



The Regional Municipality of Durham Report

To: Planning and Economic Development Committee
From: Commissioner of Planning and Economic Development
Report: #2019-P-5
Date: February 5, 2019

Subject:

Region of Durham Draft Woodland Conservation and Management By-law, File: E01-00

Recommendations:

That the Planning and Economic Development Committee recommends to Regional Council:

- A) That Regional staff be authorized to circulate the Draft Region of Durham Woodland Conservation and Management By-law to Regional Stakeholders, including: the Ministry of Natural Resources and Forestry (MNRF); the Region's Conservation Authorities; area municipal staff and by-law enforcement officers; the Durham Environmental Advisory Committee (DEAC); the Durham Agricultural Advisory Committee (DAAC); and local forest practitioners; and
 - B) That Regional staff report back to Planning and Economic Development Committee with a recommended Regional Woodland Conservation and Management By-law for its consideration.
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Report:

1. Purpose and Background

- 1.1 Under the Municipal Act, an upper-tier municipality may prohibit or regulate the destruction or injury of trees in woodlands designated in a by-law, having regard for good forestry practices, and by regulating the removal of trees in woodlands of one hectare or more in size. Tree removal in any woodland under one hectare is regulated by the local area municipalities.

- 1.2 The Region's current by-law (referred to as "the Tree By-law") was last amended on June 27, 2012 following a comprehensive review which occurs every five years.
- 1.3 This latest 5 year review has identified the need for a number of changes, based on input from a variety of stakeholders including: the Durham Agricultural Advisory Committee (DAAC); the Durham Environmental Advisory Committee (DEAC); the Ministry of Natural Resources and Forestry (MNR); the Region's Conservation Authorities; local area municipal staff and by-law enforcement officers; and local forest practitioners.
- 1.4 Dominant themes raised by stakeholders included: tree cutting permissions for farmers; tree preservation and replanting; enforcement; illegal clear cutting; cumulative removal; legislative and policy conflicts; and the application of the by-law.

2. Proposed Draft Amendments

- 2.1 A proposed draft by-law has been prepared based on stakeholder feedback, research findings, staff's experience pertaining to enforcement, and opportunities for streamlining (see Attachment #1).
- 2.2 To be consistent with Provincial policies and to conform to provincial plans and regulations, the definition for "Sensitive Natural Areas" has been revised in the proposed draft By-law to reflect the terminology within the Greenbelt Plan, the Growth Plan for the Greater Golden Horseshoe, the Regional Official Plan and the area municipal Official Plans. It also reflects Provincial regulations regarding the protection of endangered species and species at risk, and references to nesting migratory birds and bats.

The scope of analysis and screening for identifying and protecting key natural heritage and hydrological features, and other important species through a "Forest Management Prescription" for a Good Forestry Practices (GFP) application, or through an Environmental Impact Study, or an Environmental Report for a Clear Cutting permit application, has also been addressed.

- 2.3 The current by-law does not distinguish between settlement areas and rural areas for the purposes of Clear Cutting. Within settlement areas, (such as Urban Areas and Hamlets) this lack of distinction can lead to unintended outcomes of placing environmental features at risk for removal ahead of a more fulsome examination of the appropriateness of the request through a Planning Act process (e.g. subdivision, secondary plan). The draft by-law would require that clear cutting not

