
HALDIMAND COUNTY

Report FPC-03-2020 Forest Conservation By-law Update

For Consideration by Council in Committee on October 6, 2020



OBJECTIVE:

To update the Forest Conservation By-law and to repeal Regional Municipality of Haldimand-Norfolk By-law 15-00.

RECOMMENDATIONS:

1. THAT Report FPC-03-2020 Forest Conservation By-law Update be received;
2. AND THAT the Forest Conservation By-law as attached to Report FPC-03-2020 be presented for enactment and that Regional Municipality of Haldimand-Norfolk By-law 15-00 be repealed;
3. AND THAT the proposed User Fees and Charges included in this report, be approved to be effective immediately and an amendment to the User Fee By-law, Schedule O be presented for enactment;
4. AND THAT any revenues associated with these changes be incorporated into the 2021 Tax Supported Operating Budget as a Council Approved Initiative.

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Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

Haldimand County's Forest Management Plan identifies that the current Regional Forest Conservation By-law needs to be updated so that it is consistent with current standards. The Regional By-law was enacted in 2000 under the Forestry Act, 1990 (now consolidated under the Municipal Act, 2001). Over the past decade, there have been many changes in our understanding of forest management and certain practices permitted pursuant to the Regional By-law are no longer considered best practices in the forestry industry. This report presents the proposed by-law, guidelines, proposed changes in response to staff recommendations and comments received during the public review of the proposed by-law.

BACKGROUND:

Haldimand County has a strong history of commitment to the protection of its natural heritage resources. This is reflected through the enforcement of the Regional Forest Conservation By-law and the environmental policies of Haldimand County's Official Plan. The Official Plan identifies the County's support for Good Forestry Practices, sustainable harvesting of timber within all Woodlands and the environmental importance of retaining Woodlands.

Over the past 200 years, the landscape in Southern Ontario has been altered from a predominantly forested landscape to a fragmented landscape dominated by agriculture and urban land uses. Approximately 90% of the remaining forested lands in Southern Ontario are located on private property and approximately 8% of the land use in Haldimand County are privately owned forests. It is recognized that there is a public interest in conserving these remaining forests to protect the many important community benefits that they provide such as erosion control, water retention, wildlife habitat, private recreation, employment and commercial wood products. The intention of the proposed by-law is not to prohibit the cutting of every tree, or to deny landowners the ability to manage their forest resources. The intent of the proposed by-law is to continue to regulate tree cutting to prevent existing Woodlands from being destroyed and balance public interests in conserving Woodlands.

Staff began the Forest Conservation By-law review process by meeting with the Agricultural Advisory Committee in November 2017 and held a public open house in February 2018. At these meetings, staff discussed the opportunities and constraints with the Regional By-law, facilitated a question and answer period with stakeholders to identify key issues with the Regional By-law and identify objectives for a revised by-law. The key concerns identified during these meetings were:

- The public was unaware that the County has a Forest Conservation By-law;
- It was difficult to find information about the by-law on the County website;
- The regulation for cleaning up brush along field and woodland edges is unclear;
- There should be an exemption for clear-cutting fallow fields that have grown into Woodlands;
- Invasive species should not be regulated under the by-law;
- There should be an exemption to maintain private drains through Woodlands;
- There should be an exemption for clear-cutting hedgerows; and
- The application and permit process needs to be simple.

The information received at these meetings was used to direct staff's literature review of forest conservation by-laws in effect within other municipalities in Ontario. During this process, staff reviewed best management practices, discussed various regulatory options with other municipal forest managers and reviewed solutions neighbouring municipalities have implemented to address similar concerns with their forest conservation by-laws.

In 2019, a first draft of the by-law was distributed for an internal review by several County departments. The draft was then revised to address comments provided by staff and submitted to the County's lawyer for a legal review. A revision and second legal review was required to finalize a draft by-law which could be presented to the public for further comments early in 2020.

