

BY-LAW NUMBER 197-07

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THE CORPORATION OF THE COUNTY OF BRANT

To provide for the conservation and preservation of trees
and to prohibit or regulate the destruction or injuring of
trees in woodlands in the County of Brant.

WHEREAS it is deemed expedient for the general welfare of the County of Brant to maintain and improve the woodlands, soil, game and fish resources of the County by preserving and improving the woodlands of the County;

AND WHEREAS Section 135(2) of the Municipal Act 4, R.S.O. 2001, c.25 as amended, provides that the Council of the Corporation of the County of Brant may by by-law prohibit or regulate the destruction or injuring of trees in woodlands designated in the by-law;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE COUNTY OF BRANT ENACTS as follows:

Definitions:

1. For the purpose of this by-law:
 - (a) “circumference measurement” and “diameter measurement” mean a measurement made outside the bark of the tree;
 - (b) “the point of measurement” means that point of the tree trunk measured above the highest point of the ground in an undisturbed state at the base of the tree;
 - (c) circumference and diameter measurements will always be taken at the highest possible point of measurement.
 - (d) “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;
And Good Forestry Practices permits the destruction or injuring of trees that:
 - i. have been damaged by disease, insects, wind, ice, fire, lightning, or other natural causes, to an extent that the health of such trees is likely to deteriorate further;
 - ii. should be cut or removed to prevent disease or insects from spreading to other trees;
 - iii. meet or exceed the recommendations of the following Provincial Silvicultural Guidelines:
 - A Silviculture Guide to Managing Southern Ontario Forests
 - A Silviculture Guide for the Tolerant Hardwood Forest
 - A Tree Marking Guide for the Tolerant Hardwoods Working Group
 - A Silviculture Guide for the Great Lakes – St. Lawrence Conifer Forest in Ontario

- (e) “sensitive natural area” includes:
- i. provincially designated Life Science Areas of Natural and Scientific Interest.
 - ii. wetlands designated as locally, regionally, or provincially significant.
 - iii. environmentally Sensitive Areas as designated by the Grand River Conservation Area and the Long Point Region Conservation Area.
 - iv. significant portions of the habitat of vulnerable, threatened, and endangered species; significant woodlands; significant ravine, valley, river, and stream corridors; shorelines of lakes, rivers, and streams; significant wildlife habitat; and significant natural corridors.
 - v. sensitive natural areas designated in an approved official plan.
 - vi. any portion of a woodland or woodlot located within 100 feet (30.5 metres) of the water’s edge of a locally, regionally, or provincially significant wetland, a lake, a river, a stream, or an intermittent stream, which has not been approved under Section 5 of this by-law as a minor exception.
- (f) “dbh” means the diameter of the stem of a tree measured at a point that is four and one-half feet (1.3 metres) above ground;
- (g) “woodlands” means land at least 1.0 hectares and more in area with at least:
- (i) 1,000 trees of any size per hectare
 - (ii) 750 trees, measuring over five (5) centimeters in diameter at dbh, per hectare;
 - (iii) 500 trees, measuring over twelve (12) centimeters, in diameter at dbh, per hectare; or
 - (iv) 250 trees, measuring over twenty (20) centimeters, 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.
- (h) “woodlot” means an area at least 0.2 hectares in area and no greater than 1 hectare in area having not less than:
- i. 400 trees per acre (988 trees per hectare) of any size,
 - ii. 300 trees per acre (741 trees per hectare) measuring more than two inches (5.0 cm) dbh,
 - iii. 200 trees per acre (494 trees per hectare) measuring more than five inches (12.7 cm) dbh, or
 - iv. 100 trees per acre (247 trees per hectare) measuring more than eight inches (20.3 cm) dbh.
- (i) “basal area of a woodlot or woodland” means the sum of the basal areas of the individual trees of a dbh greater than four inches (10.2 cm) which comprise a woodlot or woodland;
- (j) “individual tree basal area” and “basal area” mean the area of the cross-section of the stem taken at a point of measurement of a standing tree four and one-half feet (1.3 metres) above ground level;
- (k) “intermittent stream” means a stream which flows for fewer than nine consecutive months per year under average annual precipitation conditions and which has defined banks;