- be permitted within settlement area boundaries outside of the statutory development review process.
- 2.4 The draft by-law would deal with the cumulative impact of woodlands removal by clearly defining and prohibiting the activity. At this time, the Tree By-law only requires that cumulative removal be taken into consideration with respect to the need for minor or major clear cutting.
 - 2.5 The draft by-law includes definitions for a “Forest Management Prescription” and “Environmental Report” and prescribes information that would be required with the submission of applications. This would include identifying areas of disturbance, examining associated impacts, stating the proposed method of removal, identifying Sensitive Natural Areas, and including measures for their protection.
 - 2.6 The draft by-law includes measures that would require the mitigation of direct and indirect effects of injuring or destroying trees in all woodlands, and not just those woodlands identified as “Sensitive Natural Areas”. This is proposed as a broad measure to better protect natural features and wildlife habitat.
 - 2.7 The draft by-law requires that all GFP and Clear Cutting applications be circulated to all applicable Conservation Authorities, consistent with current practice. The proposed draft by-law requires that these applications be circulated to the local area municipalities, and to notify them once a permit has been issued. This would give the area municipalities the opportunity to confirm compliance with their respective By-laws.
 - 2.8 The draft by-law would require that applicants notify the Region and the applicable area municipality prior to tree removal commencing, to improve responsiveness to potential public inquiries.
 - 2.9 Updated fees and fines have also been proposed. To encourage public compliance with the By-law, the fee for the most common type of application, (the Good Forestry Practices Permit) is proposed to remain unchanged at the nominal amount of \$50. The fee for clear cutting applications, which are far more infrequent (ie. 1-2% of all applications), but require more time to review and process are proposed to increase: \$500 for a minor clear cutting permit (i.e. to clear cut an area between 0.25 and 2.5 acres); \$1,000 for a major clear cutting application (i.e. to clear cut an area greater than 2.5 acres and where Regional Council approval is required). In keeping with existing practice, bona fide farmers are proposed to be exempt from paying any application fees. Staff will be recommending that the fines for removing

trees without a permit be updated as a way to deter potential by-law violations. Increases in fine amounts have not been undertaken since the inception of the By-law in 2008. Given that fines are governed by the Province, the Region would require approval from the Senior Justice of the Province of Ontario of Part 1 offences relevant to the by-law.

- 2.10 Various definitions have been included or updated with terminology to provide clear and consistent interpretation of terms throughout the by-law, (e.g.: Bona Fide Farmer, Clear Cut/Clear Cutting, Cumulative Removal, Destruction, Environmental Report, Fence Row, Normal Farm Practices, Personal Use, Farm Related Use, etc.).

3. Next Steps

- 3.1 Following Council's consideration of this report, staff will circulate the draft by-law and will meet with affected stakeholders for their comments. Upon receipt of these finalized comments, a proposed by-law will then be provided for Committee's consideration. It is anticipated that the new Woodland Conservation and Management By-law could come into effect on July 1, 2019.
- 3.2 Once the By-law is passed, education and information updates will be shared with the public, agencies, and other stakeholders. This could include an updated information pamphlet and webpage. Staff will also explore opportunities for combined communications through other sources, such as through Regional newsletters and social media.
- 3.3 Monitoring of tree cutting applications will continue to occur as part of the Planning Division's Annual Activity Information Report to Planning and Economic Development Committee.

4. Conclusion

- 4.1 Regional staff's analysis and consultation to date has revealed that changes to the Region's existing Tree By-law are warranted.
- 4.2 It is recommended that the Ministry of Natural Resources and Forestry (MNR); the Region's Conservation Authorities; area municipal staff and by-law enforcement officers; the Durham Environmental Advisory Committee (DEAC); the Durham Agricultural Advisory Committee (DAAC); and local forest practitioners be provided a copy of this report and the Draft Woodland Conservation and Management By-law.

- 4.3 A final draft by-law and report will be presented to Planning and Economic Development Committee at a future date once the Region's formal consultation process is complete.
- 4.4 The proposed draft by-law was prepared in consultation with Corporate Services-Legal Services staff.

5. Attachments

Attachment #1: Proposed Draft Regional Woodland Conservation and Management By-law

Respectfully submitted,

Original signed by

Brian Bridgeman, MCIP, RPP
Commissioner of Planning and
Economic Development

Recommended for Presentation to Committee

Original signed by

Elaine C. Baxter-Trahair
Chief Administrative Officer

By-law Number **-2019

of The Regional Municipality of Durham

Being a by-law to prohibit or regulate the Destruction or Injury of Trees in Woodlands in the Regional Municipality of Durham.

Whereas the Municipal Act, Section 135(2), provides upper tier municipalities with the authority to prohibit or regulate the Destruction or Injury of Trees in Woodlands.

