BY-LAW NO. 2008 - 130

A BY-LAW OF THE CORPORATION OF THE TOWN OF BRACEBRIDGE TO PROHIBIT AND REGULATE THE INJURY AND DESTRUCTION OF TREES ON CERTAIN LANDS

WHEREAS, pursuant to Section 135(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended (hereinafter referred to as the "Municipal Act"), the Council of The Corporation of the Town of Bracebridge may prohibit or regulate the destruction or injuring of trees;

AND WHEREAS, pursuant to Section 135(7) of the Municipal Act, a by-law passed under Section 135(1) may require that a permit be obtained to injure or destroy trees and the Corporation of the Town of Bracebridge may impose conditions on a permit relating to the manner in which destruction occurs;

AND WHEREAS, pursuant to Section 23.1(1) of the Municipal Act, Council may delegate legislative powers of a minor nature, such as the power to issue and impose condition on a licence;

AND WHEREAS, pursuant to Section 23.1(2) of the Municipal Act, a by-law delegating any of the municipality's powers or duties is subject to certain rules;

AND WHEREAS, it is desirable to permit limited tree cutting on larger parcels of land in advance of a development application being permitted under Section 41 of the *Planning Act, R.S.O. 1990* (hereinafter referred to as the "Planning Act");

AND WHEREAS, pursuant to Section 41(3) of the Planning Act, land subject to this by-law has also been designated as a site plan control area in the Town of Bracebridge Official Plan;

AND WHEREAS, by motion 08-DS-106 the Council of The Corporation of the Town of Bracebridge deems it desirable to prohibit the injury or destruction of trees on certain lands and regulate the injury or destruction of trees on other lands for the purposes of:

1. Protecting vegetation in the Urban, Near Urban and Community Area land use designations of the Town of Bracebridge Official Plan, 2005;

2. Protecting vegetation along that length of the Highway 11 Ontario Ministry of Transportation (MTO) right of way corridor through Bracebridge;

3. Protecting vegetation in shoreline vegetative buffers for the purpose of habitat protection, water quality and aesthetics and implementing the District Municipality of Muskoka's Lake System Health Program;

4. Protecting and conserving Environmental Protection Areas and Floodplains;

5. Minimizing the destruction or injuring of trees;

6. Regulating and controlling the removal, maintenance and protection of trees;

7. Protecting, promoting and enhancing the aesthetic values of land;

8. Sustaining a healthy natural environment;

9. Protecting significant and sensitive natural areas to ensure maximum environmental benefits of trees in both urban and rural setting; and,

10. Contributing to the human health and quality of life of all persons who work, live or play in the Town of Bracebridge, through the maintenance of tree cover, while recognizing the private land rights of its citizens.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF BRACEBRIDGE ENACTS AS FOLLOWS:

A. INTERPRETATION

1. Definitions in this by-law are:

   1.1. "Applicant" shall mean the person who submits an application for a permit under this by-law;

1.2. ”Accessory building” shall mean a building or structure that is subordinate to and customarily incidental to the principal use or structure on the same lot but shall not include other objects for storage such as a trailer, storage container or ship container;

1.3. “Breast height” shall mean a point of measurement 1.37 metres (4 feet, 6 inches) above the highest point on the tree where the ground meets the stump;

1.4. “Building permit” shall mean a building permit issued under the Building Code Act, 1992, S.O. 1992, c. 23, as amended;

1.5. “Clerk” shall mean the person appointed by Council as the Clerk of The Corporation of the Town of Bracebridge;

1.6. “Council” shall mean the Council of The Corporation of the Town of Bracebridge;

1.7. “Crown” shall mean the upper part of a tree, which includes the branches and leaves;

1.8. “Destroy” or “destroyed” or “destroying” or “destruction” shall mean the removal of trees or irreversible harm by cutting, burning, uprooting, chemical application or other means;

1.9. “Diameter” shall mean the diameter of the stem of a tree measured outside the bark at a specified point of measurement;

1.10. “Director of Director of Development Services” shall mean the person appointed by Council as the Director of the Development Services Department for the Corporation of the Town of Bracebridge or their designate provided such designate is an officer appointed within Schedule “E” of this by-law;

1.11. “DBH” shall mean ’diameter at breast height‘ wherein the diameter of the stem of a tree is measured outside the bark at a point 1.37 metres (4 feet, 6 inches) above the highest point on the tree where the ground meets the stump;

1.12. “Heritage Tree” means a tree that Council designates by resolution or by-law as being unique and of importance to the Town in terms of distinctive form, size, age and/or historical significance;

1.13. “High Water Mark” shall mean the boundary between a navigable waterway and land not under water, at normal summer levels;

1.14. “Injure” or “Injured” or “Injuring” shall mean to harm, damage or impair trees and includes, but is not limited to, harm, damage or impairment caused by changing grades around trees, compacting soil over root areas, severing roots, improper application of chemicals, improper pruning or the removal of branches and bark;

1.15. “Major Damage” shall mean any one of the following tree conditions:

1.15.1. Broken branches destroying more than 30% of the *crown*; or

1.15.2. The exposure, severing or compaction of more than 25% of the root area; or

1.15.3. The breaking off of any tree; or

1.15.4. The noticeable tipping of any trees; or

1.15.5. A cut greater than 1/3rd of the DBH or a cut with a depth of 1/10th of the DBH;

1.15.6. A wound greater than the mathematical square of the DBH of the tree - for example, a wound with an area of 100 square centimetres (15.5 square inches) is major damage to a tree with a DBH of 10 centimetres (4 inches); or

1.15.7. Any wound greater than 1,000 square centimetres (155 square inches); or

1.15.8. If the wound in paragraph 1.15.6. or 1.15.7. contacts the ground, then the wound shall be considered major damage if it is more than 60% of the size specified in paragraph 1.15.6. or 1.15.7. respectively.

