

THE REGIONAL MUNICIPALITY OF YORK

BILL NO. 36

BY-LAW NO. TR-0004-2005-036

A by-law to prohibit or regulate the destruction or injuring of trees in The Regional Municipality of York

WHEREAS subsection 135(2) of the *Municipal Act, 2001* (the “Act”), as amended, provides that Regional Council may by by-law prohibit or regulate the destruction or injuring of trees in woodlands designated in the by-law;

AND WHEREAS subsection 135(10) of the Act provides that 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 subsection 135(7) of the Act provides that the by-law may require that a permit be obtained to injure or destroy trees and may impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees;

AND WHEREAS Regional Council has determined that it is desirable to enact such a by-law for the purpose of achieving the objectives of the Regional Official Plan by sustaining a healthy natural environment while also having regard to good forestry practices;

NOW THEREFORE the Council of The Regional Municipality of York hereby enacts as follows:

1. DEFINITIONS

1.1 In this by-law:

- (a) “Act” means the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;
- (b) “basal area” means the area of the cross-section of the stem or trunk of a tree at a point of measurement 1.37 metres from the ground;

- (c) “basal area of woodlands or a woodlot” means the sum of the basal areas of those individual trees which measure at least 10 centimetres DBH and which comprise the woodlands or woodlot;
- (d) “building permit” means a building permit issued under the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended;
- (e) “bush cord” means a volume of wood equivalent to 3.62 cubic metres (128 cubic feet);
- (f) “Certified Tree Marker” means:
 - (i) an individual who has successfully completed the Ontario Ministry of Natural Resources Certified Tree Marker course;
 - (ii) a Registered Professional Forester; or
 - (iii) a member in good standing of the Ontario Professional Foresters Association;
- (g) “circumference” means the measurement of the outer boundary of the stem or trunk of a tree, including the bark;
- (h) “DBH” means the diameter of the stem or trunk of a tree at a point of measurement 1.37 metres (137 centimetres) from the ground;
- (i) “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;
- (j) “injury to a tree” means lasting damage to a tree which has the effect of inhibiting or terminating its growth, but does not include pruning or removing branches for maintenance purposes;
- (k) “lower-tier municipality” means each of the Corporations of the City of Vaughan, the Town of Aurora, the Town of East Gwillimbury, the Town of Georgina, the Town of Markham, the Town of Newmarket, the Town of Richmond Hill, the Town of Whitchurch-Stouffville and the Township of King;

- (l) “nursery stock” means coniferous or hardwood seedlings, transplants, grafts, or trees propagated or grown in a nursery and with the roots attached, and includes cuttings with or without the roots attached;
- (m) “officer” means an individual appointed by Regional Council for the administration and enforcement of this by-law and such individual is hereby designated as an officer pursuant to subsection 135(11) of the Act;
- (n) “owner” means a person having any right, title, interest or equity in land or any such person’s authorized representative;
- (o) “permit” means a permit to injure or destroy trees issued under section 5 of this by-law;
- (p) “person” includes an individual, a corporation, and their respective heirs, executors, administrators, or other duly appointed representatives;
- (q) “point of measurement” means a point on a tree measured from the highest point at which the tree meets the ground.
- (r) “Region” means The Regional Municipality of York;
- (s) “Regional Council” means the Council of The Regional Municipality of York;
- (t) “Registered Professional Forester” means a member of the Ontario Professional Foresters Association entitled to use the designation “Registered Professional Forester” under the *Professional Foresters Act, 2000*, S.O. 2000, c.18;
- (u) “silviculture” means the theory and practice of controlling forest establishment, and the composition, growth and quality of forests to achieve the objectives of forest management;
- (v) “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;
- (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 at physiological maturity, provided that where multiple stems grow from the same root system, the number of trees shall be the number of stems that can be counted at a point of measurement 1.37 metres from the ground;

- (x) “woodlands” means land at least 1 hectare in area with at least:
 - (i) 1000 trees, of any size, per hectare;
 - (ii) 750 trees, measuring over five (5) centimetres DBH, per hectare;
 - (iii) 500 trees, measuring over twelve (12) centimetres DBH, per hectare; or
 - (iv) 250 trees, measuring over twenty (20) centimetres DBH, per hectare;but does not include a cultivated fruit or nut orchard, a plantation established for the purpose of producing Christmas trees or nursery stock; and
- (y) “woodlot” means land at least 0.2 hectare in area and no greater than 1 hectare in area, with at least:
 - (i) 200 trees, of any size, per 0.2 hectare;
 - (ii) 150 trees, measuring over five (5) centimetres DBH, per 0.2 hectare;
 - (iii) 100 trees, measuring over twelve (12) centimetres DBH, per 0.2 hectare; or
 - (iv) 50 trees, measuring over twenty (20) centimetres DBH, per 0.2 hectare;but does not include a cultivated fruit or nut orchard, a plantation established for the purpose of producing Christmas trees or nursery stock.

