

## THE CORPORATION OF THE COUNTY OF PERTH

### BY-LAW No. 3836-2021

#### BEING A BY-LAW TO REGULATE THE DESTRUCTION OR INJURING OF TREES IN WOODLANDS AND WOODLOTS IN THE COUNTY OF PERTH

WHEREAS Section 135(2) of the *Municipal Act*, S.O. 2001, c.25, as amended (the "Act"), authorizes the Council of the Corporation of the County of Perth to enact a By-law to regulate the destruction or injuring of trees;

AND WHEREAS Section 135(10) of the Act provides that a lower-tier municipality within the County of Perth may delegate to the County of Perth all or part of its authority to pass a By-law in respect of the destruction or injuring of trees with the agreement of the County of Perth;

AND WHEREAS each of the County's lower tier municipalities delegated their authority to the County under Section 135(10) of the Act;

AND WHEREAS Council has determined that it is desirable to enact such a By-law for the purpose of improving the forest, soil, fish, wildlife and water resources of the County of Perth by conserving and improving the Woodlands and Woodlots as hereinafter defined;

THEREFORE, the Council of the Corporation of the County of Perth HEREBY ENACTS as follows:

#### **Section 1: Definitions**

1) In this By-law:

- a) "Building permit" means a building permit issued under the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended or any successor legislation.
- b) "Business Day" or "day" means any day falling on or between Monday and Friday of each week but does not include New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Christmas Day, or Boxing Day.
- c) "Cadastral surveying" means surveying in relation to the identification, establishment, documentation or description of a boundary or the position of anything relative to a boundary; or  
the generation, manipulation, adjustment, custody, storage, retrieval or display of spatial information that defines a boundary.
- d) "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.
- e) "Coppice growth" means where more than one tree stem grows from a single tree stump.
- f) "Council" means the Council of the Corporation of the County of Perth.

- g) "County" means the Corporation of the County of Perth or the area up to and including the geographical boundaries of the County of Perth as the context requires.
- h) "DBH" (Diameter at Breast Height) means the diameter of the stem of a tree measured at a point that is 1.37 metres (4.5 feet) above the ground.
- i) "Diameter" means the diameter of the stem of a tree measured outside the bark at a specified point of measurement.
- j) "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.
- k) "Issuing Officer" means the Officer who issues a Stop Work Order or the Officer appointed by the County to enforce this By-law as the context requires.
- l) "Lower tier municipality" means each of the Township of Perth East, Township of Perth South, Municipality of West Perth and Municipality of North Perth.
- m) "Officer" means a provincial offences officer as defined in the *Provincial Offences Act*, R.S.O. 190. c. P.33, as amended, or its successor legislation and includes an Issuing Officer.
- n) "Order" means a Stop Work Order issued pursuant to Section 7 of this By-law or an Order issued by an Officer issued pursuant to Section 8 of the By-law as the context requires.
- o) "Owner" means a person having any right, title, interest or equity in land.
- p) "Own use" and "personal use" means a use that does not include sale, exchange, barter or other disposition.
- q) "Person" includes but is not limited to an individual, partnership or corporation.
- r) "Point of Measurement" means that point on the tree trunk measured above the highest point of the ground in an undisturbed state at the base of the tree. For coppice growth the point of measurement means that point on each tree stem or trunk measured above the point on the tree trunk where the tree stems separate provided that such point of separation is less than 1.37 metres (4.5 feet) above the highest point of undisturbed ground at the base of the coppice growth. The point of separation in effect becomes "ground level" for each stem in the coppice growth, and the same circumference or diameter limits apply as for single-stemmed trees.
- s) "Registered Professional Forester" has the same meaning as in the *Professional Foresters Act*, S.O. 2000, c.18, as amended, or its successor legislation.

