

**THE CORPORATION OF
THE TOWN OF THE BLUE MOUNTAINS
BY-LAW NO. ####-##**

**Being a By-law to prohibit and regulate the destruction or injuring of
certain trees in The Town of The Blue Mountains**

WHEREAS Section 135 of the *Municipal Act*, R.S.O. 2001, c. 25, provides Council with the authority to pass By-laws for prohibiting or regulating the destruction or injury of trees and to require that a permit be obtained for the injuring or destruction of trees specified in the By-law and prescribing fees for the permit, and prescribing conditions under which a permit may be issued;

AND WHEREAS the Council of the Town of The Blue Mountains declared a Climate Emergency on October 21, 2019, and trees have been identified as an important element in mitigating the impacts of a changing climate;

AND WHEREAS trees were identified as an important element of the Town's natural and cultural landscape;

AND WHEREAS it was found to be desirable and in the public interest to amend By-law 2010-68 for the purpose of:

- a) Better regulating and controlling the removal, maintenance, and protection of trees;
- b) Supporting the goal of increasing and maintaining the Town's urban forest; and
- c) Promoting good arboricultural and forestry practices that sustain healthy woodlands and the urban forest.

NOW THEREFORE, the Council of The Corporation of The Town of The Blue Mountains enacts the following:

1. DEFINITIONS

In this By-law,

- a) "**Agricultural Activity**" means the growing of crops, including nursery, biomass, and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including but not limited to livestock facilities, manure storages, value retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment.;
- b) "**Applicant**" means the person who submits an application to the Town of The Blue Mountains for a Permit to Destroy or Injure Trees pursuant to the provisions of this By-law;
- a)c) "**Certified Arborist**" means an arborist certified by the Certification Board of the International Society of Arboriculture or who possess appropriate certification from the Ministry of Training, College and Universities;
- b)d) "**Destroy**" means the injuring or removal of trees by cutting, burning, uprooting, chemical application or other means;
- e) "**Designated Tree**" means a tree that is designated by Council by By-law, as being unique and of importance to the Town of The Blue Mountains with respect to distinctive form, size, age, and/or historical significance to the community;
- f) "**Diameter**" refers to the diameter of the stem of a tree at a height of 1.37m from the ground, in accordance with the Forestry Act, R.S.O. 1990, c. F26;
- e)g) "**Director**" means the Director of a Municipal Department, as designated by Council to administer this By-law, or his or her designate, as outlined in the Town's Delegation By-law, as amended;

- d)h) **"Farm Operation"** means an agricultural or horticultural operation that is carried on in expectation of gain or reward, and includes the cultivation of land, the raising of livestock and poultry, the production of agricultural crops and maple syrup production;
- e)i) **"Forest Technician/technologist"** means a graduate of a post-secondary school forestry and/or ecology-based program;
- f)j) **"Forestry Consultant"** means a forest technician, a forest technologist, a forest/wildlife ecologist, a managed forest plan approver, or a professional forester;
- g)k) **"Good Forestry Practice"** means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the woodlands and the environmental conditions under which it is being applied and which minimize detriments to woodlands values, including: significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, woodlands productivity and health, and the aesthetic and recreational values of the landscape and includes the cleaning and thinning of trees for the purposes of stimulating tree growth and improving the quality of the woodlands without permanently breaking the canopy; the cutting and removal of hazardous, severely damaged, diseased and insect-infested trees in order to prevent injury, damage, contamination or infestation of other trees; and the cutting or removal of trees which no longer contribute to the achievement of woodlands values;
- h)l) **"Harvesting"** means the destruction of trees and may be either a single cut or a series of cuts, and shall include logging;
- i)m) **"Hazardous Tree"** means a dead or severely damaged tree that may pose a danger to persons or property;
- k) **"Infestation"** means infestation as defined in The Forestry Act, R.S.O. 1990, cF26, as amended;
- l) **"Injure"** means to do harm, damage, or impair;
- m) **"Landscape Architect"** means a graduate of a post-secondary school landscape architect program and who is a member of The Ontario Association of Landscape Architects;
- n) **"Municipality"** means The Corporation of The Town of The Blue Mountains;
- o) **"Officer"** means an individual appointed by By-law for the administration and enforcement of this By-law, and includes a Municipal By-law Enforcement Officer;
- p) **"Owner"** means the person having the right, title, interest or equity in land;
- q) **"Permit"** means the written authorization of the director under this by-law to destroy or injure trees, with or without conditions, at the sole discretion of the Director.
- q)r) **"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;
- r)s) **"Professional Forester"** means a professional forester as defined in the Crown Forest Sustainability Act, S.O., 1994;
- t) **"Settlement Area"** means lands identified and located within the Settlement Area of the Town of The Blue Mountains, as outlined on Schedule "A" to this By-law;
- u) **"Stacked Cubic Metre"** means the recommended unit of measurement of bulk firewood in Canada, in accordance with Measurement Canada. The total stacked cubic metres of a stack of firewood is calculated by measuring, in centimetres, the length, height, and width, including wood, bark, and airspace, and dividing the result by 1,000,000. For example: 209cm x 120cm x 34cm = 1,183,200cm³. 1,183,200cm³ / 1,000,000 = 1.18 stacked cubic metres.
- s)v) **"Tree"** means any species of single-stemmed perennial woody plant, which has reached or can reach a height of at least 4 metres at physiological maturity;
- t)w) **"Tree Farm"** means land where trees are grown and maintained for sale;
- u)x) **"Tree Preservation Plan"** means a plan prepared by an arborist, a landscape architect, a forest technician, a forest technologist, a forest/wildlife ecologist, a managed forest plan approver, or a professional forester which determines trees to be preserved through an assessment process which identifies trees, shrubs and other specific areas of natural habitat and their ecological function or importance, and determines the impacts of development on the trees, shrubs, and other specific areas of natural habitat and their ecological function or importance and such plan shall determine mitigation measures and measures to protect and manage trees to be