2. SCOPE OF BY-LAW

- 2.1 This by-law applies to all woodlands and to woodlots in those lower-tier municipalities which have delegated to the Region their power under subsection 135(10) of the Act respecting such woodlots.
- 2.2 For the purpose of subsection 2.1 of this by-law, the effective date of delegation by a lower-tier municipality shall be the date on which a resolution is passed by that lower-tier municipality authorizing the delegation.

3. EXEMPTIONS

- 3.1 Despite section 2 of this by-law, this by-law does not apply to :
 - (a) activities or matters undertaken by a municipality or a local board of a municipality;
 - (b) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*;
 - (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;

- (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;
- (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;
- (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;
- (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*;
- (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*.
- (i) the injuring or destruction of trees required in order to erect a building or structure, in respect of which a building permit has been issued, provided that the total area within which trees are injured or destroyed is within 15 metres of the outer edge of the building or structure or proposed building or structure;
- (j) the injuring or destruction of trees that is reasonably required in order to install and provide utilities to the construction or use of a building or structure in respect of which a building permit has been issued, including the installation of a primary septic bed;
- (k) the injuring or destruction of trees that is reasonably required in order to install and provide utilities to a single lane driveway for vehicular access to a building or structure in respect of which a building permit has been issued;

- (l) the injuring or destruction of trees provided that no more than the equivalent of six (6) bush cords of wood are injured or destroyed in a calendar year from an owner's property, and that the injuring or destruction of trees is consistent with good forestry practices;
- (m) the injuring or destruction of Eastern White Cedar trees provided that no more than the equivalent of three (3) bush cords of wood are injured or destroyed in a calendar year from an owner's property for the purpose of maintaining existing fencing, and that the injuring or destruction of trees is in accordance with good forestry practices; or
- (n) the injuring or destruction of trees that are in a hazardous condition.

4. PROHIBITION

- 4.1 No person shall cause or permit the injuring or destruction of a tree growing in woodlands or a woodlot:
 - (a) unless exempted by section 3 of this by-law; or
 - (b) except in accordance with a permit issued under section 5 of this by-law.
- 4.2 No person shall:
 - (a) contravene the terms or conditions of a permit issued under this by-law; or
 - (b) cause or permit the contravention of the terms or conditions of a permit issued under this by-law.
- 4.3 No person shall fail to comply with an order issued under this by-law or remove or deface any order that has been posted pursuant to this by-law.

5. PERMITS

- 5.1 Upon application by an owner, the Region may issue the following permits:
 - (a) Good Forestry Practices Permits;
 - (b) Harvest Permits; and
 - (c) Special Permits.
- 5.2 The Region hereby delegates to an officer the power to issue a permit under subsections 5.3, 5.4, 5.5, 5.6 and 5.9 of this by-law and to impose conditions to such permits in accordance with good forestry practices.

Good Forestry Practices Permits

5.3 The Region may issue a Good Forestry Practices Permit to permit the injuring or destruction of trees provided that the injuring or destruction of trees is conducted in accordance with good forestry practices as prescribed in a silvicultural prescription prepared by:

- (a) a Registered Professional Forester, or
- (b) a member in good standing of the Ontario Professional Foresters Association who is authorized to prepare silvicultural prescriptions;

and provided further that the trees to be injured or destroyed are marked, in accordance with the prescription, by a Certified Tree Marker.

5.4 The Region may issue a Good Forestry Practices Permit to permit the injuring or destruction of trees provided that the injuring or destruction of trees is conducted in accordance with a forest management plan prepared for the purposes of the Managed Forest Tax Incentive Program, and provided that:

- (a) a copy of the approved forest management plan is submitted to the Region with the application;
- (b) the trees are marked with paint in accordance with the management plan and to the satisfaction of an officer; and
- (c) the officer is satisfied that the injuring or destruction of trees is consistent with good forestry practices.