- t) "Silviculture" means the theory and practice of controlling forest establishment, and the composition, growth and quality of forests to achieve the objectives of good forestry practice and forest management.
- u) "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.
- v) "Single lane driveway" means a private passageway for a motor vehicle, having at least one end thereof connected to a road, and providing the principal means of vehicular access to a building, structure or thing in respect of which a building permit has been issued. The maximum width of a single lane driveway is 6 metres (20 feet).
- w) "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 (15 feet) at physiological maturity.
- x) "Woodlands" or "Woodland" means land at least one hectare (or its equivalent of 2.47 acres) or more in area with at least:
  - i. 1000 trees of any size per hectare or 405 trees of any size per acre;
  - ii. 750 trees measuring over five (5) centimetres (2 inches) in diameter at DBH per hectare or 304 trees of such measure per acre;
  - iii. 500 trees measuring over twelve (12) centimetres (5 inches) in diameter at DBH per hectare or 202 trees of such size per acre; or
  - iv. 250 trees, measuring over twenty (20) centimetres (8 inches) in diameter at DBH per hectare or 101 trees of such size per acrebut does not include a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas trees.
- y) "Woodlots" or "woodlot" means land at least 0.2 hectares (or its equivalent of 0.5 acres) in area and no greater than 1 hectare in area, with at least:
  - i. 200 trees of any size per 0.2 hectares;
  - ii. 150 trees measuring over five (5) centimetres (2 inches) in diameter at DBH per 0.2 hectares;
  - iii. 100 trees measuring over twelve (12) centimetres (5 inches) in diameter at DBH per 0.2 hectares; or
  - iv. 50 trees measuring over twenty (20) centimetres (8 inches) in diameter at DBH per 0.2 hectares

but does not include a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas trees or nursery stock.

- 2) For the purposes of this By-law, the boundary of a woodland or woodlot shall be defined by the ecological limit of the woodland or woodlot and not by property boundaries.

## **Section 2: General Prohibition**

Except as provided in this By-law, no person by themselves or through any other person shall destroy or injure, or cause or permit to be destroyed or injured, any living tree located in a woodland or woodlot within the County.

## **Section 3: Exceptions**

A person may destroy or injure a tree located in a woodland or woodlot in the County if:

- 1) The person who is destroying or injuring trees does so in accordance with a silvicultural prescription incorporating good forestry practice prepared by:
  - a) a Registered Professional Forester in good standing with the Ontario Professional Foresters Association; or
  - b) a member in good standing with the Ontario Professional Foresters Association; and
  - c) the person who is destroying or injuring trees has complied with all the requirements of this By-law; and
  - d) the trees to be destroyed or injured have been clearly marked with paint on two sides and at the base of the tree with the basal mark extending to the ground.

**OR**

- 2) The trees destroyed or injured:
  - a) have attained, at the specified point of measurement, the circumference or diameter measurement which is equal to or greater than the minimum circumference or diameter prescribed for the species in Schedule "A" to this By-law; and
  - b) the injuring or destruction of trees has occurred in compliance with all the requirements of this By-law; and
  - c) the destruction or injuring of trees will not reduce the density of trees in the area in which the injury or destruction occurred below the minimum number of trees per hectare specified in the definitions of a woodland or woodlot.

## **Section 3(A): Ash Trees**

- 1) Section 3(A) (inclusive of all subsections and paragraphs of this section) shall be in force for the period commencing December 5, 2019 and ending on September 5, 2022 (the "Period") and thereafter shall be of no force and effect.

- 2) Schedule A to this By-law is hereby amended to provide that during the Period the diameter requirement for species of white, green and red ash, being Species A, and black ash, being Species B, is deemed to be zero at each of the four points of measurement.
- 3) Prior to the destruction of ash trees in a woodland or woodlot during the Period, every person who intends to destroy ash trees in a woodland or woodlot shall comply with Sections 6(2), (3), (4) and (7) of this By-law.
- 4) Notwithstanding the density requirements contained in the definitions of “woodland” and “woodlot” in this By-law and any other provision of this By-law, in order to protect the remaining woodland or woodlot, the density of the woodland or woodlot in which the destruction or injury of ash trees has occurred shall, for all purposes of this By-law, be deemed to remain as it was prior to the destruction of the ash trees located there.
- 5) For the purposes of Section 3(A) (4), the opinion of an Officer, Issuing Officer or other person qualified as an expert by a court of competent jurisdiction in the area of determining the density of trees in a woodland or woodlot shall be presumed to be conclusive as to the density of the trees in the woodland or woodlot as it was prior to the destruction or injury of the ash trees located there, which presumption may be rebutted on the balance of probabilities.

#### **Section 4: Drainage Works**

- 1) Except for municipal drainage works, if the injury or destruction of trees is intended to construct drainage works, the person intending to cause or permit such injury or destruction by themselves or through another shall comply with this By-law.
- 2) Except for municipal drainage works, every person commits an offence who by themselves or through another constructs or causes or permits to be constructed tile drainage works consisting in whole or in part of perforated tile through or within 5 metres (16.5 feet) of a woodland or woodlot.