preserved and proper practices to remove trees to be destroyed;

y) **"Urban Forest"** means the trees and shrubs in the Settlement Area, including trees in yards, along streets and utility corridors, in protected areas, and in watersheds. This includes individual trees, street trees, and green spaces with trees;

z) **"Woodlands or Forest Management Plan"** means a plan for a woodlands prepared according to guidelines set by the Ministry of Natural Resources or other recognized guidelines, which set out objectives and management practices to ensure the sustainability of the woodlands, and approved by a forestry consultant.

aa) **"Woodland"** means land that is one hectare or more in area with at least:

- (i) 1000 trees, of any size, per hectare;
- (ii) 750 trees, measuring over five (5) centimetres/1.96 inches in Diameter at DBH, per hectare;
- (i) 500 trees, measuring over twelve (12) centimetres/4.72 inches, in Diameter at DBH, per hectare; or
- (iii) 250 trees, measuring over twenty (20) centimetres/7.87 inches in Diameter 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. AREA OF APPLICATION OF BY- LAW

2.1 Applicability- This By-law applies to the following lands:

a) Town Owned Lands - Despite Section 3.2(a) no person shall, within the boundaries of the Municipality, destroy or cause to be destroyed any tree that is located on land owned, controlled or managed by the Municipality or the County of Grey or any local board thereof without first obtaining the written authorization of the Municipality or the County of Grey or the local board.

a)b) Tree Preservation Plans - No person, shall, within the boundaries of the Municipality, destroy or permit or cause to be destroyed any tree that is identified as a tree for preservation on a tree preservation plan or an area of tree preservation forming part of, or referenced, in an agreement entered into with the municipality, unless supported by appropriate studies and reports, such as a Certified Arborist Report, Environmental Impact Study, or any other report that the Director deems appropriate.

c) Settlement Area

i. On a parcel of land with an area of 0.5 hectares (ha) or more within the Settlement Area, as outlined on Schedule "A" and subject to the Exemptions outlined in Section 3, no person shall injure or destroy or cause or permit the injury or destruction of trees without first obtaining a Permit pursuant to this By-law in the following cases:

a. When the applicant proposes to destroy five (5) or more trees simultaneously or in a given calendar year, each with a diameter between fifteen (15) cm and thirty (30) cm;

b. A tree with a diameter greater than thirty (30) cm;

2.2 A Permit pursuant to Section 2.1 of this By-law shall not be issued to destroy trees located on lands unless supported by appropriate studies and reports, such as a Certified Arborist Report, Environmental Impact Study, or any other report that the Director deems appropriate.