The public comment period was postponed to August 2020 due to the outbreak of COVID-19. All of the written comments received during the public comment period are included in Attachment 5. The key concerns raised during the public comment period were:

- Requiring Good Forestry Practices increases landowner costs, restricts landowner's ability to manage their property and are open to interpretation making enforcement difficult;
- Private landowners should be able to prepare their own silvicultural prescriptions and mark trees on their own property;
- The by-law needs to be able to regulate Qualified OPFA Members and Certified Tree Markers to make sure they are following Good Forestry Practices;
- The by-law should only regulate the size of a Woodlands and not individual trees;
- Circumference limit harvests should be permitted;
- There may be an insufficient number of Qualified OPFA Members and Certified Tree Markers working in the area to meet the need for only Good Forestry Practices harvests;
- Provide exemptions for hazardous trees and trees identified as Noxious Weeds; and
- More public meetings should be held to receive input from stakeholders.

The following table highlights the key changes in the proposed by-law:

Provisions	Regional By-law	Proposed By-law
Minimum Size of Woodlands Regulated	<ul style="list-style-type: none"> • >0.2 ha (0.5 acres) 	<ul style="list-style-type: none"> • >1.0 ha (2.47 acres)
Notifications and Applications	<ul style="list-style-type: none"> • Notice of Intent 	<ul style="list-style-type: none"> • Permit
Harvest Type	<ul style="list-style-type: none"> • Circumference Limit • Good Forestry Practices 	<ul style="list-style-type: none"> • Good Forestry Practices
Enforcement Tools	<ul style="list-style-type: none"> • Part 3 Charges 	<ul style="list-style-type: none"> • Stop Work Orders • Set Fines (tickets) • Part 3 Charges
Appeal Process	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Committee of Adjustment • Council • Normal Farm Practices Board
Penalties	<ul style="list-style-type: none"> • Fine not more than \$20,000 • Imprisonment of not more than three (3) months • Reforestation Court Order 	<ul style="list-style-type: none"> • Individual: maximum fine of \$10,000 or \$1,000 per tree and subsequent convictions to a maximum fine of \$25,000 or \$2,500 per tree. • Corporation: maximum fine of \$50,000 or \$5,000 per tree and subsequent convictions to a maximum fine of \$100,000 or \$10,000 per tree. • Reforestation Court Order. • Fines are consistent with other updated municipal forest conservation by-laws such as Oxford County, Niagara and Durham Regions.

ANALYSIS:

The proposed by-law is consistent with the authority provided under the Municipal Act, 2001 which provides the County authority to enact a by-law regulating the injury or destruction of trees in Woodlands, enforcement tools, penalties such as set fines for ticketable offences, stop work order provisions as well as the authority to issue permits rather than the Regional By-law's Notice of Intent system.

The Municipal Act provides several statutory tree cutting exemptions which have been added to the proposed by-law including:

- Tree cutting undertaken by a municipality or a local board of a municipality;
- Harvesting trees with a license issued under the Crown Forest Sustainability Act;
- Trees removed by a person licensed under the Surveyors Act while making a survey;

- Removing trees as a condition of a site plan, a plan of subdivision or a consent under the Planning Act. Tree cutting for developments is regulated through the County's Official Plan policies and site plan conditions;
- Tree cutting by a transmitter or distributor under the Electricity Act, for the purpose of constructing and maintaining hydro systems;
- Clearing of trees for a pit or quarry issued under the Aggregate Resources Act; and
- The removal of trees for the construction of drainage works under the Drainage Act.

In addition, staff have proposed several Haldimand County specific tree cutting exemptions for:

- The removal of trees to construct a building, driveway, septic bed and install utilities to the new building with an approved building permit;
- The cutting of trees undertaken as Normal Farm Practices as part of an agricultural operation; Due the broad interpretation of what constitutes Normal Farm Practices, staff have developed the Normal Farm Practice Guidelines to assist staff, landowners and forestry professionals in the interpretation of Normal Farm Practices in regards to the proposed by-law (Attachment 4).
- Tree species like European Buckthorn that are regulated by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) as Noxious Weeds are permitted to be cut without a permit;
- Cutting up to twenty (20) trees a year by the owner of a Woodlands for personal use; and
- The removal of trees that have been assessed as hazardous to human safety or property.

