor thereof.

3. EXEMPTIONS FROM APPLICATION OF BY-LAW

The provisions of this By-law do not apply to:

- (a) activities or matters undertaken by the County or a Lower-tier Municipality or a local board of the County or a Lower-tier Municipality; or
- (b) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*; or
- (c) the injuring or destruction of trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his or her agent, while making a survey; or
- (d) the injuring or destruction of trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections; or
- (e) the injuring or destruction of trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation; or
- (f) the injuring or destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section; or
- (g) the injuring or destruction of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*; or
- (h) the injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
 - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
 - (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*; or
- (i) activities or matters undertaken by the provincial government or federal government or their authorized agents; or
- (j) the destruction or injury of trees required in the exercise of the rights or powers of a hydroelectric corporation or any public utility board or commission; or
- (k) the injuring or destruction of trees in accordance with Good Forestry Practices described in a Silvicultural Prescription approved by an OPFA Member, and in accordance with tree marking carried out by a Qualified Tree Marker;
- (l) the injuring or destruction of trees in accordance with Good Arboriculture Practice described in a Tree Protection Plan prepared by a Qualified Arborist, and in accordance with tree marking carried out by a Qualified Arborist;
- (m) the destruction or injuring of trees that is reasonably required in order to install and provide utilities to the construction or use of the building, structure or thing in respect of which a Building Permit has been issued; or
- (n) the injuring or destruction of trees that is required in order to erect or maintain a buffer around any building, structure or thing in respect of which a building permit is issued and has taken into consideration the protection of trees surrounding the structure or work within the building envelope, provided that no tree is destroyed or injured that is located more than 5 m from the outer edge of the building, structure, septic system, or thing; or

- (o) the injuring or destruction of trees that is required to erect any structure or thing permitted as an exemption to the setback in the Comprehensive Zoning By-law of a Lower-tier Municipality provided that no tree is destroyed or injured that is located more than 3 m from the outer edge of the structure or thing; or
- (p) the destruction or injuring of trees that is reasonably required in order to provide a temporary access road no wider than 5m to the building, structure or thing in respect of which a Building Permit has been issued, on a property only accessible by water; or
- (q) the destruction or injuring of trees that is reasonably required in order to install a single lane driveway for vehicular access to the building, structure or thing in respect of which a Building Permit has been issued provided that no tree is destroyed or injured that is located more than 2.5 metres from the centreline of the driveway; or
- (r) the destruction or injuring of trees that is reasonably required in order to install a pathway no wider than 5m to gain access to the water; or
- (s) the injury or destruction of trees measuring less than 10 centimeters DBH; or
- (t) the injury or destruction of severely damaged trees in the interest of public safety, health and general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfalls, freezes, or as a result of insects, disease or wildlife; or
- (u) the injury or destruction of dead, dangerous, diseased or severely injured trees or stumps, in accordance with good arboricultural practice; or
- (v) the pruning of tree branches, in accordance with good arboricultural practice, to maintain, improve, or protect tree health and surrounding forest health while maintaining the tree's natural shape; or
- (w) the pruning of tree branches, in accordance with good arboricultural practice, to permit a view of the water from the primary building, provided such pruning maintains and protects tree health and surrounding forest health.
- (x) Despite the foregoing, in areas of steep slopes, Sections 3(m)(o)(p)(q)(r)(s)(t) and (u) shall only apply when stumps and root systems are not disturbed or removed.
- (y) Despite the foregoing, in areas adjacent to fish habitat, Section 3(m)(n)(o)(p)(q)(r) and (s) shall not apply.
- (z) Despite the foregoing, Sections 3(m) (n) (o) (q) and (s) shall not apply to a municipally owned shore road allowance which is directly adjacent to a privately owned property and which is located between the boundary of the property and the high water mark of a navigable waterway.

4. PROHIBITIONS

Subject to Section 3 of this By-law:

- (a) No person shall destroy or injure any tree or permit or cause any other person to destroy or injure any tree located in an area described in Section 2 of this By-law unless:
 - (i) exempted by Section 3 of this By-law; or
 - (ii) Council grants relief to the owner pursuant to Section 6 of this By-law.
- (b) No person shall destroy or injure any tree or permit or cause any other person to destroy or injure any tree located on municipally owned road allowance or shore road allowance unless:
 - (i) the person is the registered owner of a property which is directly adjacent to a municipally owned shore road allowance; and

- (ii) the said shore road allowance is located between the boundary of the property owned by the person and the high water mark of a navigable waterway; and
- (iii) in accordance with Section 3;
- (c) No person shall fail to comply with an Order issued under this By-law;
- (d) No person shall remove or deface an Order posted under this By-law;
- (e) No person shall obstruct or interfere with an Officer, or any person or agent authorized by an Officer, in the discharge of his or her duties under this by-law.

5. DESIGNATION OF OFFICERS

Council may appoint, by by-law, Officers to enforce the provisions of this By-law for such term and on such conditions as Council considers appropriate, and the Clerk is authorized to issue Certificates of Designation to these individuals.