Harvest Permits

5.5 The Region may issue a Harvest Permit to permit the injuring or destruction of trees provided that:

- (a) the trees are of a species listed in Schedule “A”;
- (b) the trees have attained the diameter or circumference measurement applicable to such tree species as set out in the said schedule, measured at a point of measurement 137 centimetres from the ground;
- (c) the trees or area of trees to be injured or destroyed are marked with paint to the satisfaction of an officer; and
- (d) the injuring or destruction of trees shall not have the effect of :
 - (i) reducing the basal area of trees measuring at least 10 centimetres DBH to below 16 square metres per hectare; or

- (ii) reducing the number of trees in woodlands or a woodlot below the number of trees necessary to constitute woodlands or a woodlot, respectively; or
- (iii) reducing below 20 trees per hectare in woodlands or a woodlot the number of trees in Category 1 of Schedule “A” which have reached or exceeded the minimum diameter or circumference measurement, measured at 137 centimetres from the ground, as set out in Schedule “A”.

5.6 Despite subsection 5.5 of this by-law, the Region may issue a Harvest Permit provided that an officer is satisfied that the injuring or destruction of trees is consistent with good forestry practices.

Special Permits

5.7 Where a person intends to injure or destroy trees and the proposed activity does not meet the requirements set out in subsections 5.3, 5.4, 5.5 or 5.6 of this by-law, an application may be made for a Special Permit.

5.8 The Region may issue a Special Permit to permit the injuring or destruction of trees provided that Regional Council is satisfied that the injuring or destruction of trees will be in compliance with agricultural and natural environment policies adopted by Regional Council from time to time.

5.9 An officer may issue a Special Permit to permit the injuring or destruction of trees provided that the total area of tree removal does not exceed 0.2 hectare, and provided that the officer is satisfied that the injuring or destruction of trees will be in compliance with agricultural and natural environment policies adopted by Regional Council from time to time.

6. APPLICATION PROCESS

6.1 Every person who intends to injure or destroy a tree where a permit to do so is required under this by-law shall first complete and submit an application for a permit in the form approved by the Region from time to time.

6.2 An application for a permit shall:

- (a) be accompanied by the applicable fee as prescribed in Schedule “B”; and
- (b) contain a description of the proposed activity.

6.3 An application for a permit shall be deemed incomplete, and no permit shall be issued if:

- (a) the application has not been completed in full;
- (b) the owner of the woodlands or woodlot has not signed the application;

- (c) the party who will be undertaking or responsible for the injuring or destruction of trees has not signed the application; or
 - (d) the application fee has not been paid.
- 6.4 In addition to the requirements set out in subsections 6.1, 6.2 and 6.3 of this by-law, an application for a Good Forestry Practices Permit shall include:
- (a) a silvicultural prescription prepared in accordance with subsection 5.3 of this by-law and the name of the Certified Tree Marker who marked the trees to be injured or destroyed in accordance with the prescription; or
 - (b) a copy of the approved forest management plan prepared for the purposes of the Managed Forest Tax Incentive Program, in accordance with subsection 5.4 of this by-law.
- 6.5 In addition to the requirements set out in subsections 6.1, 6.2 and 6.3 of this by-law, an application for a Harvest Permit shall include the name of the individual who marked the trees to be injured or destroyed in accordance subsection 5.5 of this by-law, unless otherwise directed by an officer under subsection 5.6 of this by-law.
- 6.6 In addition to the requirements set out in subsections 6.1, 6.2 and 6.3 of this by-law, an application for a Special Permit shall include:
- (a) an explanation of the necessity for the proposed activity and the rationale for selecting the area; and
 - (b) an environmental impact study which meets or exceeds the requirements prescribed by the Region from time to time.
- 6.7 Upon receipt by the Region of an application for a permit, the owner shall permit an officer to enter upon his or her property and undertake such site inspections as may be required to consider the application. An officer may undertake a site inspection prior to, during and after the proposed activity.
- 6.8 The Region may impose conditions to a permit that may include:
- (a) the manner and timing in which the injuring or destruction of trees is to be carried out;
 - (b) the qualifications of persons authorized to injure or destroy trees;
 - (c) the species, size, number and location of replacement trees to be planted; and
 - (d) measures to be implemented to mitigate the direct and indirect effects of the injuring or destruction of trees on the natural environment.

- 6.9 A permit issued pursuant to this by-law shall expire one year after the date of issuance, provided that an officer may, upon the request of the owner, renew the permit for a further period of one year.
- 6.10 A decision regarding an application for a permit shall not be made by the Region until such time as all the required documents have been filed, the applicable fee has been paid and any required inspections have been undertaken.
- 6.11 An application for a permit shall not be deemed to be received by the Region until such time as all requirements under section 6 of this by-law have been fulfilled by the applicant.