Whereas the Council of the Regional Municipality of Durham deems it desirable to enact a Regional Woodland Conservation and Management By-Law for the purposes of:

- conserving and improving the Woodlands in the Region through Good Forestry Practices;
- promoting Good Forestry Practices that sustain healthy Woodlands and related natural habitats and environments;
- helping to achieve the objectives of the Durham Regional Official Plan to ensure the long-term health and productivity of Woodlands;
- promoting the conservation of biological diversity, including rare natural features and species;
- minimizing the Destruction or Injury of Trees in Woodlands;
- regulating and controlling the removal and protection of Trees in Woodlands;
- minimizing and guarding against conditions which may result in Injury;
- protecting, promoting and enhancing the aesthetic value of Woodlands; and
- contributing to ecosystem health, human health, recreation, enjoyment and quality of life through the maintenance of Woodland cover.

NOW, THEREFORE, the Council of the Regional Municipality of Durham hereby enacts as follows:

1. DEFINITIONS

1.1 In this By-law:

- a) "Agricultural Operation" means the commercial production of crops or raising of livestock, and includes cultivation, seeding, and harvesting;
- b) "Area Municipality" means any one of the area municipalities within the Regional Municipality of Durham, namely the Town of Ajax, the Township of Brock, the Municipality of Clarington, the City of Oshawa, the City of Pickering, the Township of Scugog, the Township of Uxbridge or the Town of Whitby;
- c) "Bona Fide Farmer" means a Person who has a current and valid farm registration number under the Farm Registration and Farm Organizations Funding Act, 1993, S.O. 1993, c.21, as amended;
- d) "Building Permit" means a building permit issued by an Area Municipality under the Building Code Act, 1992, S.O. 1992, c.23, as amended;
- e) "Business Day" means any day falling on or between Monday and Friday of each week but does not include a statutory holiday;
- f) "Certified Tree Marker" means a Person currently certified to mark Trees through the Ministry of Natural Resources Certified Tree Marker Program;
- g) "Clear Cut/Clear Cutting" means the Destruction of all Trees within all or a portion of a Woodland, where the area to be cut exceeds 0.1 hectare.
- h) "Commenting Agency" means any Conservation Authority, provincial Ministry, area municipality, utility, or agency as decided by the Region within its jurisdiction;
- i) "Commissioner" means the Commissioner of Planning and Economic Development of the Regional Municipality of Durham or designate;
- j) "Cumulative Removal" means the incremental or continuous removal of Trees in a Woodland since July 1, 2008, with or without a Permit;
- k) "DBH" or "Diameter at Breast Height" means the diameter of the stem of a Tree measured at a point that is 1.37 metres above the ground;
- l) "Destruction" means the clearing, and/or removal of Trees in all or part of a Woodland;
- m) "Environmental Report" means an Environmental Impact Study, or a scoped Environmental Impact Study under the Durham Regional Official Plan, a natural heritage evaluation under the Oak Ridges Moraine Conservation Plan, or other report required by the Region, Area Municipality, or consulting agency that analyzes the natural environment and makes recommendations regarding mitigation of impacts from Tree removal.

- n) "Fence Row" means a narrow linear strip of Trees less than 1 hectare in size that defines a laneway or boundary between fields or properties;
- o) "Forest Management Prescription" means the site specific operational plan prepared and signed by, or under the direction of and signed by, a Qualified OPFA Member that describes existing Woodland conditions, Woodland management objectives and the proposed methods for harvesting a Woodland;
- p) "Good Forestry Practices" means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the Woodland and environmental conditions under which they are being applied and that minimize detriments to Woodland values, including: significant ecosystems; important fish and wildlife habitat; soil and water quality and quantity; forest productivity and health and the aesthetic and recreational opportunities of the landscape;
- q) "Injury" means lasting damage to a Tree which may include, but is not limited to:
 - i) broken branches in the crown of any Tree;
 - ii) the breaking off or splitting of the stem of any Tree;
 - iii) the noticeable leaning of any Tree;
 - iv) the splitting of, removal of, or damage to the bark of any Tree; or
 - v) damage to the root structure of any Tree;
- r) "Multiple Offence" means an offence in respect to two or more acts or omissions each of which separately constitutes an offence and is a contravention of this By-law;
- s) "Normal Farm Practices" means part of an Agricultural Operation, which retains existing Woodland cover, and includes activities such as:
 - i) the removal of Trees for Personal Use;
 - ii) Farm-Related Uses such as fence posts and rails; or
 - iii) the removal of Fence Rows where required.