#### **Section 5: Exemptions**

This By-law does not apply to:

- 1) activities or matters undertaken by the County or a lower tier municipality or a local board of a lower tier municipality;
- 2) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act*, 1994, R.S.O. 1990, c. 25;
- 3) the injuring or destruction of trees by a person licensed under the *Surveyors Act*, R.S.O. 1990, c. S.29 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 as a condition to the approval of a site plan, a plan of subdivision or a consent under Sections 41, 51, or 53, respectively, of the *Planning Act*, R.S.O. 1990, c. P.13 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 as a condition to a development permit authorized by regulation made under Section 70.2 of the *Planning Act*, R.S.O. 1990, c. P.13 or as a requirement of an agreement 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*, S.O. 1998, c. 15, Schedule "A" for the purpose of construction and maintaining a transmission system or a distribution system, as those terms are 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*, R.S.O. 1990, c. A.8;
- 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*, R.S.O. 1990, c. A. 8 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*, R.S.O. 1990, c. P 13;
- 9) the injuring or destruction of trees required to erect 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 15 metres (50 feet) from the outer edge of the building, structure or thing;
- 10) the injuring or destruction of trees required to install and provide utilities for or to construct a single lane driveway of no more than 6 metres (20 feet) in width for vehicular access during construction to a building, structure or thing for which a building permit has been issued;
- 11) the injury or destruction of trees by an owner of the lands upon which a woodland or woodlot is located who has destroyed or injured trees for his or her own use provided that the destruction or injuring of trees will not reduce the density of trees in the area in which the injury or destruction occurred below the minimum number of trees per hectare specified in the definitions of a woodland or woodlot; or
- 12) the clearing of trees:
  - a) in an area along the edge of a field used to plant crops immediately adjacent to a woodland or woodlot which has become overgrown by seedlings and saplings; or
  - b) that impede the passage of farm machinery or equipment along an existing laneway that is either within or along the edge a woodlot or woodland;

provided that the area to be cleared has been inspected, approved and marked by an Issuing Officer prior to the commencement of the clearing of the trees and the person who

cleared or caused or permitted the injury or destruction of the trees for this purpose has complied with this By-law.

### **Section 6: Notice of Intent**

- 1) Every person who intends to destroy or injure trees located in the County pursuant to Section 3(1) of this By-law shall first request a Notice of Intent form from the County. The person shall legibly complete the Notice of Intent form and personally deliver or send it by mail, facsimile transmission or email to the County as directed on the Notice of Intent form no less than 20 days prior and no more than 180 Business Days prior to the start of the destruction or injury of trees together with a legible copy of the Silvicultural Prescription signed by and identifying the person who prepared the prescription.
- 2) Every person who intends to destroy or injure trees located in the County pursuant to Section 3(2) of this By-law shall first request a Notice of Intent form from the County. The person shall legibly complete the Notice of Intent form and personally deliver or send it by mail, facsimile transmission or email to the County as directed on the Notice of Intent form no less than 7 days and no more than 180 Business Days prior to the start of the destruction or injury of trees.
- 3) Upon receipt of the Notice of Intent form, the County may:
  - a) return the form as being illegible or incomplete;
  - b) inspect the site and the area around the site at which the tree injury or destruction is to occur;
  - c) require additional information or amendments to the Notice of Intent; or
  - d) any one or more of the foregoing.
- 4) Unless and until the person submitting the Notice of Intent has been advised in the form of a receipted copy of the submitted Notice of Intent form sent by email or facsimile transmission to the address provided by the person in the Notice of Intent form that the County is satisfied with the form and content of the Notice of Intent, no person shall injure or destroy trees except as may otherwise be permitted by law.
- 5) The County may serve a receipted copy of the Notice of Intent confirming that the County is content with the Notice of Intent by:
  - a) Email or facsimile transmission to the email address or facsimile transmission number identified in the Notice of Intent, service to be effective on the day following the day it was mailed or transmitted; or
  - b) Ordinary mail mailed to the address identified in the Notice of Intent effective on the fifth day following the date of mailing, excluding the day of mailing.
- 6) Proof of Service may be proven by affidavit.
- 7) Every person who has submitted or caused to be submitted a Notice of Intent and has

received a receipted copy of that Notice of Intent, shall notify the Officer or the County by facsimile transmission, email or telephone no more than 7 business days and no less than 24 hours prior to the date upon which the destruction or injury of the trees is to begin, advising of the location of the destruction or injury of trees and the date upon which the injury or destruction of the trees is to start.