The proposed by-law provides the Minor Exception permit process for landowners wishing to clear-cut hedgerows, private drains and fallow fields. Staff have developed the Minor Exception Guidelines to assist staff, landowners and forestry professionals in the interpretation of the Minor Exception process (Attachment 3).

Since there is no regulated list of invasive species and the term can be applied to a wide range of trees, an exemption for cutting invasive species is not included in the proposed by-law. Excluding an exemption for invasive species is consistent with other Forest Conservation By-laws in Ontario. The majority of invasive species identified in Ontario are herbaceous plants like Garlic Mustard, aquatic plants, fish, or pathogens like Dutch Elm Disease and insects such as Emerald Ash Borer. Landowner's are encouraged to consult with staff to get further information if they are planning to manage a specific tree species that they feel is invasive or trees invested with an invasive species in their Woodlands. Invasive species in a Woodlands can usually be managed through a Good Forestry Practices Permit.

The current Regional By-law regulates Woodlands as small as 0.2 hectares in size. Under the proposed by-law, Woodlands will have to be at least one (1) hectare in size before they are regulated. This means that small isolated patches of trees having a total area equalling less than one (1) hectare in size will no longer be regulated under the proposed by-law. This change recognizes that these small patches of trees are fragmented, have very little interior forest habitat, provide limited shelter, connectivity or corridor links to other Woodlands and have little commercial value to the landowner. The allowance to cut trees in or clear-cut these small isolated areas without a permit, provides opportunities for farmers to find efficiencies in the cultivation of their fields and reduces the pressure to expand agricultural operations into larger and more ecologically valuable Woodlands. Any tree harvesting or clear-cutting that impacts a Woodlands equal to or greater than one (1) hectare in size will require a either a Good Forestry Practices or Minor Exception Permit.

Permits

The Regional By-law's Notice of Intent system only notifies the County that the landowner wishes to injure or destroy trees in their Woodlands. Under this system the landowner does not require approval from the County prior to harvesting. This can create situations where the landowner may have the best

intentions to harvest their Woodlands according to the by-law regulations, but due to misinterpretation or a mistake in reading the by-law, may be in contravention of the by-law regulations.

Permits require approval by the County prior to the tree cutting which provides an opportunity for staff to meet with the landowner and resolve any issues with the proposed harvest before a contravention occurs. This promotes the philosophy of education before legislation. Permits also provide more confidence for the landowner and contractor knowing that the silvicultural prescription and tree marking has been reviewed and approved by staff prior to the start of the harvest. The County has the ability to impose conditions on a permit to ensure that Woodlands are harvested sustainably while offering the flexibility for the conditions to reflect the unique characteristics of each Woodlands.

The proposed by-law has a simple permitting system with two types of permits:

- **Good Forestry Practices Permit**

This permit is used when a landowner wants to sustainably harvest select trees within a Woodlands and can be approved by staff.

- **Minor Exception Permit** is used when a landowner wishes to clear-cut an area of Woodlands.

Minor Exception Permits impacting an area of Woodlands less than one (1) hectare can be approved by staff.

Minor Exception Permits impacting an area of Woodlands one (1) hectare or greater in size must be approved by Council prior to issuing a permit.

The proposed permitting process, allows staff to approve minor clear-cutting such as small hedgerows, field access and private drains while ensuring that clear-cutting of large areas is subject to public and Council review. The proposed by-law outlines a clear and straightforward process for landowners to apply for a permit.