Normal Farm Practices does not include Clear Cutting.
- t) "Officer" means an individual appointed by Regional Council for the administration and enforcement of this By-law;
- u) "Owner" means any Person or Persons who is the registered owner on title to the land;

- v) "Permit" means the written authorization from the Officer or the Commissioner issued under Section 5 or 6 of this By-law;
- w) "Person" or "Persons" means any individual or individuals, of any corporation or corporations, their respective heirs, executors, administrators or other duly appointed representatives;
- x) "Personal Use" means the use of Trees by a Bona Fide Farmer for home heating or other home related uses, but does not include Clear Cutting;
- y) "Farm Related Use" means the use of Trees by a Bona Fide Farmer for farm related activity such as the heating of an accessory barn, post and rail fencing, farm construction on-site, but does not include Clear Cutting;
- z) "Region" means the Regional Municipality of Durham;
- aa) "Regional Council" means the Council of the Regional Municipality of Durham;
- bb) "Qualified OPFA Member" means a Registered Professional Forester or Associate Member of the Ontario Professional Foresters Association under the *Professional Foresters Act*, S.O. 2000, c. 18, as amended, to practice professional forestry, unless a suspension, term, condition or limitation of certification applies which would restrict the Member from carrying out responsibilities under this By-law;
- cc) "Sensitive Natural Area" means:
 - i) a Provincially or Regionally designated or identified Significant Wetland;
 - ii) land that is designated or identified as a Key Natural Heritage and Hydrological Feature in either the Oak Ridges Moraine Conservation Plan, Greenbelt Plan, and Growth Plan for the Greater Golden Horseshoe, Durham Regional Official Plan, or an area municipal Official Plan;
 - iii) land that is 30 metres from the water's edge of a locally, Regionally, or Provincially Significant Wetland, lake, river, stream or intermittent stream;
 - iv) a Provincial or Regional Life Science Area or Area of Natural and Scientific Interest identified by the *Ministry of Natural Resources Act*, 1982, as amended; or
 - v) an area of endangered species or species at risk, or any area containing nesting migratory birds or bats.
- dd) "Tree" or "Trees" means any living species of woody perennial plant in a

Woodland, including its root system, which has reached or can reach a height of at least 4.5 meters at physiological maturity;

ee) "Woodland" or "Woodlands" means an area of land one hectare in size or greater on one or more properties with a minimum density of:

- i) 1,000 Trees, of any size, per hectare;
- ii) 750 Trees, measuring over five (5) centimetres at DBH, per hectare;
- iii) 500 Trees, measuring over twelve (12) centimetres, at DBH, per hectare;
or
- iv) 250 Trees, measuring over twenty (20) centimetres, at DBH, per hectare.

For the purposes of this By-law, "Woodland" or "Woodlands" does not include:

- i) a cultivated fruit or nut orchard;
- ii) a plantation established for the purpose of producing Christmas Trees and which is being actively managed and harvested for the purposes for which it was planted, except that this does not refer to plantations that have ceased being managed or harvested for their intended purpose for a period of 15 years or more;
- iii) a bona fide Tree nursery that is being actively managed and harvested for the purposes for which it was planted;
- iv) a Fence Row; or
- v) land previously cleared and used for agricultural purposes, which has become overgrown with young (less than 15 years old) and early successional Tree species common on disturbed fields (e.g. Sumac, Hawthorn, Apple, Scots Pine, Poplar, White Birch, Ash) and which is intended to be used again as part of an Agricultural Operation.

2. APPLICATION OF THE BY-LAW

2.1 This By-law shall apply to all Woodlands and Sensitive Natural Areas.

2.2 Cumulative Removal is prohibited except as otherwise explicitly permitted by this By-law.

2.3 Applicants are encouraged to consult with the Officer prior to the submission of any Permit application.

3. **GENERAL PROHIBITIONS**

- 3.1 No Person shall through their own action or through any other Person, cause Injury or Destruction to any Tree located in a Woodland, unless:
- a) such Injury or Destruction is permitted under Section 4 of this By-law; and
 - b) Such Person is in possession of a valid Good Forest Practice Permit issued under Section 5 of this By-law or a Clear Cutting Permit issued under Section 6 of this By-law, and pursuant to any applicable terms or conditions.