7. ORDERS TO DISCONTINUE ACTIVITY

- 7.1 Where an officer is satisfied that a contravention of this by-law has occurred, the 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 stop the injuring or destruction of trees.
- 7.2 An order issued under this section may be served personally or served by sending it by mail to the last known address of:
- (a) the owner of the woodlands or woodlot; and
 - (b) the corporation, company, person or persons identified as injuring or destroying a tree or trees.
- 7.3 Where service of an order is made by mail, service shall be deemed to have been effected on the fifth day after the order is mailed.
- 7.4 Where service cannot be carried out under subsection 7.2 of this by-law, the officer shall place a placard containing the terms of the order in a conspicuous place on the owner's property, 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.

8. APPEALS TO THE ONTARIO MUNICIPAL BOARD

- 8.1 Pursuant to section 136 of the Act, an applicant for a permit may appeal to the Ontario Municipal Board:
- (a) if the Region refuses to issue a permit, within 30 days after the refusal;
 - (b) if the Region fails to make a decision on the application, within 45 days after the application is received by the Region; or

- (c) if the applicant objects to a condition in the permit, within 30 days after the issuance of the permit.

9. ENFORCEMENT

- 9.1 The provisions of this by-law may be enforced by an officer appointed by Regional Council for the administration and enforcement of this by-law.
- 9.2 Pursuant to subsection 137(1) of the Act, an officer may, at any reasonable time, enter and inspect any land to determine whether this by-law, an order under this by-law, a condition to a permit, or a court order under subsection 138 (2) of the Act is being complied with.
- 9.3 For the purpose of determining compliance with this by-law, the points of measurement listed in Schedule “A” shall be used to determine whether a tree which has been injured or destroyed would have attained the minimum measurement required by this by-law.

10. PENALTIES

- 10.1 Any person who contravenes any provision of this by-law, or an order issued under section 137(3) of the Act is guilty of an offence and is liable:
 - (a) on first conviction, to a fine of not more than \$10,000 or \$1,000 per tree, whichever is greater; and
 - (b) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree, whichever is greater.
- 10.2 Despite subsection 10.1 of this by-law, where the person convicted is a corporation,
 - (a) the maximum fines in subsection 10.1 (a) are \$50,000 or \$5,000 per tree, whichever is greater; and
 - (b) the maximum fines in subsection 10.1 (b) are \$100,000 or \$10,000 per tree, whichever is greater.

11. REBUTTABLE PRESUMPTION

- 11.1 An owner of a property shall be presumed to have injured or destroyed or caused or permitted to be injured or destroyed a tree growing in woodlands or a woodlot, or contravened or caused or permitted the contravention of the terms or conditions of a permit issued under this by-law, as the case may be, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

12. GENERAL

- 12.1 Schedules “A” and “B” shall form part of this by-law.
- 12.2 The short title of this by-law is the “Forest Conservation By-law”.
- 12.3 By-law No. TR-1-91-154 is hereby repealed.
- 12.4 Despite subsection 12.3 of this by-law, by-law No. TR-1-91-154 shall continue to apply to proceedings in respect of matters that were initiated prior to its repeal.
- 12.5 This by-law shall come into effect on June 1, 2005.

ENACTED AND PASSED this 19th day of May, 2005.

Regional Clerk

Regional Chair

SCHEDULE "A"

MINIMUM DIAMETER/CIRCUMFERENCE MEASUREMENTS
BY CATEGORY OF TREE SPECIES

CATEGORY 1: UPLAND MIXED-WOOD TREE SPECIES

<u>Species:</u>	<u>Common Name:</u>
<u>Acer saccharum</u>	Sugar Maple
<u>Acer nigrum</u>	Black Maple
<u>Acer rubrum</u>	Red Maple
<u>Acer saccharinum</u>	Silver Maple
<u>Quercus spp.</u>	Oak species
<u>Juglans nigra</u>	Black Walnut
<u>Juglans cinerea</u>	Butternut
<u>Carya spp.</u>	Hickory species
<u>Prunus serotina</u>	Black Cherry
<u>Fraxinus americana</u>	White Ash
<u>Tilia americana</u>	Basswood
<u>Fagus grandifolia</u>	Beech
<u>Pinus strobus</u>	White Pine
<u>Tsuga canadensis</u>	Eastern Hemlock
<u>Ulmus spp.</u>	Elm species
<u>Castanea dentata</u>	American chestnut
<u>Gymnocladus dioicus</u>	Kentucky Coffee Tree