- (l) “coppice growth” means where more than one tree stem grows from a single tree stump, the point of measurement for the purpose of this by-law shall be at the point on the tree trunk where the tree stems separate, provided that such point of separation is closer than 50 inches (1.27 metres) to the highest point of the ground in an undisturbed state at the base of the tree;
- (m) “County” means the Corporation of the County of Brant;
- (n) “Clerk” means the Clerk of the Corporation of the County of Brant;
- (o) “Forestry Officer” means any Municipal Law Enforcement Officer whose responsibility is to enforce this By-law.

General Prohibition

- 2. Except as exempted pursuant to Section 4 or except as permitted in Section 5 or Section 6 of this by-law, no person shall destroy or injure or permit the destruction or injury by cutting, burning or other means of any living species of trees listed in this section that has not attained the circumference or diameter measurement specified herein at the point of measurement:

Species A

- Ash (green, white, black)
- Basswood
- Beech
- Hemlock
- Cherry – black
- Elm
- Hickory (shagbark, bitternut, pignut, mockernut)
- Maple (sugar, black, red, silver)
- Oak (red, white, bur)
- Pine – white
- Walnut (black, white {butternut})

<u>Point of Measurement</u>	<u>Diameter</u>	<u>Circumference</u>
18 inches (46 cm.)	18 inches (46 cm.)	57 inches (145 cm.)
12 inches (30 cm.)	20 inches (51 cm.)	63 inches (160 cm.)
8 inches (20 cm.)	22 inches (56 cm.)	69 inches (175 cm.)
4 inches (10 cm.)	26 inches (66 cm.)	82 inches (208 cm.)

Species B

- Chestnut
- Gum
- Hackberry
- Pine – red
- Sycamore
- White Spruce
- Tamarack
- Yellow Birch

<u>Point of Measurement</u>	<u>Diameter</u>	<u>Circumference</u>
18 inches (46 cm.)	14 inches (36 cm.)	44 inches (112 cm.)
12 inches (30 cm.)	16 inches (41 cm.)	50 inches (127 cm.)
8 inches (20 cm.)	18 inches (46 cm.)	57 inches (145 cm.)
4 inches (10 cm.)	22 inches (56 cm.)	69 inches (175 cm.)

Species C

Birch – white
Cedar
Poplar

<u>Point of Measurement</u>	<u>Diameter</u>	<u>Circumference</u>
18 inches (46 cm.)	8 inches (20 cm.)	25 inches (64 cm.)
12 inches (30 cm.)	10 inches (25 cm.)	31 inches (79 cm.)
8 inches (20 cm.)	12 inches (30 cm.)	37 inches (94 cm.)
4 inches (10 cm.)	16 inches (41 cm.)	50 inches (127 cm.)

Damage to residual trees

3. (a) In cutting or removing any tree, no person shall so conduct the operations as to unnecessarily injure or damage any other tree.

Sensitive natural areas

- (b) Subject to the exceptions contained in Section 4 or as permitted pursuant to Section 5 or Section 6 of this by-law, no person shall destroy or injure, or permit the destruction or injury by cutting, burning or any other means of any tree growing in a woodlot or woodland in a sensitive natural area.

Minimum residual basal area

- (c) Subject to the exceptions contained in Section 4 or as permitted pursuant to Section 5 or Section 6 of this by-law, no person shall destroy or permit the destruction of any trees by cutting, burning or other means so that the average basal area of the woodlot or woodland in which the tree stands is reduced below 65 square feet per acre (15 square metres per hectare).