### **Section 7: Stop Work Order**

- 1) If an Officer is satisfied on reasonable and probable grounds that a contravention of this By-law has occurred or is occurring, an Officer may make an Order 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 immediately stop the injuring or destruction of trees. The Order shall be substantially in the form prescribed in Schedule "B" to this By-law.
- 2) Every person who fails to comply with an Order issued pursuant to this Section is guilty of an offence.

### **Section 8: Work Order**

- 1) Upon the Officer being satisfied that a contravention of this By-law has occurred, the Officer may make an Order requiring the person who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention.
- 2) Every person who fails to comply in whole or in part with an Order made under this Section is guilty of an offence.

### **Section 9: Service of an Order**

- 1) An Order issued under this By-law may be served personally or may be served by sending it by registered mail to the last known address of:
  - a) the registered owner of the woodland or woodlot; and
  - b) any other person the Officer or the County believes on reasonable and probable grounds is responsible for the contravention of the By-law.
- 2) As an alternative to personal service or service by registered mail, the Order may be served by placing a placard containing the terms of the Order in a conspicuous place at or near the site where the contravention is believed to have occurred and the placing of the placard shall be deemed to be sufficient service of the Order on the person or persons to whom the Order is directed.
- 3) Service of the Order is effective:
  - a) on the date upon which the Order is personally served;
  - b) on the fifth day following the date upon which a copy of the Order is mailed, excluding the date of mailing; or
  - c) the date the placard is placed.



- 4) Service of the Order may be proved by Affidavit.

### **Section 10: Other Offences**

- 1) Any person who obstructs or interferes with an Officer in the performance of his or her duties under this By-law is guilty of an offence.
- 2) Any person who removes, defaces, destroys or covers in whole or in part a placard evidencing an Order issued pursuant to this By-law is guilty of an offence.
- 3) Any person who by themselves or causes or permits another person to destroy or injure a tree that according to a Notice of Intent or Silvicultural Prescription was to remain unharmed is guilty of an offence.
- 4) Any person who fails to mark a tree as provided in Section 3(1)(d) of this By-law is guilty of an offence.
- 5) Every director or officer of a corporation is guilty of an offence who causes or permits the corporation of which he or she is an officer or director to commit an offence contrary to this By-law.

### **Section 11: Penalties**

- 1) Any person who contravenes Section 2 of this By-law is guilty of an offence and is liable:
  - a) on first conviction, to a fine of not more than \$1,000.00 per tree destroyed or injured to a maximum of \$100,000.00;
  - b) on any subsequent conviction, to a fine of not less than \$5,000.00 and not more than the lesser of \$1,000.00 per tree destroyed or injured or \$100,000.00.
- 2) Any person who commits an offence described in Section 4(2), Section 6 or Section 10 of this By-law is liable to a fine of not more than \$25,000.00 on a first conviction and a fine of not more than \$50,000.00 on any subsequent conviction.
- 3) Every person who fails to comply in whole or in part with an Order made pursuant to this By-law is liable to a fine of not more than \$25,000.00 on a first conviction and a fine of not more than \$50,000.00 on any subsequent conviction.
- 4) If a person is convicted of an offence contrary to this By-law, the court in which the conviction is registered, and any other court of competent jurisdiction thereafter, 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, and to maintain the replanted trees as appropriate, including any silvicultural treatment necessary to re-establish the trees.

### **Section 12: Enforcement**

- 1) This By-law shall be enforced by one or more Officers.
- 2) An Officer may, at any reasonable time, enter upon and inspect any land to determine if there has been compliance with this By-law or an Order issued pursuant to this By-law. An Officer may not enter a building or residence except under the authority of a

search warrant.

- 3) For the purpose of determining whether a tree is less than or greater than a measurement specified in this By-law, a measurement of the diameter or circumference taken by an Officer of that part of the tree still remaining after the destruction or injury of the tree, as near as is reasonably practicable to the Point of Measurement specified in this By-law, shall be presumed to be proof of the size of the tree at the specified Point of Measurement, which presumption may be rebutted by evidence to the contrary on the balance of probabilities.
- 4) In a legal proceeding alleging a contravention of this By-law, it shall be presumed, which presumption may be rebutted by evidence to the contrary on a balance of probabilities, that the owner of the property upon which it is alleged that the contravention occurred, by himself or through another person or persons:
  - a) caused or permitted to be caused the injury or destruction, as the case may be, of any living tree on the said property, or
  - b) contravened, caused to be contravened or permitted the contravention of an Order issued pursuant to of this By-law as the case may be.
- 5) For the purposes of this By-law, circumference and diameter measurements will always be taken at the highest possible point of measurement.