1.16. “Navigable Waterway” shall mean a body of water that is capable of affording reasonable passage of floating vessels of any description for the purpose of transportation, recreation or commerce;

1.17. “Officer” shall mean any person designated by this or any other by-law or resolution of the Town of Bracebridge to issue permits, impose conditions and to enforce the permits, in accordance with Schedule “E” to this by-law;

1.18. “Owner” shall mean the registered owner of the property;

1.19. “Permit” shall mean written authorization from the Town to injure or destroy trees and such permit is issued in accordance with this by-law;

1.20. “Person” shall mean any individual, corporation, partnership, association, firm, trust, or other entity and includes anyone acting on behalf or under the authority of such entity;

1.21. “Removes” shall mean to move from a place or position occupied or to:

1.21.1. Transfer or convey from one place to another; or

1.21.2. Take off; or

1.21.3. Take away or withdraw; or

1.21.4. Do away with or eliminate.

1.22. “Significant Community Tree” shall mean a tree identified and designated by resolution or by-law by Council as having community significance;

1.23. “Site” shall mean the area of land containing any tree proposed to be injured;

1.24. “Town” or “Town of Bracebridge” shall mean The Corporation of the Town of Bracebridge;

1.25. “Tree” shall mean a self-supporting, woody, perennial plant, including its root system, with a diameter greater than 20 centimetres (8 inches) DBH;

1.26. “Wetland” shall mean lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface where the presence of abundant water has caused the formation of hydric soils (soils marked by considerable moisture) and has favoured the dominance of swamps, marshes, bogs and fens. Notwithstanding the foregoing, periodically soaked or wet lands being used for agricultural purposes which no longer exhibit wetland characteristics are not wetlands for the purposes of this by-law;

1.27. “Zoning By-law” shall mean a by-law regulating land use within the Town of Bracebridge enacted under the Planning Act and in force, but does not include holding by-laws.

2. Notwithstanding anything to the contrary, the provisions of this by-law do not apply to the activities or matters undertaken by the Provincial Government, the Federal Government or their authorized agents.

3. In the event of a conflict between this by-law and a by-law of The District Municipality of Muskoka, the provisions of The District Municipality of Muskoka by-law shall govern.

4. Notwithstanding anything to the contrary, the provisions of this by-law shall not be applied in a way so as to frustrate a legally permitted use under the Town’s Zoning By-law or an expansion of a legal non-conforming use in accordance with the Planning Act.

5. In this by-law, where a dimension or standard is given in both metric and imperial measurements, the metric dimension or standard shall govern.

B. LANDS SUBJECT TO THIS BY-LAW

6. This by-law applies to the following lands within the Town, except those portions of lands designated as woodlands pursuant to a by-law enacted by the Council of the District Municipality of Muskoka pursuant to Section 135(4) of the Municipal Act:

6.1. Lands within 60 metres (196 feet, 10 inches) of the high water mark of a navigable waterway;

6.2. Lands zoned as follows, pursuant to the Town’s Zoning By-law, as amended:

6.2.1. Environmental Protection - EP1 and EP2;

6.2.2. Flood Zones: Floodway, Phase 1 - F1; Flood Fringe, Phase 2 – F2; and, Flood Plain Phase 2 - F3.

6.3. Lands within the boundaries of the Urban and Near Urban Areas and the Muskoka Falls Community as set out in the Town's Official Plan and as shown on Schedule "A", herein, and zoned as follows, pursuant to the Town's Zoning By-law, as amended:

6.3.1. Residential - R1, R2, R3 and R4;

6.3.2. Shoreline Residential - SR1, SR2, and SR3;

6.3.3. Rural - RU;

6.3.4. Rural Residential - RR;

6.3.5. Rural Commercial - RC;

6.3.6. Rural Industrial - RUI;

6.3.7. Institutional - I;

6.3.8. Open Space - OS1, OS2 and OS3;

6.3.9. Office Commercial - C1;

6.3.10. Special Purpose Commercial - C2;

6.3.11. General Commercial - C3;

6.3.12. District Commercial - C4;

6.3.13. Convenience Commercial - C5;

6.3.14. South Bracebridge Commercial - C6;

6.3.15. Tourist Commercial - CT;

6.3.16. Business Park Industrial - M1;

6.3.17. General Industrial - M2;

6.3.18. Extractive Industrial - M3; and

6.3.19. Waste Disposal Industrial - M4.

6.4. Lands within 70 metres (229 feet, 8 inches) of the Highway 11 MTO right-of-way.

C. EXEMPT ACTIVITIES

7. Exempt Activities under Section 135 (12) of the Municipal Act

Despite Section B.6, this by-law does not apply to the following activities:

7.1. Activities or matters undertaken by a municipality or a local board of a municipality;

7.2. Activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*;

7.3. The injuring or destruction of trees by a person licenced under the *Surveyors Act, 1990* to engage in the practice of cadastral surveying, or his or her agent, while making a survey;

7.4. 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;

7.5. 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;

7.6. The injuring or destruction of trees by a transmitter or distributor, as those terms are defined in Section 2 of the Electricity Act, 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that Section;

7.7. The injuring or destruction of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act, 1990*;

7.8. The injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land:

7.8.1. That has not been designated under the *Aggregate Resources Act, 1990* or a predecessor of that Act; and

7.8.2. Which a pit or quarry is a permitted land use under a by-law passed under Section 34 of the Planning Act;

7.9. Any activity pursuant to a Provincial or Federal Act, regulation or instrument or order of a legislative nature described in Section 14 (1) of the Municipal Act; and

7.10. Any other activities exempt from the provisions of this by-law by any other regulation, instrument or order of a legislative nature.

8. It is hereby acknowledged that the activities described in Section C.7 and exempt from this by-law are those detailed in the Municipal Act as of the date of passage of this by-law and may change. In the event of any conflict between the Municipal Act and this by-law, the provisions of the Municipal Act, shall govern.