- 3.2 No Person shall through their own action or through any other Person:
- a) Contravene any term or condition of a Permit issued under this By-law or cause or permit the contravention of any term or condition of a Permit issued under this By-law;
 - b) Fail to comply with an Order issued under Section 7 of this By-law; or
 - c) Remove or deface any Order that has been posted pursuant to Section 7 of this By-law.

4. **EXEMPTIONS**

- 4.1 This By-law, shall not apply to:
- a) Any activity or matter undertaken by an Area Municipality or the Region;
 - b) Any activity undertaken by a Conservation Authority on land owned or managed by such Authority;
 - c) Any activity or matter undertaken under a licence issued under the *Crown Forest Sustainability Act*, 1994, S.O. 1994, c.25, as amended.
 - d) Any activity undertaken by a Person licensed under the *Surveyors Act*, R.S.O. 1990, c. s.29, as amended, to engage in the practice of cadastral surveying or his or her agent, while making a survey.
 - e) Any activity imposed after December 31, 2002:
 - i) as part of a Tree Preservation Plan required as a condition of approval of a plan of subdivision that received draft approval under Section 51 of the *Planning Act*, R.S.O. 1990, c. P. 13.;
 - ii) as part of a Tree Preservation Plan required as a condition of

a consent approved under Section 53 of the *Planning Act*, R.S.O, 1990, c.P.13;

- iii) as a requirement of a Tree Preservation Plan approved and included in a site plan agreement under Section 41 of the *Planning Act*, R.S.O, 1990.c.P. 13, or a development agreement between an Owner and the applicable Area Municipality or the Region; or
 - iv) as a condition of a Community Planning 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 entered into under such regulation.
- f) Any activity by a transmitter or distributor, for the purpose of constructing and maintaining a transmission system or a distribution system defined in the *Electricity Act*, S.O. 1998, c.15, as amended.
 - g) Any activity 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*, R.S.O. 1990, c. A.8, as amended.
 - h) Any activity that is required in order to erect any building, structure or thing, including yard areas, in respect of which a Building Permit has been issued, provided that no Tree is removed that is located more than 15 metres from the outer edge of the building, structure or things and that only those Trees necessary to accommodate the building, structure or thing, including yard areas, are removed.
 - i) Any activity that is required in order to install and provide utilities to the construction or use of a building, structure or thing, including the installation of a primary septic bed, in respect of which a Building Permit has been issued.
 - j) Any activity that is required in order to install, provide or maintain a single lane driveway for vehicular access to a building, structure or thing in respect of which a Building Permit has been issued.
 - k) Any activity required for the purpose of a licensed waste disposal site that has been approved, where applicable, under the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended; the *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40, as amended; the *Environmental Assessment Act*, R.S.O. 1990, c. E.18, as amended; and the *Planning Act*, R.S.O., 1990, c. P.13.
 - l) Any activity for the construction of drainage works authorized under the *Drainage Act*, R.S.O., 1990, c. D.17, as amended.

- m) Any forestry management activity which, in the opinion of a qualified OPFA member:
 - i) results in the removal of one or more Trees which are dead; or are significantly diseased; or
 - ii) results in the removal of one or more Trees which pose a hazard to human safety or property.
- n) Any Normal Farm Practice as part of an Agricultural Operation.

5. GOOD FORESTRY PRACTICE PERMITS

- 5.1 Any Person who intends to Cause Injury or Destruction to one or more Trees in a Woodland, in a manner that does not constitute Clear Cutting, shall first complete and submit to the Region, an application for a Good Forestry Practice Permit. Such an application will be circulated to the Area Municipality, Conservation Authority and/or consulting agencies for comment and/or information purposes at the Region's discretion. The Officer may, at their sole discretion, waive the requirement for a Good Forestry Practice Permit where the Tree removal being proposed involves a small number of Trees and the impact of the removal is deemed to be negligible or imperceptible to the integrity of the overall Woodland.
- 5.2 Each Good Forestry Practice Permit application must be accompanied by the following:
 - a) a copy of the completed application form signed by the Owner;
 - b) the required fee;
 - c) such additional information as the Officer may require;
 - d) for applications which propose to cause Injury or Destruction to more than 50 Trees, a Forest Management Prescription is required;
 - e) for applications which propose to cause Injury or Destruction to 50 Trees or less, a plan showing the location of the Trees to be affected, together with a description of how Good Forestry Practices are to be followed should the application be approved. A Forest Management Prescription may be required at the discretion of the Officer; and
 - f) if the area to which the application applies contains a Sensitive Natural Area, a Forest Management Prescription shall be submitted, regardless of the number of Trees to be injured, destroyed or removed.