Exceptions

4. This by-law does not apply to:
- (a) activities or matters undertaken by a municipality or a local board of a 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, 2001, c.25, s.135 (12); 2002, c.17, Schedule a, s.27 (3,4); or
- (i) the owner of the Woodlands who has destroyed trees for his or her own use, provided the Owner has been the registered owner of the Woodlands for at least two years prior to the date of the commencement of the destruction of the trees, and providing such destruction has not reduced the number of trees per hectare below the minimum number of trees per hectare required to be considered Woodlands or Woodlot

Application for minor exception

- 5 (a) Upon the application of the owner of any trees affected by this By-law, or any predecessor thereof, or upon application by any person authorized in writing by the owner, the Council of the Corporation of the County of Brant may, by resolution, authorize such minor exception from the By-law in respect of such trees that can be cut to comply consistent with the general intent and purpose of the By-law.
- (b) No person, granted a minor exception in accordance with this by-law, shall destroy or injure or permit the destruction or injury of any tree, by cutting, burning or other means, except in compliance with the minor exception.

Notice of application

- (b) Where the Council of the Corporation of the County of Brant receives an application under Subsection (a), the Clerk of the County shall give notice of the application to the owners of each parcel of land that abuts the land of the owner of the trees in respect of which the application is made and to such other owners as County Council considers proper.

Service of notice

- (c) A notice under Subsection (b) shall be deemed to be sufficiently given if served upon an owner,
 - i. personally; or
 - ii. by leaving it at his or her place of business or residence; or
 - iii. by registered mail addressed to his or her place of business or residence, if known, as set forth in the last revised assessment roll of the municipality in which the land is situate; or
 - iv. if the place of business and residence of the owner are not known, by leaving it with any person being at least sixteen years of age on the land of the owner or by posting it in two conspicuous places on such land.

Content of notice

- (d) A notice under Subsection (b) shall contain;
 - i. The name and address of the owner who has made the application for a minor exception or on whose behalf the application has been made;
 - ii. A description of the land of the owner in respect of which the application has been made;
 - iii. A description of the nature and extent of the trees on such land;
 - iv. A description of the purpose, nature and extent of the minor exception for which application has been made; and
 - v. The hour, day and place of the meeting at which County Council will consider passing a resolution under Subsection (a).

Notice to applicant

- (e) The Clerk of the County shall give notice in such manner as he considers proper to the owner who has made the application or on whose behalf the application has been made, of the hour, day and place of the meeting at which County Council will consider passing a resolution under Subsection (a).

Conditions precedent

- (f) No meeting of County Council shall be held to consider the passing of a resolution under Subsection (a) unless:
 - i. Twenty-one days have elapsed after required notices have been given in accordance with this Section; and
 - ii. The giving of such notices is proved by affidavit or declaration.

Entitlement to be heard

- (g) County Council shall hear in person or by his counsel or agent, the applicant and any person who claims that his land will be prejudicially affected by the resolution.

Notice of intent to destroy trees

- 6. (a) No person shall cut or permit the cutting of any tree b cutting, burning or other means without first notifying the County Clerk's office at least seven working days prior to any cutting.

Form of notice

- (b) Such notification shall be in the Form of a “Notice of Intent to Cut” as described in Schedule A, and shall be delivered to the County Clerk’s Office or an officer appointed by County Council to enforce the provisions of this by-law.

Approval of Notice of Intent

- (c) The Notice of Intent to Cut shall be reviewed by the Forestry Officer to ensure compliance with this by-law. Where the Notice of Intent to Cut complies, the Notice shall be signed by the Forestry officer and a copy returned to the applicant.

Fail to Comply with Notice of Intent

- (d) Where a Notice of Intent to Cut has been approved by the Forestry Officer, no person shall destroy or injure, or permit the destruction or injury of any tree by cutting, burning or other means, except in compliance with the approved Notice of Intent to Cut.

County tenders

- (e) If a woodlot is purchased on a County Tender, a “Notice of Intent to Cut” shall be filed in accordance with this by-law before cutting can commence in accordance with the terms and conditions of this Agreement for the Sale of Timber.