9. <u>Other Exempt Activities</u>

Despite Section B.6, this by-law does not apply to the following activities:

9.1. The injury, destruction, cutting and/or removal by the owner of a lot, or his or her agent, of a dead or hazardous tree that has incurred major damage, disease or insect infestation which must be removed to prevent damage to structures or chattels on the lot, the contamination or infestation of other trees or the injury and destruction of trees which pose a risk to the safety of persons or property;

9.2. The injury or destruction of trees, subject to the *Farming and Food Production Protection Act, 1998*, to continue or enlarge an agricultural operation. For the purposes of this Section, agricultural operations include *tree* farms of any kind;

9.3. The injury or destruction of trees, subject to Section D.10 of this by-law, by the owner, or his or her agent, as follows:

9.3.1. For lands located in the Urban Area and Community, a total of no greater than 4 trees, each with a diameter greater than 20 centimetres (8 inches) DBH and less than 38 centimetres (15 inches) DBH, on a lot, within one calendar year;

9.3.2. For lands located in the Waterfront a total of no greater than 6 trees, each with a diameter greater than 20 centimetres (8 inches) DBH and less than 38 centimetres (15 inches) DBH, on a lot, within one calendar year with the exception of lands within 15 metres (49 feet, 3 inches) of a navigable waterway that may be developed in accordance with Section D.11.1.2.2 herein; and,

9.3.3. For lands in the Near Urban Area and Rural Area a total of no greater than 10 trees each with a diameter greater than 20 centimetres (8 inches) DBH and less than 38 centimetres (15 inches) DBH, on a lot, within one calendar year.

In the case of double or multiple stemmed trees, the diameter measurement is to be taken at a point 1.37 metres (4 feet, 6 inches) above the highest point on the tree where the ground meets the stump for each stem. Where at least one stem measures 20 centimetres (8 inches) in diameter or greater, the entire tree is protected under the by-law;

9.4. The injury or destruction of trees with a DBH of fewer than 20 centimetres (8 inches);

9.5. The injuring or cutting of trees in accordance with an approved site plan, a plan of subdivision or a consent or a related agreement registered against the land under Sections 41, 51 or 53 of the Planning Act;

9.6. The injury or destruction of trees to accommodate a legally permitted entranceway and/or to ensure safe sight visibility for any such entranceway;

9.7. The injury or destruction of trees necessary to accommodate a legally permitted use;

9.8. The injury or destruction of trees required in the exercise of the rights or powers of a hydroelectric corporation or any public utility board or commission;

9.9. The removal of damaged or destroyed trees in the interests of public safety, health and general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfalls, or freezes or the removal of damaged or destroyed trees as a result of insects, disease or wildlife;

9.10. The injury or destruction of trees that are part of a golf course operation;

9.11. The periodic pruning of tree branches in accordance with good arboricultural practice to maintain, improve or protect tree health and surrounding forest health while maintaining the tree's natural shape;

9.12. The injury or destruction of trees within 5 metres (16 feet, 5 inches) of an occupied building;

9.13. The injury or destruction of trees required to construct or erect any building, structure or thing in respect of which a building permit has been issued under the *Building Code Act, 1990*.

9.14. The injuring or destruction of the following species of non-native, invasive trees:

9.14.1. Ailanthus or Tree of Heaven *(Ailanthus altissima)*;

9.14.2. Balsam, Himalayan *(Impatiens glandulifera)*;

9.14.3. Barberry, European *(Berberis vulgaris)*;

9.14.4. Barberry, Japanese *(Buerberis Thunbergii)*;

9.14.5. Birch, European *(Betula pendula)*;

9.14.6. Elm, Siberian *(Ulmus pumila)*;

9.14.7. Locust, Black *(Robina pseudo acacia)*;

9.14.8. Maple, Manitoba *(Acer negundo)*;

9.14.9. Maple, Norway *(Acer platanoides)*;

9.14.10. Olive, Autumn *(Elaeagnus umbellate)*;

9.14.11. Olive, Russian *(Elaeagnus angustifolia)*;

9.14.12. Pine, Scots *(Pinus Sylvestris)*;

9.14.13. Poplar, Silver *(Populus alba)*; and

9.14.14. Willow *(Salix)*.

9.15. The injury or destruction of trees required for the construction and maintenance of recreational trails;

9.16. The injury or destruction of trees for personal use. For the purposes of this exemption, personal use means the use of wood by the owner for activities such as burning wood for fuel in wood stoves, fireplaces, etc., recreational use, or use in making wood-based products, provided such products are not for commercial sale on the property unless the owner of the property is able to comply the Town's Zoning By-law;

9.17. The injury or destruction of trees within lands assessed under the Managed Forest Tax Incentive Program;

9.18. The injury or destruction of trees for the purpose of one temporary access road, no wider than 4.5 metres (14 feet, 9 inches), on properties that are accessible only by water; or

9.19. The injury or destruction of trees in accordance with the diameter limits, a tree marking plan or a managed plan, as described in the District of Muskoka tree cutting by-law.

D. PROHIBITIONS AND REGULATIONS

10. Lands on Which Tree Cutting is Prohibited

No person shall injure or destroy trees, as follows:

10.1. Lands comprising wetlands as defined in this by-law; and

10.2. Any tree classified as an endangered, threatened, or at risk species, as defined in the *Endangered Species Act, 2007*, or any tree classified as an endangered or threatened tree species, or a tree species of special concern, as defined in the federal statute, *Species at Risk Act, 2002*.