2.3 This By-law is a component of the municipality's development review and approval process. An application for a Permit may be processed and considered concurrently with a development related application submitted pursuant to the *Planning Act* and a Permit pursuant to this By-law may be issued prior to the granting of approval of the *Planning Act* application at the Director's discretion, where the issuance of a permit would not otherwise prejudice a decision on the *Planning Act* application.

2.3. EXEMPTIONS

3.1 A tree may be injured or destroyed, without applying for a Permit from the Town, where:

- a) The tree is located on a Lot which is less than 0.5ha in size;
- b) The tree is located on lands located outside of the Settlement Area, as outlined on Schedule "A", and/or within the Hamlet Area, Agricultural, Special Agricultural, Rural, Rural Employment, and Mineral Resource Extraction Area designations of the Town of The Blue Mountains Official Plan, as amended.
- c) Any tree which is subject to the County of Grey Forest Management By-law No. 4341-06;
- d) Any tree which is subject to the Development Control policies of the Niagara Escarpment Plan, as amended.
- e) Any Tree which is located within an area regulated by a Conservation Authority under Ontario Regulation 151/06, as amended.
- f) The applicant proposes to injure or destroy four (4) or fewer trees simultaneously or in a given calendar year, each with a diameter between fifteen (15) cm and thirty (30) cm; or
- g) The tree has a diameter of less than fifteen (15) cm.
- h) The cutting of firewood for personal use to a maximum volume of twenty-five (25) Stacked Cubic Metres per calendar year;
- i) The injury or destruction as necessary to clear land in accordance with a normal farm practice conducted by a farm operation for its own agricultural activity;
- j) The maintenance of a tree in accordance with good arboriculture practice;
- k) The removal of a dead, diseased or hazardous tree when certified as such by an individual designated or approved by the Director;
- l) The removal of a tree that necessitates removal as a result of being considered locally as an invasive species, when certified as such by an individual designated as such by the Director;
- m) The removal of a damaged or destroyed tree, when certified as such by an individual designated or approved by the Director, where the removal is in the interest of public safety, health or general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfall or freezes;
- n) A tree injured or destroyed in compliance with a tree preservation plan approved by the Director or otherwise approved and recognized in an executed Development Agreement;
- o) A tree on land covered by a woodlands management plan approved by a forestry consultant, a copy of which has been submitted to the Director, provided such work is undertaken in accordance with good forestry practice and the woodlands management plan;

3.2 In accordance with Section 135(12) of the *Municipal Act*, this By-law does not apply to:

- a) Activities or matters undertaken by the Municipality or the County of Grey or any local board thereof;
- b) Activities or matters undertaken by a conservation authority as defined by the *Conservation Authorities Act*;
- c) Activities or matters undertaken under a license issued under the *Crown Forest Sustainability Act, 1994*;
- d) The injuring or destruction of trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying of 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* 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* 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, 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*;
- 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,
 - 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* 2001, c. 25, s. 135(12); 2002, c. 17, Sched. A, s. 27 (3,4).

4. PERMIT APPLICATION

4.1 An Owner who applies for a Permit shall submit the following, as part of a complete application:

- a) A completed Application Form;
- b) Payment of the required fees in accordance with the Town of The Blue Mountains Fees and Charges By-law, as amended;
- c) A report prepared by a landscape architect or a qualified forestry consultant which will provide a general visual assessment and categorization of the existing trees, set forth the reasons for the proposed destruction of the tree(s), shall confirm that endangered, threatened, or at risk species are not present, and shall include recommendations for preservation and protection of any trees to be retained;
- d) Any other technical reports or studies as deemed necessary and appropriate by the Director;
- e) The Director shall have the option of not requiring the report noted in Section 5.1(c) in special circumstances to be determined at their sole discretion; and
- f) Following receipt of an application, the Director or their designate may enter and inspect the lands upon which the tree is located and the submitted of the application shall be deemed permission to so enter and inspect.

5. PERMIT ISSUANCE

5.1 A Permit shall not be issued unless the Director is satisfied that the injury or destruction of a tree will not result in:

- a) Soil erosion or slope instability including impacting existing flood control measures;
- b) Blockage of a watercourse or interference with natural drainage processes;
- c) Siltation in a watercourse;
- d) Pollution of a watercourse;
- e) Significant impact on any healthy vegetation community within, or adjacent to the subject site; or
- f) Significant impact on any fish or wildlife habitat within, or adjacent to, the subject site.