<u>Point of Measurement</u> <u>From Ground Level</u>	<u>Diameter</u> <u>Category 1 Species</u>	<u>Circumference</u> <u>Category 1 Species</u>
3 cm (1 in.)	79 cm (31 in.)	247 cm (97 in.)
10 cm (4 in.)	71 cm (28 in.)	223 cm (88 in.)
20 cm (8 in.)	64 cm (25 in.)	199 cm (79 in.)
30 cm (12 in.)	56 cm (22 in.)	176 cm (69 in.)
46 cm (18 in.)	51 cm (20 in.)	160 cm (63 in.)
137 cm (54 in.)	46 cm (18 in.)	144 cm (57 in.)

CATEGORY 2A: INTOLERANTS/OTHER TREE SPECIES OF LARGER DIAMETERS

<u>Species:</u>	<u>Common Name:</u>
<u>Pinus resinosa</u>	Red Pine
<u>Larix decidua</u>	European Larch
<u>Picea glauca</u>	White Spruce
<u>Picea abies</u>	Norway Spruce
<u>Betula alleghaniensis</u>	Yellow Birch
<u>Fraxinus nigra</u>	Black Ash
<u>Fraxinus pennsylvanica</u> var. <u>subintegerrima</u>	Green Ash
<u>Fraxinus pennsylvanica</u>	Red Ash
<u>Celtis occidentalis</u>	Hackberry
<u>Salix spp.</u>	Willow species

<u>Point of Measurement</u>	<u>Diameter</u>	<u>Circumference</u>
<u>From Ground Level</u>	<u>Category 1 Species</u>	<u>Category 1 Species</u>
3 cm (1 in.)	66 cm (26 in.)	207 cm (82 in.)
10 cm (4 in.)	56 cm (22 in.)	176 cm (69 in.)
20 cm (8 in.)	46 cm (18 in.)	144 cm (57 in.)
30 cm (12 in.)	41 cm (16 in.)	128 cm (50 in.)
46 cm (18 in.)	36 cm (14 in.)	112 cm (44 in.)
137 cm (54 in.)	30 cm (12 in.)	95 cm (38 in.)

CATEGORY 2B: INTOLERANTS/OTHER TREE SPECIES OF SMALLER DIAMETERS

<u>Species:</u>	<u>Common Name:</u>
<u>Pinus banksiana</u>	Jack Pine
<u>Pinus sylvestris</u>	Scot's Pine
<u>Larix laricina</u>	Tamarack
<u>Abies balsamea</u>	Balsam Fir
<u>Thuja occidentalis</u>	Eastern White Cedar
<u>Juniper virginiana</u>	Eastern Red Cedar
<u>Betula papyrifera</u>	White Birch
<u>Populus spp.</u>	Poplar species
<u>Ostrya virginiana</u>	Ironwood
<u>Picea mariana</u>	Black spruce
<u>Carpinus caroliniana</u>	Blue Beech
<u>Prunus pensylvanica</u>	Pin Cherry

<u>Point of Measurement</u>	<u>Diameter</u>	<u>Circumference</u>
<u>From Ground Level</u>	<u>Category 1 Species</u>	<u>Category 1 Species</u>
3 cm (1 in.)	48 cm (19 in.)	152 cm (60 in.)
10 cm (4 in.)	41 cm (16 in.)	128 cm (50 in.)
20 cm (8 in.)	30 cm (12 in.)	96 cm (38 in.)
30 cm (12 in.)	25 cm (10 in.)	80 cm (31 in.)
46 cm (18 in.)	20 cm (8 in.)	64 cm (25 in.)
137 cm (54 in.)	15 cm (6 in.)	48 cm (19 in.)

SCHEDULE "B"

PERMIT FEE

GOOD FORESTRY PRACTICES PERMIT	\$25.00
HARVEST PERMIT	\$250.00
SPECIAL PERMIT: Issued under subsection 5.8	\$500.00
Issued under subsection 5.9	\$250.00

Where the OWNER/APPLICANT is a bona fide farmer as demonstrated by providing a 'Farm Business Registration Number' on the application, as defined in the *Farm Registration and Farm Organization Funding Act, 1993*, S.O. 1993, c.21 the PERMIT FEE for each of the above noted PERMITS shall be:

\$25.00