### **Section 13: Severability**

- 1) If any section or sections of this By-law or parts thereof are found by any Court to be illegal or beyond the power of the Council to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found illegal.

### **Section 14: Administration**

- 1) Schedules "A" and "B" shall form part of this By-law.
- 2) The short title of this By-law is the "Forest Conservation By-law."
- 3) By-law Number 3557-2016 and By-law Number 3731-2019 of the Corporation of the County of Perth shall be repealed and replaced by this By-law, effective on the date of its passing.
- 4) Despite Section 14(3) of this By-law, By-law Number 3557-2016 of the Corporation of the County of Perth shall continue to apply to proceedings in respect of offences that occurred before its repeal.

Read a first and second time this 2<sup>nd</sup> day of September, 2021.

Read a third time and finally passed this 2<sup>nd</sup> day of September, 2021.

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James Aitcheson, Warden

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Tyler Sager, Clerk

## Schedule "A" to By-law No. 3836-2021

### Minimum Circumference and Diameter Limits by Category of Tree Species

\*Diameter Limits for Ash Trees have been suspended for the period commencing December 5, 2019 and ending on September 5, 2022. In regard to the destruction of ash trees identified as Species A and Species B, refer to Section 3(A) of By-law 3836-2021.

#### **SPECIES A**

Ash*	white, green, red
Basswood	
Elm	red, rock, white
Maple	hard, red, silver, black, soft, sugar
Oak	red, white, bur
Pine	white
Walnut	black, white (butternut)

Point of Measurement	Circumference	Diameter	Note
46 cm (18 inches)	145 cm (57 inches)	46 cm (18 inches)	Imperial measurements are approximate and are provided for convenience only.
30 cm (12 inches)	160 cm (63 inches)	51 cm (20 inches)	
20 cm (8 inches)	175 cm (69 inches)	56 cm (22 inches)	
10 cm (4 inches)	208 cm (82 inches)	66 cm (26 inches)	

#### **SPECIES B**

Ash*	black
Beech	
Pine	red
Cherry	black
Birch	white, yellow
Hemlock	
Hickory	all types
Poplar	cottonwood
Spruce	white, norway

Point of Measurement	Circumference	Diameter	Note
46 cm (18 inches)	119 cm (47 inches)	38 cm (15 inches)	Imperial measurements are approximate and are provided for convenience only.
30 cm (12 inches)	127 cm (50 inches)	41 cm (16 inches)	
20 cm (8 inches)	145 cm (57 inches)	46 cm (18 inches)	
10 cm (4 inches)	175 cm (69 inches)	56 cm (22 inches)	

#### **SPECIES C**

Poplar	balsam, trembling aspen, large toothed
Cedar	all types
Larch	eastern (tamarack), European
Locust	black
Pine	scotch, jack

Point of Measurement	Circumference	Diameter	Note
46 cm (18 inches)	71 cm (28 inches)	23 cm (9 inches)	Imperial measurements are approximate and are provided for convenience only.
30 cm (12 inches)	79 cm (31 inches)	25 cm (10 inches)	
20 cm (8 inches)	94 cm (37 inches)	30 cm (12 inches)	
10 cm (4 inches)	127 cm (50 inches)	41 cm (16 inches)	

Schedule "B" to By-law No. 3836-2021



# STOP WORK ORDER

Issued pursuant to Section 7 of By-law No.3836-2021of the Corporation of the County of Perth

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(Name of Owner or Person responsible for destruction or injury of trees)

Is 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 woodlands or woodlots located on the property described below:

**MUNICIPAL ADDRESS OR LEGAL DESCRIPTION OF THE PROPERTY:**

Lot: \_\_\_\_\_ Concession:\_\_\_\_\_

Ward (Former Township):\_\_\_\_\_ Municipality:\_\_\_\_\_

Municipal (911) Address:\_\_\_\_\_

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Date of Order:\_\_\_\_\_

Signature of Officer:\_\_\_\_\_

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Issuing Authority: The Corporation of the County of Perth  
Marvin Smith, By-law Enforcement Officer  
Phone (519) 291-2236

Mailing Address: County of Perth - Forestry  
1 Huron Street, Stratford, Ontario N5A 5S4  
Fax: (519) 271-6265 Email: info@perthcounty.ca