11. Lands on Which Tree Cutting is Regulated

11.1. Subject to Sections C.7, C.8, C.9 and D.12 of this by-law, no person, through their own actions or through the actions of another person, shall cause or permit the injuring or destruction of trees unless that person first obtains a permit under this by-law and where a permit has been issued, the terms and conditions of any such permit are being complied with, on any of the following lands:

11.1.1. Lands within 60 metres (196 feet, 10 inches) of a navigable waterway;

11.1.2. Lands within the boundaries of the Urban and Near Urban Areas and the Muskoka Falls Community as set out in the Town's Official Plan and as shown on Schedule "A", herein, and zoned as follows, pursuant to the Town's Zoning By-law, as amended:

11.1.2.1. Residential - R1, R2, R3 and R4;

11.1.2.2. Shoreline Residential - SR1, SR2, and SR3;

11.1.2.3. Rural – RU, RR, RC, RUI;

11.1.2.4. Institutional - I;

11.1.2.5. Open Space - OS1, OS2 and OS3;

11.1.2.6. Commercial – C1, C2, C3, C4, C5, C6 and CT;

11.1.2.7. Industrial - M1, M2, M3, and M4;

11.1.2.8. Flood - F1, F2 or F3; and

11.1.2.9. Environmental Protection - EP1 or EP2.

11.1.3. Lands that contain heritage trees or significant community trees, as defined herein; and

11.1.4. Lands within 70 metres (229 feet, 8 inches) of the Highway 11 MTO right-of-way.

11.2. It is hereby acknowledged that certain lands described in Section D.11.1.2.2 are those typically used for the construction of waterfront dwellings, related facilities such as septic systems, and amenity areas typically associated with waterfront use. Notwithstanding anything to the contrary, regulations in this Section shall not be used to prohibit or frustrate such legal uses including the development of shoreline properties in accordance with the Town's Zoning By-law.

12. Specific Regulations

Notwithstanding anything to the contrary, however subject to Sections D.10 and D.11, an owner, or his or her agent, may injure or destroy trees as follows:

12.1. In order to erect any building, structure, septic system or thing in respect of which a building permit is issued and which has taken into consideration the protection of trees surrounding the structure or work within the building envelope, provided that no tree is removed or injured that is located more than 5 metres (16 feet, 5 inches) from the outer edge of the building, structure, septic system or thing, unless expressly permitted by the Town;

12.2. To establish amenity areas typically associated with use of the property according to the zoning by-law such as yards, gardens, play areas, parking areas, swimming pools and accessory buildings such as, but not limited to, a private garage, implement shed, or gazebo.

13. Alternative Measures

13.1. Notwithstanding Section D.12, an owner, or his or her agent, may prepare a site plan illustrating a proposed tree cutting proposal and apply for a permit in accordance with this Section herein and Schedules “C” and “D”, as deemed appropriate by the Director

13.2. Where the Director is able to determine that a site plan meets the objectives set forth with this Section, herein, and Schedules “C” and “D”, as applicable, and complies with Section D of this by-law, the Director may issue a permit in accordance with Section E.

13.3. The Director may make the permit conditional upon any other conditions necessary to comply with this by-law and to properly implement the site plan and the conditions set forth within the site plan.

E. PERMITS

14. Applications For Permits

14.1. Subject to Sections C.7, C.8, C.9 and D.12, every person who intends to injure or destroy a tree, personally or through another person, in accordance with Section D.15, shall apply for a permit by submitting all of the information necessary to determine compliance with this by-law and paying the fee prescribed in Town’s fee by-law.

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

14.2.1. The application has not been completed in full;

14.2.2. The owner has not signed the application and submitted the original signature as part of the application;

14.2.3. The owner’s agent, if applicable, being the party who will be undertaking the works or whom is responsible for the injuring or destruction of trees has not signed the application and submitted the original signature as part of the application;

14.2.4. The application fee has not been paid; or

14.2.5. Any required inspections have not been undertaken.

15. Application Requirements

15.1. Where a permit is required under this by-law, the owner, or his or her agent, shall submit:

15.1.1. A complete application on the form in use by the Town from time to time, the content of which is set out in Schedule “B”;

15.1.2. The prescribed fee as set out in Town’s fee by-law;

15.1.3. A plan, drawing and/or photograph of the property clearly identifying:

15.1.3.1. Lands owned by the owner;

15.1.3.2. Any and all significant features of the lands including lakes, rivers, streams, steep slopes in excess of 20% slope and wetlands;

15.1.3.3. Scaled drawing(s) of the location of the tree(s) proposed to be injured, destroyed and/or retained; and

15.1.3.4. In the instance where the base of a tree to be injured or destroyed straddles a property line, the written consent of the affected adjacent property owner to the proposed injury or destruction of the tree shall be obtained.

15.2. On receipt of a complete application and the prescribed fee, the Director shall review the application and:

15.2.1. Determine whether or not the tree proposed to be injured or destroyed are located within those lands described in Section D.10;

15.2.2. Determine whether or not a permit should be issued and identify any conditions thereto; and,

15.2.3. If the provisions of this by-law can be met, issue a permit in accordance with Section E herein.

15.3. Following the receipt of an application, the Director and any person acting under the Director's instructions may enter and inspect the land upon which the trees are located and the submission of the application shall constitute irrevocable permission to the Town to enter the property for the purpose of administering this by-law.

15.4. Where, in the determination of the Director, additional information is necessary to evaluate the application, the Director may require the applicant to submit such additional information within a specified period of time. If the requested information is not submitted within the specified period of time, the application may be refused.

15.5. A permit shall not be issued until all of the information prescribed in this by-law has been received and any additional information necessary to further detail the proposed injury or destruction of the tree and the payment of the prescribed fee.

16. Requirements for Permit Issuance

In determining whether or not to issue a permit, the Director shall determine, amongst other matters:

16.1. Whether or not the trees proposed to be injured or destroyed are located within those lands described in Section D.10;

16.2. Whether or not the purpose of the injury or destruction of trees is for the purpose of establishing, maintaining or enlarging a legally permitted use of the subject lands, including legal non-conforming uses under the Planning Act; and

16.3. Whether or not the tree proposed to be injured or destroyed is located within lands with slopes in excess of 20% where natural vegetation should be retained before and after construction, particularly on lands adjacent to a shoreline, on a ridgeline, where there is minimal soil and vegetative cover or in areas of unstable slopes with the potential for erosion.