5.2 The Director shall review the complete Application and may:

- a) Issue a Permit;
- b) Issue a Permit with conditions; or
- c) Refuse to issue a Permit

5.3 The Director may confer with such persons, staff, qualified professional, and agencies as they consider necessary for the proper review of the Application.

5.4 A Permit shall not be issued where:

- a) An application for a plan of subdivision or consent related to lands on which the tree is

located has been submitted to the municipality and has not received draft approval unless otherwise permitted per Section 2.3;

- b) An application to amend the Official Plan, for re-zoning, or for site plan approval related to the lands on which the tree is located has been submitted to the municipality, and has not received final approval unless otherwise permitted under Section 2.3;
- c) Trees that are listed as endangered, threatened, or at-risk species in the *Endangered Species Act*, R.S.O., 1990 or the *Species at Risk Act*, 2002;
- d) Where approval would be in contravention of the *Migratory Birds Act*, 1994;
- e) The Permit would result in the destruction of a Designated Tree; or
- f) The destruction of a tree will not be in accordance with good arboricultural and forestry practices, as determined by the Director.

6. TERMS AND CONDITIONS OF A PERMIT

6.1 The Director may impose conditions on a Permit that in their sole discretion are reasonable. Without limiting the generality of the foregoing, the following conditions may be imposed:

- a) Any conditions in accordance with good arboricultural and forestry practice, and established silviculture;
- b) Measures to be implemented to protect the retained trees during construction, including if application, directional boring, and the length of time that the Permit is valid for;
- c) The requirement to prepare a Tree Preservation and Protection Plan in accordance with Schedule 'A', which must be approved and implemented as a condition of the Permit;
- d) To require the destruction or injury to the tree to occur in a safe and appropriate manner and within a specified time frame;
- e) A requirement to plant a replacement tree in accordance with Section 7.3 of this By-law, as deemed appropriate by the Director; and
- f) Where the destruction or injury of a tree is not conducted as part of, and in accordance with, a Site Plan Agreement, a Subdivision Agreement, or a Condominium Agreement, the Owner may be required to:
 - i. Enter into an agreement regarding the conditions as set out in 7.1(a) to (e) above this section which form part of the Permit; and
 - ii. Register the agreement on the title to the lands affected by the Permit.

6.2 A copy of the Permit shall be posted on the property prior to the commencement of any injury or destruction of any tree allowed by the Permit, in a conspicuous place on the subject property that is adjacent to a public road and visible to all persons or at such other location deemed appropriate.

6.3 Where a Permit requires the planting of replacement trees, the Director may impose conditions on the Permit that in their sole discretion are reasonable. Without limiting the generality of the foregoing, the following provisions related to the replacement tree may be imposed:

- a) The species, size, number, and location of the replacement tree;
- b) The date by which any replacement tree is to be planted;
- c) The maintenance and care of any replacement tree shall be determined by the Director in consultation with a landscape architect or qualified forestry consultant;
- d) Where removal involves a distinctive tree, the replacement tree shall be equal to the net Diameter of the removed tree, either as a single tree or multiple trees, and shall include the same species, where appropriate and commercially available;
- e) The maintenance and care of a replacement tree including the deposit of security in the form of a letter of credit, cash or certified cheque, in an amount to be determined by the Director to guarantee, for a specified period of time, the cost of maintaining or replacing a replacement tree;
- f) Replacement trees are to be maintained and protected in accordance with good arboricultural and forestry practices by the Owner or person responsible for the injury or destruction, for a minimum period of two (2) years after planting;

g) Replacement trees shall be subject to the following locational priorities:

- i. The first and highest priority shall be to plant the replacement tree on the property where the tree was destroyed; and
- ii. The next highest priority shall be to plant the replacement tree on another site(s) in the municipality for the purpose of general reforestation.

3.7. ADMINISTRATION

7.1 The Director is responsible for the administration of this By-law and is hereby delegated the authority to receive applications and the required fees, if applicable, and to issue permits and/or approvals and to attach conditions thereto in accordance with this By-law.

7.2 If there is a conflict between this By-law and a By-law passed under the *Forestry Act*, the *Species at Risk Act*, the *Endangered Species Act* or the *Municipal Act*, the provision that is the most restrictive shall prevail.

4.8. ENFORCEMENT

8.1 As assigned by the Director, An officer may, during daylight hours and upon producing a certificate of designation, enter and inspect any land to which this By-law applies. An Officer may, in carrying out an inspection, be accompanied by an assisting person.