5.3 A Forest Management Prescription shall include:

- a) a detailed map of the property, the Woodland and the area of proposed Tree removal (tree marking must be completed by a Certified Tree Marker);
- b) a description of the existing forest conditions;
- c) the forest management objectives for an area;
- d) prescribed methods for harvesting the existing forest stand;
- e) a series of treatments that will be carried out to establish a free-growing stand in manner that accommodates other resource values as identified;
- f) identification of any Sensitive Natural Area and the environmental protection measures necessary to protect the Sensitive Natural Area feature;

5.4 Upon review and consideration of the application, an Officer may issue a Good Forestry Practice Permit to permit the Injury, Destruction or removal of Trees in a Woodland. The Permit will be circulated to any other such Person or agency as the Region and/or Officer deems appropriate.

5.5 The Officer may impose conditions on the Permit that relate to, but are not restricted to:

- a) the location, number, size and type of Trees that are proposed to be the subject of Injury or Destruction;
- b) the manner and timeframe within which the affected Trees are proposed to be the subject of Injury or Destruction;
- c) the marking, with paint or other material, of the Trees that are proposed to be the subject of Injury or Destruction;
- d) the qualifications of the Persons authorized to cause Injury or Destruction in accordance with the Permit;
- e) the measures to be implemented to mitigate the direct and indirect effects of Injury or Destruction of Trees on a Woodland or Sensitive Natural Area;
- f) a requirement that the Owner notify the Region and the Area Municipality at least one business day prior to Tree removal being scheduled to commence; and

- g) such additional information as may be required by the Commissioner or Officer in respect to such Permit.
- 5.6 Prior to any Injury, or Destruction of any Tree pursuant to the Permit, a copy of the Permit shall be posted and displayed in a prominent location as identified on a map filed with the permit application, to the satisfaction of the Officer.
- 5.7 For any Good Forestry Practice Permit there is to be no direct and indirect effects on a Woodland, and Sensitive Natural Area.
- 5.8 A Good Forestry Practice Permit shall be in effect for a period of two years or at the discretion of the Officer or the Commissioner and is not transferable. If the activity for which the Permit was issued has not taken place within the time frame of the permit, such Permit shall lapse and shall be of no effect.
- 5.9 Prior to the expiry of the Permit, the Owner may request in writing, that the Permit be renewed. Such renewals may, at the discretion of the officer or the Commissioner requests shall not be unreasonably denied. Permits may be renewed one time only for an additional period of not more than one year.
- 5.10 Where a Good Forestry Practice Permit application has been denied, the Officer will notify the applicant in writing by registered mail within 10 Business Days of the decision and shall provide reasons for the denial.

6. CLEAR CUTTING PERMITS

- 6.1 Clear Cutting is prohibited except in accordance with the following:
 - a) Every Person who intends to Clear Cut shall first complete and submit to the Region, an application for Clear Cutting Permit;
 - b) Clear Cutting activity shall not commence prior to the Person receiving written approval from the Commissioner;
 - c) Approval shall only be granted following circulation to the applicable Area Municipality and any Commenting Agency for comment;
 - d) Only a Bona Fide Farmer that owns the subject lands may be permitted to Clear Cut within an Urban Area Boundary or within a Rural Settlement Area;
 - e) Any application for Clear Cutting of 1 hectare or less is subject to the approval and any condition(s) of the Commissioner;
 - f) Any application for Clear Cutting greater than 1 hectare is subject to the approval of Regional Council;

- g) Clear Cutting shall be permitted only where there is no direct or indirect effect on a Woodland or a Sensitive Natural Area.