17. Obligation to Issue Permits

17.1. The Director shall issue a permit within 15 working days of receipt of an application unless:

17.1.1. The applicant has not submitted all the required information compiled in all respects with the requirements of this by-law or has not paid the required fee;

17.1.2. The proposed injury or destruction will not comply with the requirements set out in Section D.13 and Schedules "C" and "D" of this by-law;

17.1.3. The proposed injury or destruction of trees may:

17.1.3.1. Interfere with natural drainage courses; or

17.1.3.2. Result in soil erosion, flooding, slope instability or siltation in a watercourse or body; or

17.1.3.3. Have a significant negative impact on any fish or wildlife habitat within or adjacent to the property on which the trees proposed to be destroyed or injured are located;

17.1.4. The proposed injury or destruction of trees to be cut are on lands described in Section D.10 and exemptions offered in Sections C.7, C.8, C.9 and D.12 do not apply.

17.2. The Director may impose conditions on a permit to ensure that the proposed injury or destruction of trees occurs in accordance with this by-law, including, but not limited to:

17.2.1. Prohibiting the injury or destruction of trees in drainage areas as set out in the Town's Official Plan;

17.2.2. Prohibiting the injury or destruction of trees on steep slopes of 20% or more and/or erosion areas as set out in the Town's Official Plan;

17.2.3. Retention of buffers;

17.2.4. Protection of stream crossings;

17.2.5. Site clean-up; and

17.2.6. Such additional conditions, but not limited to, as set out in Schedule “C” and “D” of this by-law.

17.3. Every permit issued under this by-law shall be deemed to include a condition permitting the Town to access the lands referred to in the permit for the purpose of ensuring compliance with this by-law.

17.4. A permit issued pursuant to this by-law shall be valid for a period of one year. In the event that the proposed injury or destruction of trees is not completed within the said period or an extension granted in accordance with Section E.18, the permit shall expire automatically.

17.5. When the proposed activity cannot comply with this by-law, the application for a permit shall be refused.

17.6. The provisions of this by-law are inherent in each and every permit that may be issued, regardless of whether or not such by-law provisions are repeated verbatim on the permit.

17.7. Notwithstanding anything to the contrary, where a permit has been issued to injure or destroy trees under this by-law, any and all injuring or destruction of trees shall be completed in accordance with the permit and any conditions that may be attached to the permit.

18. Renewal or Transfer of Permit

18.1. If an owner is in compliance with an existing permit, such permit may be transferred or renewed upon application to the Town and upon receipt of the prescribed fee as set out in the Town’s fee by-law. A permit may be renewed a maximum of two times. A renewed permit expires one year after the expiry date of the previous permit. A transferred permit expires on the date that the existing permit was due to expire.

18.2. A person who wishes to renew or transfer a permit shall, at least 30 days before the expiry of the permit, submit to the Town a fresh application that complies with all the requirements set out in Section E.15.

19. Revocation of Permits

A permit issued under this by-law may be revoked:

19.1. Where it was issued on mistaken, false or incorrect information; or

19.2. If it was issued in error; or

19.3. An applicant has failed to comply with the terms and conditions of the permit.

20. Review of Decisions of Director

20.1. Pursuant to paragraph 1 of Section 23.1 of the Municipal Act, the delegations to the Director herein are not exclusive and Council, through its Committee, hereby retains the power to review any decision of the Director at any time.

20.2. An applicant for a permit under this by-law may request a review by Council, through its Committee, in written form, addressed to the Clerk of the Town:

20.2.1. When the Director refuses to issue a permit; or

20.2.2. If the Director fails to make a decision within 15 working days after the application is received by the Director; or

20.2.3. If the applicant objects to a condition in the permit, imposed by the Director pursuant to this by-law.

20.3. On receipt by the Clerk of an application for review under this Section, Council, through its Committee, shall hold a hearing and provide the applicant an opportunity to make representations under its procedural rules in use, as approved by Council.

20.4. Upon any such review, Council, through its Committee, may make any decision it deems appropriate, subject to law.

F. ORDERS

21. Orders to Discontinue Activity

21.1. Where the Director is satisfied that a contravention of this by-law may be occurring, the Director may make a Stop Work Order under the authority of Section 444 (1) of the Municipal Act requiring that the injuring or destruction of trees be immediately stopped.

21.2. A Stop Work Order may be reviewed in accordance with Section E.20 herein.

22. Remedial Orders

22.1. Where a person has contravened Sections D.10, D.11.1 or D.13 of this by-law, pursuant to Section 445 (1) of the Municipal Act, Council, through its Committee, may make such remedial orders as it deems appropriate.

22.2. A Remedial Order may be reviewed in accordance with Section F.20, herein.

22.3. In determining whether or not to issue an order under this Section, Council, through its Committee, shall:

22.3.1. Determine whether or not the lands will naturally regenerate; and

22.3.2. Determine whether or not re-planting is required to prevent erosion or the escape of silt or other materials to a waterbody.

23. Service of Orders

23.1. An Order issued under Section F.21 or F.22, herein, and shown on Schedules “F” and “G” of this by-law, may be served personally or served by sending it by mail, in accordance with the latest revised assessment roll, to the last known address of:

23.1.1. The owner of the lands; and, if applicable,

23.1.2. The person identified as injuring or destroying trees.

23.2. Where service of an Order is made by mail, service shall be deemed to have been served on the fifth day after the Order is mailed.

23.3. Where service cannot be carried out in accordance with Section F.23.1. and F.23.2., service is deemed sufficient if the Officer places a placard containing the terms of the Order in a conspicuous place on the affected lands and such placing of the placard shall be deemed to be sufficient service of the Order on the person to whom the Order is directed.

23.4. No person, through his or her own actions or through any other person, shall:

23.4.1. Fail to comply with an Order issued under this by-law;

23.4.2. Remove or deface any Order that has been posted pursuant to this by-law;

23.4.3. Contravene the terms or conditions of a permit issued under this by-law; or

23.4.4. Obstruct the Director or his or her designated Officer in the carrying out of their duties under this by-law,

and if such obstruction occurs that person is guilty of an offence and, upon conviction, is liable for the penalties herein.