8.2 If the Director is satisfied that a contravention of this By-law has occurred, an Officer may issue a Stop Work Order requiring the person that contravened the By-law, or that caused or permitted the contravention of the By-law, to stop any injury or destruction to the tree, subject to the following:-

- a) The Stop Work Order shall set out reasonable particulars of the contravention in sufficient detail to identify the contravention, the location of the contravention, and the date by which there must be compliance with the Order.
- b) A Stop Work Order may be served personally by an Officer, may be posted in a conspicuous place on the property where the contravention occurred, or may be sent by registered mail to the person contravening this By-law. Where an order is issued under this By-law is served personally by an Officer, it shall be deemed to have been served on the date of delivery to the person(s) named.
- c) The placing of the Order on the affected lands shall be deemed to be sufficient service of the Order on the person or corporation to whom the Order is directed on the date it is posted.
- d) Where an Order issued under this By-law is sent by registered mail, it shall be sent to the last known address of the applicant, the Owner, or the person or company retained to work on the trees on the lands.
- a)e) Where a person fails to comply with an Order issued under this By-law and the municipality enters on the lands and completes the work specific in the Order, the municipality shall be entitled to recover the costs to complete the work from the person named in the Order by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

5.9. PENALTIES FOR NON-COMPLIANCE WITH BY-LAW

9.1 Any person who contravenes any provision of this By-law or an order is guilty of an offence and on conviction is liable:-

- a) on a first conviction, to a fine of not more than \$540,000.00 or \$1,000.00 per tree, whichever is greater; and
- b) on any subsequent conviction, to a fine of not more than \$2100,000.00 or \$2,500.00 per tree, whichever is greater.

9.2 Where a person is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed by the By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repletion of the offence by the person convicted or any other person:-

9.3 Where a person is convicted of an offence 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 replant or have replanted such trees in such manner and within such a period of time as the court considers appropriate, including any silvicultural treatment necessary to re-establish the tree or have the tree re-established and may also order the person to provide compensation for the injury or destruction of the tree to the municipality, in accordance with Section 12 of this By-law.

9.4 No Permit shall be renewed or extended where the Owner or the Applicant is in breach of any terms of this By-law or a condition of said Permit.

10. COMPENSATION

10.1 The Director shall calculate the compensation for the injury or destruction of a tree required as a condition of a Permit, or required as a condition of an Order issued under this By-law, as follows:

- a) The value of any tree that is injured or destroyed shall be determined using the International Society of Arboriculture Trunk Formula Method.;
- b) The value of the tree injured or destroyed, as calculated pursuant to Section 10.1.a), shall be used to determine the number, species, and size of the replacement tree that shall be planted by the permit holder or person responsible for the injury or destruction, as the case may be. The Director shall make this determination in consultation with a qualified forestry consultant and their decision to the number, species, and size of replacement tree shall be final.
- c) The provisions of Section 7.3, with necessary modifications, shall apply to replacement trees planted in accordance with this Section.

11. APPEALS TO COUNCIL

11.1 An Applicant for a Permit pursuant to this By-law may appeal in writing to the Council by filing a notice of appeal by personal service or pre-paid registered mail with the Clerk:

- a) If the municipality makes a decision to refuse to issue a Permit, an appeal shall be submitted within thirty (30) days following the date of the refusal;
- b) If the municipality fails to make a decision on the Application, within forty-five (45) days after the application is received by the Town; or
- c) If the Applicant objects to a condition in the Permit, an appeal shall be submitted within thirty (30) days after the issuance of the Permit.

11.2 The Council has the same powers as the Director under this By-law, and may:

- a) Confirm the refusal to issue the Permit;
- b) Issue a Permit, with or without conditions;
- c) Affirm, vary, or add any conditions to the Permit; or
- d) Confirm the issuance of a Stop Work Order.

The decision of Council is final.

6.12. SHORT TITLE

This By-law may be referred to as 'The Tree ~~Preservation~~ By-law".

7.13. VALIDITY OF THE BY-LAW

Where a court of competent jurisdiction declares any section or part of a section of this By-law to be invalid, the remainder of this By-law shall continue in force unless the court makes an order to the contrary.

8.14. EFFECTIVE DATE OF BY-LAW

This By-law shall come into force and take effect on the day of the passing thereof.

| Enacted and passed this day of , [2022](#) .

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