6.2 A Clear Cutting Permit application shall not be approved unless accompanied by the following:

- a) a copy of the completed application form signed by a Qualified OPFA Member and the Owner;
- b) the required fee;
- c) a plan or drawing having sufficient detail to clearly show the number, location, species, and approximate age of the Trees to be Clear Cut;
- d) the rationale for the proposed Clear Cutting;
- e) a map depicting proposed location that the permit will be posted;
- f) such additional information as the Commissioner may require; and
- g) where any portion of the Woodland to which the application applies contains a Sensitive Natural Area, the application shall be accompanied by an Environmental Report.
- h) At the discretion of the Commissioner, a public meeting may be required for an application less than 1 hectare in area, if Cumulative Removal and the area of Clear Cutting exceeds 1 hectare.

6.3 Any required Environmental Report shall be prepared by a qualified natural heritage expert/ qualified person which, at a minimum, shall include:

- a) a baseline inventory of environmental features and functions;
- b) the location, area and approximate number of Trees proposed to be Clear Cut;
- c) an assessment of the potential impacts of the proposed Clear Cutting on the long-term health and ecological integrity of the Sensitive Natural Area;
- d) an examination of historical records to identify whether Tree removal had occurred since December 31, 2002, for the purposes of determining Cumulative Removal;
- e) an evaluation of the potential impact of the proposed Clear Cutting

within the context of Provincial, Regional, and Area Municipal policy;

- f) recommendations that support the long term protection of environmental features and functions as may be necessary to protect the subject Sensitive Natural Area;
- g) a description of Woodland proposed to be preserved;
- h) any recommended mitigation measures to address impacts of the proposed Clear Cutting on environmental features and functions.

6.4 The Commissioner may impose any such condition on a Clear Cutting Permit as the Commissioner deems appropriate, and may include:

- a) the location, area of land and number of Trees permitted to be Clear Cut;
- b) the manner and timeframe within which the Trees are permitted to be Clear Cut;
- c) the marking with paint or other material, the location of the Trees permitted to be Clear Cut;
- d) the qualifications of the Persons authorized to Clear Cut the Trees;
- e) any measure to be implemented to mitigate the direct and indirect effects of the Clear Cutting on a Woodland or Sensitive Natural Area;
- f) the re-planting of Trees;
- g) a requirement that any Clear Cutting for farm purposes must be put into agricultural use within a specified time period (e.g. 3 years);
- h) a requirement that the Owner notify the Region and Area Municipality within one business day of Tree removal being scheduled to commence;
- i) a requirement to provide any additional information as may be required before the Permit becomes effective;
- j) a requirement to implement any recommendations included within an Environmental Report, to the satisfaction of the Region;
- k) a requirement to implement any condition of a Municipality or Commenting Agency as may be applicable;
- l) a requirement to post a copy of the Permit in a prominent location as identified on a map as part of the Permit application, to the satisfaction

of the Officer. The posted Permit is to remain on display until the work for which the Permit was issued has been completed.

- m) A time limitation period of up to one year which is not transferable. If any Clear Cutting for which the Permit was issued has not taken place within the one-year period, the Permit shall lapse and shall be of no effect. Notwithstanding the above, and only prior to the expiry of the Permit, the Person may request in writing that the Permit be renewed for a period of up to one additional year from the date of the original Permit. Permits may only be renewed one time only.

6.5 Where a Clear Cutting Permit application has been denied, the Commissioner shall notify the applicant in writing by registered mail within 10 Business Days of the decision, and shall provide reasons for the denial.

6.6 Any application that proposes to Clear Cut an area greater than 1 hectare in size shall be subject to the approval of Regional Council, in accordance with the following:

- a) Regional Council shall have regard to any delegation heard at a public meeting;
- b) Within 10 days of receipt of such application, the Commissioner or his designate shall send by regular mail or by personal delivery, written notice of the public meeting to the applicant, to all assessed Owners of each parcel of land that abuts the subject property from which Trees are proposed to be Clear Cut, and to any other such Person or agency as the Commissioner deems appropriate;
- c) At least 20 days prior to the public meeting, the applicant shall erect a public notice sign at a location and on the form approved by the Commissioner;
- d) Upon review and consideration of the application, and at least 20 days prior to the public meeting, the Commissioner shall prepare a report which shall make a recommendation on the application, the reasons for the recommendation, and any conditions that may be recommended to be applied, if any;
- e) At the public meeting, the applicant and any interested Person shall be afforded an opportunity to address the Committee. Any public meeting shall be subject to the Region's Procedural By-law.
- f) Where Council directs the Commissioner not to issue a Clear Cutting Permit, the applicant will be notified in writing by registered mail within 10 Business Days following the Council meeting, and such notice shall provide reasons for the denial.