Good Forestry Practices and Circumference Limit Harvests

Circumference Limit harvests only allow trees of certain species that are a minimum size or greater to be harvested. This method of harvesting has been used in the past because it's easy to understand and enforce. The problem with harvesting only the largest trees is the significant negative impacts it has on the long-term health, structure, genetic diversity and sustainability of wood products produced in a Woodlands.

The Regional By-law requires a specific residual stocking of trees that have to be left in the Woodlands after a Circumference Limit harvest; however there is no regard for the condition, quality, or species diversity of the trees left behind. In many cases, the largest diameter and highest quality trees are harvested, which leaves behind smaller and low quality trees. These small and poor quality trees will not produce timber or other benefits at the same rate as the large, high value trees that were harvested. Circumference Limit harvests result in diminishing monetary returns for the landowner since after each harvest the timber quality is reduced. The volume of timber declines and the number of years before the trees in the Woodlands grow large enough to be harvested again increases. The effects of this practice negatively impact the ecological sustainability and economic viability of a Woodlands for several generations and staff do not recommend including this type of harvest in the proposed by-law.

Under the proposed by-law, tree harvesting can only be conducted in a manner that is consistent with Good Forestry Practices. Good Forestry Practices are conducted in a way that enables the forest to maintain its health, ecological processes, wildlife habitats and provide a continuous supply of forest products that provide both short-term and long-term economic benefits to landowners. Good Forestry Practice harvests focus on removing defective and diseased trees across all size classes and of a variety of tree species.

When properly implemented, Good Forestry Practices result in each subsequent harvest producing more high quality timber, revenue for the landowner, shorter wait time between harvests while maintaining the health, habitat and diversity of the Woodlands. These practices represent what the forestry profession, forestry workers and society have come to expect from forest management operations. The Municipal Act and Haldimand County's Official Plan require forest conservation by-laws to have regard for Good Forestry Practices. It is contradictory to promote Good Forestry Practices while also including an option for Circumference Limit harvesting.

Circumference Limits harvests require a higher level of regulation compared to Good Forestry Practices since each tree under a Circumference Limit harvest must be measured by staff to ensure compliance with the by-law. Good Forestry Practices reduces the amount of regulation since the harvest targets are based on an average number of trees in each size class (Basal Area) calculated over the entire harvest area. By regulating the tree cutting across the entire Woodlands, this provides landowners more flexibility to meet their personal management objectives and address their concerns regarding regulations for each individual tree being cut. Staff will inspect to make sure that only the trees that were marked to be cut have been cut and that the harvest follows the silvicultural prescription. To address concerns with the interpretation of what constitutes Good Forestry Practices, staff have developed the Good Forestry Practices Guidelines to assist staff, landowners and forestry professionals in the interpretation of Good Forestry Practices (Attachment 2). These guidelines are already being implemented under the Regional By-law and have been adopted from best management practices identified in the Silvicultural Guide for Managing Southern Ontario Forests and the Tree Marking Guide prepared by the Ministry of Natural Resources and Forestry.

Qualified Ontario Professional Forestry Association (OPFA) Member and Certified Tree Marker

The proposed by-law requires that all Good Forestry Practices harvests include a silvicultural prescription prepared by a Registered Professional Forester or Associate Member who are in good standing with the Ontario Professional Foresters Association (OPFA). The Professional Foresters Act, 2000 designates the Ontario Professional Foresters Association as a professional body that regulates and governs the practice of professional forestry in Ontario. This requirement ensures that individuals preparing silvicultural prescriptions have the proper education, training and experience to make forest resource management decisions.

A Certified Tree Marker who is currently certified through the Ontario Ministry of Natural Resources and Forestry must complete all tree marking for a harvest. This requirement will ensure that individuals marking trees are experienced, well trained, can apply resource management standards, use discretion in adapting tree marking to circumstances such as variability in terrain, forest stand type, habitat conditions, ecological features, ecological and social values; and apply tree marking prescriptions in a consistent manner.