G. OFFENCES AND PENALTIES

24. Every person who:

24.1. Fails to comply with the provisions of this by-law;

24.2. Fails to comply with an Order issued by the Director under Section F of this by-law;

24.3. Removes or defaces an Order that has been posted pursuant to this by-law;

24.4. Contravenes the terms or conditions of a permit issued pursuant to this by-law; or

24.5. Obstructs the Director or his or her designated officer in the carrying out of his or her duties under this by-law,

is guilty of an offence and, upon conviction, is liable for the penalties herein.

25. Any person who contravenes any provision of this by-law, or an Order issued under Section F of this by-law, is guilty of an offence and is liable:

25.1. On first conviction, to a fine of not more than $10,000; and

25.2. On any subsequent conviction, to a fine of not more than $25,000.

The fines levied may vary depending on the seriousness of the offence.

26. If a person is convicted of an offence for contravening this by-law or an Order issued under Section F of 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 replacement trees in such a manner and within such time period as the court considers appropriate.

H. ENFORCEMENT

27. Council may, by resolution or by-law, appoint such tree cutting by-law Officers as may be necessary to administer and enforce the provisions of this by-law.

28. Each such Officer shall:

28.1. Not be a member of Council;

28.2. Hold the designation of Officer in accordance with this by-law for such term as specified by resolution or by-law of Council; and

28.3. Be provided with Council's consideration of being paid allowances for salary and traveling expenses when engaged in the enforcement of this by-law at such rates as authorized by Council.

29. Upon entering private lands, an Officer shall show proper Town identification to the owner or occupier of the land if and when requested.

30. Every person appointed to enforce the provisions of this by-law may exercise the powers of entry in accordance with the applicable provisions of the Municipal Act.

I. ADMINISTRATION

31. Schedules "A" to "G", inclusive, shall form part of this by-law.

32. In this by-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the masculine gender shall include the feminine, and further, the converse of the foregoing also applies where the context so requires.

33. Should a decision of a Court or Tribunal of competent jurisdiction rule that one or more of the provisions of this by-law are invalid, in whole or in part, such decision does not affect the validity, effectiveness, or enforceability of the other provisions or parts of the provisions of this by-law.

34. The short title of this by-law is the "Tree Cutting By-law".

J. FORCE AND EFFECT

35. That this by-law shall come into force and effect immediately upon the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME, AND FINALLY PASSED THIS 22ND DAY OF DECEMBER 2008.

_____ _____

Mayor Clerk

SCHEDULE "A"

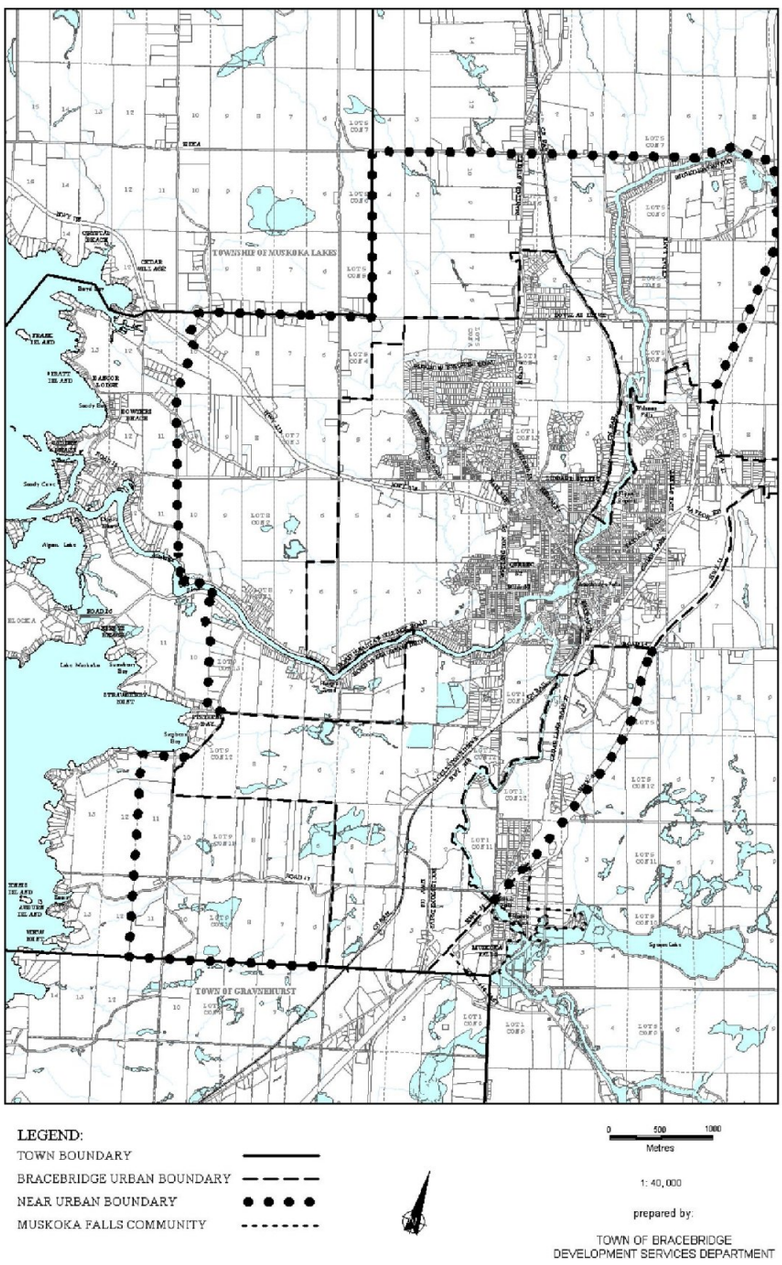
Lands Subject to this By-law

Lands within the Urban and Near Urban Areas and Muskoka Falls Community, as mapped below; all lands in the Town within 60 metres (196 feet, 10 inches) of the highwater mark of a navigable waterway; all lands in the Town zoned Environmental Protection and/or Flood pursuant to the Town Zoning By-law; and all lands in the Town within 70 metres (229 feet, 8 inches) of the Highway 11 MTO right of way.