6. RELIEF

If any owner, contractor or person wishes to apply for relief from this By-law, they may do so by submitting a written request identifying the nature and extent of the relief requested and accompanied by a site plan/diagram and a description of the proposed tree removal/cutting to the Director. Council, in deciding whether to grant relief, may require the applicant to provide such additional information as it deems necessary and Council may impose such conditions as it deems appropriate.

7. ORDERS

- (a) Where an Officer is satisfied that a person has contravened any provision of this By-law, the officer may make an Order:
 - (i) requiring the person to stop the injuring or destruction of trees and shall set out the particulars of the contravention; and/or
 - (ii) requiring the person to rehabilitate the land or plant or replant trees in such a manner and within such a period as the Officer considers appropriate, including any treatment necessary to re-establish the trees.

The Order shall set out the information contained in Schedule "A".

- (b) An Order issued under this section may be served personally or served by sending it by registered mail to the last known address of:
 - (i) The owner of the property at the address shown on the municipal tax rolls; and
 - (ii) The person identified as injuring, destroying or harvesting a tree or trees.
- (c) Where service of an Order is made by registered mail, the Order shall be deemed to have been served on the fifth day after the Order is mailed.
- (d) Where service cannot be made under the preceding sections of this By-law, it is deemed sufficient if the Officer places a placard containing the terms of the Order in a conspicuous place on the affected lands and the placing of the Order shall be deemed to be sufficient service of the Order on the person to whom the Order is directed.
- (e) A person to whom an Order under this section has been directed may request a review of Council by filing a written request with the Director within 30 days after the date of the Order. Council may confirm, alter, or revoke the Order.
- (f) If a person fails to comply to an Order, the County or Lower-tier Municipality may carry out the work, enter the property for that purpose and recover the cost with interest all in accordance with Section 446 of the Municipal Act, 2001.

8. PENALTY

- (a) Any person who contravenes any provision of this By-law, or an Order issued under this Bylaw is guilty of an offence and upon conviction is liable to a fine provided for under the *Provincial Offences Act* process.
- (b) Any person who contravenes any provision of this By-law, or an Order issued under this Bylaw is guilty of an offence and upon conviction is liable to:
 - (i) A maximum fine of \$100,000;
 - (ii) In the case of a continuing offence, for each day or part of a day that the offence continues, a maximum fine of \$10,000 for each day;
 - (iii) Notwithstanding 8(b)(i), in the case of a multiple offence, for each offence included in the multiple offence, a maximum fine of \$10,000 for each offence included in the multiple offence;
 - (iv) In accordance with Subsection 429(2)(d) of the *Municipal Act* a special fine may be imposed and may exceed \$100,000 in circumstances where there is an economic advantage or gain from the contravention of this By-Law or an Order under this By-Law.
- (c) 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 treatment necessary to re-establish the Trees.
- (d) If a court makes an order under section 8(b) of this By-law, the County relies on Section 446(3) and 446(4) of the *Municipal Act*, as amended, for the recovery of costs.

9. CONFLICT WITH OTHER BY-LAWS

Nothing in this By-law shall exempt any person from complying with the requirements of any other By-law in force or from obtaining any license, permission, permit, authority or approval required under any other By-law or legislation.

10. ADMINISTRATION

- (a) Schedule “A” shall form part of this By-law.
- (b) 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.
- (c) The short title of this By-law is the “Shoreline Tree Preservation By-law”.

READ a first and second time this 29th day of August, 2012.

READ a third time and finally passed this 29th day of August, 2012.

ORIGINAL SIGNED BY _____
Murray Fearrey Warden

ORIGINAL SIGNED BY _____
James G. Wilson, CAO/County Clerk

SCHEDULE “A”

STOP WORK ORDER COUNTY OF HALIBURTON

Under the authority of Section 7, of By-law 3505 YOU ARE HEREBY DIRECTED AND ORDERED TO forthwith stop, halt, cease, and desist from any and all works associated with the destruction of trees or removal thereof from those lands comprising;

MUNICIPAL ADDRESS / LEGAL DESCRIPTION OF THE PROPERTY:

LOT: _____ CONCESSION: _____

GEOGRAPHIC TOWNSHIP: _____

MUNICIPALITY: _____

OWNER / INDIVIDUAL RESPONSIBLE FOR DESTRUCTION OR INJURYING OF TREES:

DESCRIPTION OF INFRACTION:

Date of Inspection: _____

Effective Order Date: _____

Signature of Officer: _____ Date: _____

Pursuant to By-law 3505 Section 4, if you fail to comply with this Order you may be guilty of an offence and upon conviction may be liable to a fine as provided in Section 8.

Pursuant to By-law 3505 Section 7(e), where the person to whom an Order has been directed in accordance with this By-law is not satisfied with the terms of the Order, the person may request a review by Council by filing a written request by personal service or certified mail to the Director within 30 days after the date of the Order.

Municipal Address:

County of Haliburton
11 Newcastle Street
P.O. Box 399
Minden, Ontario
K0M 2K0

Attention: Director of Planning
County of Haliburton