Offences

- 7. (a) Any person who contravenes any provision of this by-law, or any director or officer that knowingly concurs in the contravention of any provision of this by-law is guilty of an offence and upon conviction is subject to any penalty as provided for in the Provincial Offences Act.
- (b) Pursuant to Section 426 of the Municipal Act, any person who hinders or obstructs or attempts to hinder or obstruct any person who is exercising a power or performing a duty authorized by this Act or a by-law passed pursuant to the Municipal Act is guilty of an offence.

Enforcement

- 8. This by-law may be enforced by any Municipal Law Enforcement Officer appointed by Council by-law to enforce the provisions of this by-law.

Power of Entry

- 9. Pursuant to Section 435 of the Municipal Act, 2001, S.O. 2001, Chapter 25, subject to any exemptions specified therein, the exercise of a power of entry of by the municipality shall be in accordance with the following:
 - (a) The power of entry shall be exercised by an employee, officer or agent of the municipality or a member of the police force of the municipality.
 - (b) The person exercising the power must on request display or produce proper identification.

- (c) The person exercising the power may be accompanied by a person under his or her direction.
- (d) Notice of the proposed entry shall be provided to the occupier of the land, except where the entry is authorized pursuant to Section 13 of this by-law, or the notice requirement is otherwise exempted under Section 435 of the Act.

Notice

10. Where pursuant to Section 435 of the Municipal Act, 2110, S.O. 2001, Chapter 25, notice of a proposed exercise of a power of entry must be given and must satisfy the following requirements:
 - (a) The notice must be given to the occupier of the land in respect of which the power of entry will be exercised.
 - (b) The notice must be given within a reasonable time before the power of entry is exercised.
 - (c) The notice must be given by personal service in the case of a proposed exercise of a power of entry in respect of a room or place actually used as a dwelling.
 - (d) In the case of a proposed exercise of a power of entry other than one described in paragraph (c) the notice must be given by personal service or prepaid mail or by posting the notice on the land in a conspicuous place.
11. Pursuant to Section 435 and 436 of the Municipal Act, 2001, S.O. 2001, Chapter 25 the municipality has the authority to enter onto land at any reasonable time without notice for the purpose of carrying out an inspection to determine whether or not this by-law is being complied with. In addition, the municipality may require the production for inspection of documents relevant to the inspection , and upon providing a receipt may remove documents for the purpose of making copies, may require information from any *person* concerning a matter related to the inspection, and alone or in conjunction with a *person* possessing special or expert knowledge, make examinations, and take tests, samples or photographs for the purpose of the inspection.
12. Pursuant to section 444 of the Municipal Act, 2001, S.O. 2001, Chapter 25, where the municipality is satisfied that a contravention of the by-law has occurred, the municipality may make an order to discontinue the contravening activity. The order shall set out the reasonable particulars of the contravention, the location of the land, the date by which compliance is required.
13. No *person* shall contravene an order issued under section 12 of this by-law.
14. Pursuant to Section 446 of the Municipal Act, 2001, S.O. 2001, Chapter 25, where a person is directed or required to do a matter or thing to come into compliance with this by-law, in default of it being done by the *person* so directed or required, the municipality may do the matter or thing at the person's expense, may enter onto land at any reasonable time to do so, and may recover the cost by action or by adding the cost to the tax roll and collecting them in the same manner as taxes. The amount of the costs including interest constitutes a lien on the land upon the registration in the proper registry office of a notice of lien.

15. 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.
16. That By-law Number 256-03 passed in Council on December 16, 2003, be and the same is hereby repealed effective on the coming into force of this by-law.
17. This by-law as passed by the Council of the Corporation of the County of Brant shall come into force and take effect immediately upon approval.
18. This By-law shall be known as "The Brant Tree Conservation By-law".

READ a first and second time, this 18th day of September, 2007.

READ a third time and finally passed in Council, this 18th day of September, 2007.

THE CORPORATION OF THE COUNTY OF BRANT

Mayor

Deputy Clerk