Note: Urban, Near Urban and Community boundaries follow lot and concession lines, roads or waterbodies.

SCHEDULE 'A'

URBAN, NEAR URBAN, and COMMUNITY AREAS



SCHEDULE "B"

Information Required for Complete Application

1. Receipt of Prescribed Fees;

2. Name, address and telephone number of all owners;

3. Name, address and telephone number of the authorized qualified professional to the owner;

4. Signature or authorization of all owners;

5. Municipal Address of property (if assigned);

6. Legal description of property;

7. A plan, drawing and/or photograph of the property clearly identifying:

   (a) Lands owned by the owner;

   (b) Any and all significant features of the lands including lakes, rivers, streams, steep slopes (greater than 20%) and wetlands;

   (c) Scaled drawings of the location of the trees proposed to be injured, destroyed and/or retained; and

   (d) In the instance where the base of a tree to be injured or destroyed straddles a property line, the written consent of the affected adjacent property owner to the proposed injury or destruction of the tree shall be obtained.

AND (if required)

8. A Tree Inventory and Preservation Plan prepared and signed by a qualified professional containing, but not limited to:

   (a) A general description of the history of use of the property;

   (b) Importance of the property to the surrounding landscape;

   (c) A key map of the property showing the location of the property within the Town;

   (d) A detailed inventory map of the property showing the property boundary vegetation type boundaries, adjacent property, vegetation, fences, roads, access roads or trails, hydro lines, utility lines, windbreaks, watercourses, grass fields, railways, buildings, towers, bridges, quarries, dams, flood lands, swamps, mines, brush, marshes, debris piles, shallow rocky areas, orchards, hazard areas, developed agricultural lands, plantations, and woodland areas;

9. Details with respect to soil types, topography, physical features, water features, drainage, access, wildlife, existing grading and proposed grading and an inventory of trees and tree regeneration, and the method of assessing the inventory of trees with respect to each distinct area or compartment within the woodlot;

10. An analysis and prescription for each vegetation area regarding preservation, conditional preservation, removals and revegetation in accordance with the establishment or extension of a use permitted by the zoning by-law;

11. A map showing the extents of the areas of preservation, conditional preservation, vegetation removals and restoration where applicable; and

12. A prescription for tree preservation measures, including monitoring, notes, specifications and details for the duration of active development on the property.

SCHEDULE "C"

Detailed Tree Cutting Rules

On the issuance of a tree cutting permit, the Director may impose additional conditions dealing with, but not limited to, the following matters:

1. Timing:

   The timing of tree cutting may be restricted to periods when the ground is dry and not soft to reduce the impact on forest soils and vegetation. Tree cutting or destruction in early spring, when the ground is thawing or soft, may be prohibited.

2. Buffers:

   (a) A buffer up to 3 metres (9 feet, 9 inches) in width of uncut densely growing trees may be required beside open areas or other hard edges to reduce windthrow and other damage to the forest interior and minimize invasion by exotic species;

   (b) Maintain buffers and natural vegetation between cut area and waterbodies, rare vegetation communities and significant wildlife habitats may be required.

3. Tree marking:

   Tree marking may be required prior to any injuring or destroying of trees taking place.

4. Erosion:

   (a) Cutting on steep slopes (slopes greater than 20%) may be prohibited;

   (b) Avoid cutting along lake and stream shorelines and around springs and seeps.

5. Roads, skid trail and landings:

   (a) Skid trails and roads on steep slopes (e.g. greater than 12% for roads; greater than 20% for skid trails), wet spots, seepage and poorly drained areas and intermittent streams may be prohibited;

   (b) The number and width of skid trails and roads may be restricted any may be required to follow the land contours whenever possible;

   (c) Skid trails are not permitted directly up of down a slope;

   (d) Landings may be restricted to well-drained sites away from waterbodies and watercourses.

6. Crossing streams:

   (a) Skid trails and roads may be required to approach and cross streams at right angles to minimize impacts on stream banks and to prevent water from flowing down skid trails. However, each crossing shall be reviewed depending on the particular site circumstances;

   (b) The number of stream crossings and locations may be restricted.

7. Cutting and felling:

   Directional felling may be required to minimize damage to the remaining trees.

8. Non-native, invasive species:

   Hosing down forestry equipment between work sites to prevent the introduction of non-native, invasive species may be required.

9. Tree cutting residue:

   Tree cutting operations may leave behind treetops and limbs and tops may be required to be cut so that they lie flat on the ground and decay rapidly. However, in no circumstances shall the height of the residue exceed 1 metre (3 feet, 3 inches) in height.

10. Qualification of Tree Cutters:

Where there may be danger to persons or property arising as a result of tree cutting operations, the following qualifications may be required:

(a) Trained in use of relevant equipment (e.g. chainsaws, heavy equipment);

(b) Site safety personnel such as flag persons on roads; and

(c) Requirement that the trees be taken down in sections.

SCHEDULE "D"

Other Tree Cutting Site Plan Application Requirements

The Director shall review the proposed site plan for compliance, where applicable, with requirements for the approval of tree cutting proposals in accordance with Section D.13, Schedule "C" and Schedule "D" herein.

1. **Survey Plan**

Conducted by an Ontario Land Surveyor (an accurate and scaled sketch by the owner, or his or her agent, may be acceptable) showing lot area and frontage, bearings, dimensions, stakes, etc.

2. **Site Plan**

Details of development to be included on the plan:

(a) Lot area;

(b) Maximum and actual number of parking spaces;

(c) North arrow (the drawings must be oriented to have a vertical north line, or as closely as possible);

(d) Any other relevant data;

(e) Key plan for site location;

(f) Property boundaries;

(g) Front, side and rear lot lines;

(h) Location and dimensions of existing and proposed buildings;

(i) Location or outline of existing buildings or adjacent properties;

(j) Roadways, driveways, parking area layout; and

(k) Exterior amenity areas.