All individuals who are Qualified OPFA Members and Certified Tree Markers must adhere to a code of conduct and professional ethics. Should an application be submitted where the proposed harvest does not follow Good Forestry Practices, staff have the option to deny the permit as well as submit a complaint to the professional association who regulates their members. By requiring all silvicultural prescriptions be prepared by Qualified OPFA Members and trees marked by a Certified Tree Marker, the public can have a higher level of confidence that their Woodlands are being properly harvested.

Both the Regional By-law and the proposed by-law require that a Qualified OPFA Member prepare the silvicultural prescription for Good Forestry Practices harvests and there is no change in the costs to the landowner. Circumference Limits harvests in the Regional By-law are not required to be prepared by a Qualified OPFA Member, however the costs are actually being born by the taxpayers. Currently there is no fee in place for staff to review the Circumference Limit harvest and it requires significant staff time to administer a Circumference Limit harvest compared to a Good Forestry Practices harvest. The

proposed change to permit only Good Forestry Practices harvests allow landowners the freedom to choose a Qualified OPFA Member they wish to hire at competitive prices, and reduces costs to taxpayers for the enforcement of the by-law. Generally more merchantable timber can be harvested following Good Forestry Practices compared to Circumference Limits harvests. This added revenue for the landowner often offsets the cost to hire a Qualified OPFA Member and the Certified Tree Marker.

Although The Professional Foresters Act, 2000 does permit landowners to perform acts in relation to the management or manipulation of forests on land that they own, the County has the authority to require a higher level of qualifications in the proposed by-law. To properly implement Good Forestry Practices requires individuals to have a significant amount of knowledge, experience and training in tree identification, ecology, forest measurement, planning, operational procedures, understanding of both the long-term and short-term economical, social and environmental management objectives of a Woodlands. Since most landowners do not have this level of knowledge or experience, staff have recommended that only Qualified OPFA Members should prepare the silvicultural prescriptions and the tree marking should be completed by a Certified Tree Marker. Landowners who do possess this level of knowledge can take the tree marking course to become Certified Tree Markers and work with a Qualified OPFA Member to prepare the silvicultural prescription for their Woodlands.

Since 2001, Haldimand County has received on average eleven (11) Notice of Intents per year and about a third are Good Forestry Practices. It is very unlikely that the existing number of Qualified OPFA Members and Certified Tree Markers will be unable to meet the demand for Good Forestry Practice permits in Haldimand County.

Fees

To recognize the significant community benefits received from private landowners who already engage in Good Forestry Practices and encourage more landowners to sustainably manage their Woodlands, staff have recommended a nominal fee of \$25 for a Good Forestry Practices Permit.

Staff propose amending the current Minor Exception application fee to \$360 to fully recover the cost for staff to review, process, approve or deny an application to clear-cut less than one (1) hectare of Woodlands under the proposed by-law. Staff recommend adding a new user fee in the amount of \$2,055 for Minor Exception applications clear-cut an area of Woodlands equal to or greater than one (1) hectare. This application fee is consistent with the cost for similar planning applications and reflects the amount of staff time to prepare the public notice, review the application and prepare a report for Council.

Including a user fee in the amount of \$4,480 for the reforestation of one (1) hectare of Woodlands provides a consistent and transparent reforestation value that will be applied to all Minor Exception application conditions, reforestation court orders and other planning applications that involve reforestation. This value reflects the cost for site preparation before tree planting, purchasing tree stock, labour to plant the trees, maintenance and monitoring of the trees until they are able to freely grow on their own.

Staff recommend that Council adopt and enact the proposed Forest Conservation By-law. The proposed by-law provides a fair and transparent regulation for the injury or destruction of trees in Woodlands, a simple permitting process and the supporting guidelines provide clarification in situations where the Regional By-law was open to misinterpretation. The proposed by-law finds an excellent balance between the public interested in protecting forests, private landowner's management of trees on their property, the agricultural communities need to efficiently manage their lands, the forestry industry's need for economical operations and sustainable employment and the County's enforcement of the by-law regulations.