6.7 The Clear Cutting Permit will be circulated to any other such Person or agency as the Region deems appropriate.

7. ENFORCEMENT

7.1 An Officer, or any person authorized by an Officer, may at all reasonable times enter upon and inspect any land and Woodland for the purposes of enforcing this By-law, determining compliance with this By-law, determining compliance with terms and conditions of a Permit issued under this By-law, or laying charges under this By-law.

7.2 Where an Officer has determined that a contravention of this By-law has occurred, the Officer may make an Order requiring any Person who contravened this By-law to remedy such contraventions. The Order shall set out:

- a) the municipal address or the legal description of the land;
- b) reasonable particulars of the contravention; and
- c) the period within which there must be compliance with the Order.

7.3 Where an Officer has determined that a contravention of this By-law has occurred, the Officer may make an Order requiring the Person who contravened this By-law or who caused or permitted the Injury or Destruction of Trees in contravention of this By-law, to remedy such contraventions, which may include one or more measures to rehabilitate the land or Woodland, the plant or replant Trees or other measures to the satisfaction of the Commissioner. The Order shall set out:

- a) the municipal address or the legal description of the land;
- b) the particulars of the contravention;
- c) the work to be done and the period within which there must be compliance with the Order; and
- d) Should the work not be done in compliance with the Order, the Region may have the work done at the expense of the Owner.

7.4 No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Person including an Officer or Commissioner who is exercising a power or performing a duty under this By-law.

8. PENALTY

8.1 Any Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine of not less than \$500 and not more than

\$100,000.

- 8.2 Despite subsection 8.1, the Region designates that the Destruction of each Tree is one offence in a series of Multiple Offences. In the case of Multiple Offence, a Person found guilty of contraventions of this By-law constituting a Multiple Offence is liable upon conviction, for each offence included in the Multiple Offence, for minimum fine of \$500 and a maximum fine not exceeding \$10,000; however, despite Section 8.1, the total of all fines for each included offence is not limited to \$100,000.
- 8.3 If a Person is convicted of an offence for contravening this By-law the Court in which the conviction has been entered, and any Court of competent jurisdiction thereafter, may order the Person to rehabilitate the land or to plant or replant Trees or provide such other remedy in such a manner and within such period as the Court considers appropriate.
- 8.4 Part 1 *Provincial Offences Act* offences and fines may apply to specific contraventions of the By-law as indicated in "Schedule B" to the By-law.

9. ADMINISTRATION

- 9.1 Schedule "A" shall form part of this By-law.
- 9.2 If any section or part of this By-law is found by any court of competent jurisdiction to be illegal or beyond the power of Regional Council to enact, such section or part 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 to be enacted as such.
- 9.3 The short title of this By-law is the "Regional Woodland Conservation and Management By-law".
- 9.4 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 a Woodland, or contravened or cause 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 on probabilities.
- 9.5 By-law 27-2008 of the Regional Municipality of Durham and any amendments thereto, are hereby repealed.
- 9.6 Despite subsection 9.5, By-law 27-2008 shall continue to apply to:
- a) proceedings in respect of offences that occurred before its repeal; and,
 - b) Permits in compliance with By-law 27-2008, which were made prior to its repeal.

This By-law Read and Passed on the -----th day of -----, 2019.

J. Henry, Regional Chair and CEO

R. Walton, Regional Clerk

SCHEDULE A

FEES

| | |
|--|--|
| 1. Application for Good Forestry Practices Permit | \$50.00 |
| 2. Application for a Clear Cutting Permit (Between 0.1 Ha and 1 Ha) | \$500.00 |
| 3. Application for Clear Cutting Permit (Greater than 1Ha) | \$1000.00 Excluding Advertising Costs of a Public Meeting |

Permit fees are waived for Bona Fide Farmers.

SCHEDULE B

Part 1 Provincial Offences Act...