3. **Landscape Plan**

Details of landscape development or removal to be included on the plan:

(a) Location of all proposed plan material, planting beds and sodded areas, and other surface treatments;

(b) Location of existing vegetation to be retained or removed;

(c) Listing of plant material showing index, name, size (diameter at breast height), quantity, etc; and

(d) Location of pathways, play areas, open space areas, and exterior walkways, stairs, activity areas, and building entrances.

4. Other Considerations

The Director may require that the following objectives be met, but are not necessarily limited to:

(a) Preservation of significant fish and wildlife habitat;

(b) Erosion control on lands subject to environmental hazards such as lands prone to flooding and building hazard areas;

(c) Protection and preservation of features such as wetlands and narrow waterbodies;

(d) Restriction of the construction of buildings, structures or other facilities from causing a destruction of significant heritage areas, as a result of erosion, surface water run-off, structural development or fill, or the migration of chemical or other elements;

(e) Generally, maintain ground or vegetative cover and provide a natural buffer;

(f) Where appropriate, require storm water management approaches and practices that will protect the health of lakes and rivers;

(g) Existing vegetation shall be substantially retained on all slope faces of 20% or greater in accordance with the Town's Official Plan and if vegetation cannot be substantially retained, then a site evaluation report that addresses specific mitigation measures shall be required;

(h) Protection of deer wintering areas that include significant conifer shelter, feeding areas and travel corridors upon which deer depend for survival; and/or

(i) Schedule "C" denotes detailed tree cutting rules, though not limited in its content, that may be required as a condition of the site plan application for the destruction or injury of trees.

5. <u>General</u>

The Town may waive any condition that may not be appropriate or impose additional requirements that may be appropriate on any tree cutting request.

SCHEDULE "E"

Appointment of Officers

1. Council may appoint, from time to time, by resolution or by-law, persons it deems qualified and necessary to act as Officers to administer and enforce the provisions of this by-law, to issue permits under this by-law and to impose conditions to such permits.

2. An Officer, appointed by resolution or by-law of Council, or any person authorized by an Officer, may at all times enter upon and inspect any land 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, and determining compliance with an order issued under Section F of this by-law or laying charges under this by-law.

3. Any person who obstructs or interferes with an Officer, or any person authorized by an Officer, in the discharge of his or her duties under this by-law, shall be considered in violation of this by-law.

SCHEDULE "F"

BRACEBRIDGE
The Heart of Muskoka

TREE CUTTING BY-LAW

STOP WORK ORDER

Municipal Act, 2001, c. 25, s. 444 (1)

Town of Bracebridge, 1000 Taylor Court, Bracebridge, ON P1L 1R6
Tel: 645-5264 Fax: 645-4209

Inspection Date: _____ Time:_____:_____a.m./p.m. Permit and or Application No. (Where Applicable) _____

Address/Location: _____

Owner: _____

Contractor: _____ Officer's Telephone No. _____

A CONTRAVENTION OF THE TOWN OF BRACEBRIDGE TREE CUTTING BY-LAW No. 2008-____ AND/OR TREE CUTTING PERMIT No. _____ HAS BEEN FOUND TO EXIST AT THE ABOVE-NOTED LOCATION BY REASON OF THE FOLLOWING:

STOP ALL INJURING AND DESTRUCTION OF TREES ☐
STOP PART OF INJURING AND DESTRUCTION OF TREES ☐ (Specify)
BY-LAW VIOLATIONS:

YOU ARE HEREBY ORDERED TO TAKE ACTIONS SET OUT ABOVE **IMMEDIATELY**

PENALTIES CAN BE PROVIDED FOR VIOLATION OF THE TOWN OF BRACEBRIDGE TREE CUTTING BY-LAW

_____ Date of Order Issuance

_____ Signature of Officer

Municipal Act, S.O. 2001, c. 25, section 444 (1) provides that, "If a municipality is satisfied that a contravention of a by-law of the municipality passed under this or any other Act has occurred, the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity."

Personal information on this form is collected under the authority of the Municipal Act. Questions about this Order should be directed to: The Director of Development Services, Town of Bracebridge, 1000 Taylor Court, Bracebridge, ON P1L 1R6.

SCHEDULE "G"

BRACEBRIDGE
The Heart of Muskoka

TREE CUTTING BY-LAW

REMEDIAL ORDER

Municipal Act, 2001, c. 25, s. 445 (1)

Town of Bracebridge, 1000 Taylor Court, Bracebridge, ON P1L 1R6
Tel: 645-5264 Fax: 645-4209

Inspection Date: _____ Time: _____:_____a.m./p.m. Permit and or Application No. (Where Applicable) _____

Address/Location: _____

Owner: _____

Contractor: _____ Officer's Telephone No. _____

A CONTRAVENTION OF THE TOWN OF BRACEBRIDGE TREE CUTTING BY-LAW No. 2008-____ AND/OR TREE CUTTING PERMIT No. _____ HAS BEEN FOUND TO EXIST AT THE ABOVE-NOTED LOCATION AND SHALL BE REMEDIED AS FOLLOWS:

SPECIFIC REMEDIAL ACTIONS TO REMEDY BY-LAW AND/OR PERMIT VIOLATIONS, AS FOLLOWS:

_____

_____

_____

_____

YOU ARE HEREBY ORDERED TO TAKE ACTIONS SET OUT ABOVE **ON OR BEFORE:**

PENALTIES CAN BE PROVIDED FOR VIOLATION OF THE TOWN OF BRACEBRIDGE TREE CUTTING BY-LAW

_____ _____

Date of Order Issuance Signature of Officer

Municipal Act, S.O. 2001, c. 25, section 445 (1) provides that, "If a municipality is satisfied that a contravention of a by-law of the municipality passed under this or any other Act has occurred, the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention."

Personal information on this form is collected under the authority of the Municipal Act. Questions about this Order should be directed to: The Director of Development Services, Town of Bracebridge, 1000 Taylor Court, Bracebridge, ON P1L 1R6.