FINANCIAL/LEGAL IMPLICATIONS:

All fees and charges included in this report were developed in coordination with the County's Finance Division and will be incorporated into the County's User Fees and Service Charges By-law. Costs are calculated utilizing the approved methodology within Schedule R in the Council approved User Fees and Service Charges By-law. Any revenue impacts of these fees will be incorporated in the 2021 Tax Supported Operating Budget as a Council Approved Initiative.

STAKEHOLDER IMPACTS:

Staff have taken several steps to increase the public awareness of the Regional By-law and to ensure that all stakeholders have had the opportunity to provide their input regarding the proposed by-law. Information about the Regional By-law has been posted on the County website so that it is easy to find and an informative notice has been included in the Spring and Fall Community Guides. To ensure all stakeholders impacted by the proposed by-law were informed of the review, a notice regarding the public review and comment period was posted on the County website, through the County's Monthly Update eNewsletter, a newspaper advertisement and on social media. Staff provided information regarding the proposed by-law directly to forestry professionals who have worked in the County within the last five years including the Haldimand Stewardship Council, Conservation Authorities, Haldimand Agricultural Advisory Committee and other agencies that have an interest in forest conservation. Throughout the review process there have been sufficient opportunities for all stakeholders to provide their input.

Private Landowners

The regulation of the injury or destruction of trees in private Woodlands has not increased. The proposed by-law deregulates Woodlands that are less than one (1) hectare in size and provides additional exemptions for tree cutting. The definition for tree cutting for personal use has been clarified and additional information is provided to landowners in the supporting guidelines. The process from application to permit has been streamlined. There is a nominal fee of \$25 for Good Forestry Practices Permits and an increased cost for Minor Exception Permits to recover the cost of County resources.

Public Interest

The proposed by-law maintains the intent of the Regional By-law to conserve Woodlands. By moving to permitting only Good Forestry Practice harvests, this ensures that Woodlands are sustainably managed for their economic, social and environmental benefits. The enhanced enforcement tools, added penalties for infractions and permit process provides the public with greater confidence that the County has the tools to effectively, consistently and fairly enforce the by-law.

Agricultural Community

The regulation of the injury or destruction of trees in private Woodlands has not increased. The proposed by-law deregulates Woodlands that are less than one (1) hectare in size and provides additional exemptions for tree cutting which provides more flexibility for land managers. The Normal Farm Practices exemption has been clearly defined and is supported by the Normal Farm Practices Guidelines. The option for staff to approve the clear-cutting of a Woodlands area less than one (1) hectare allows for staff to work with the agricultural community to find solutions that find efficiencies in the management of their land and speeds up the permit approval process.

Forestry Industry

There is a small increase in the cost of hiring a Qualified OPFA Member and Certified Tree Marker for businesses who currently do not have staff members with these qualifications. Contractors, and mill operators who aren't Qualified OPFA Members or Certified Tree Markers can easily take the tree marking course to become Certified Tree Markers and register to become members of the OPFA so that they can prepare their own silvicultural prescriptions. The proposed move to Good Forestry Practices will help to encourage local businesses to invest in training their staff, diversify the services that they offer and if the number of Good Forestry Practices permits increases it may create a market for more Qualified OPFA Members and Certified Tree Markers to work and establish their business locally in Haldimand County. Generally more merchantable timber can be harvested following Good Forestry Practices compared to Circumference Limits harvests. This added revenue often offsets the cost to hire a Qualified OPFA Member and the Certified Tree Marker. By properly implementing Good Forestry Practices we are ensuring that there is a sustainable supply of high quality wood products and employment opportunities now and for future generations.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Draft Forest Conservation By-law
2. Good Forestry Practices Guidelines
3. Minor Exception Guidelines
4. Normal Farm Practices Guidelines
5. August 2020 Public Comment Period Written Comments
6. Draft User Fee By-law Amendment