

**THE CORPORATION OF THE TOWNSHIP OF MUSKOKA LAKES  
BY-LAW NUMBER 2016-161**

A By-Law to exempt Swift River Energy Limited from the provisions of certain Township of Muskoka Lakes By-laws

**WHEREAS** the Corporation of the Township of Muskoka Lakes (the "Township") is the owner of a freehold or leasehold interest in certain lands in the Township of Muskoka Lakes, in the Province of Ontario, as more particularly described in Schedule "A" (the "Premises");

**AND WHEREAS** Swift River Energy Limited ("SREL") wishes to have use of the Premises and other lands in conjunction with the development and construction of the North Bala Falls Small Hydro Project (the "Project");

**AND WHEREAS** the Township and SREL have agreed to terms upon which the Township will lease the Premises and other lands to SREL (the "Lease");

**AND WHEREAS** the Township, after careful consideration and debate, has covenanted in the Lease to pass by-laws providing for amendments or exemptions in favour of SREL during the term of the Lease from any Township by-laws that will restrict SREL's ability to use the Premises for uses set out in the Lease;

**AND WHEREAS** the *Municipal Act, 2001*, permits municipalities to pass by-laws regulating or prohibiting certain matters, including noise, outdoor illumination, tree cutting, and the alteration of grades;

**AND WHEREAS** By-law 2008-55 of the Township of Muskoka Lakes (the "Tree Preservation By-law") authorizes the Township to prohibit and regulate the destruction or injuring of trees, including the granting of an exemption for the injuring or removal of trees by or with the permission of the Township that are situated on lands that are owned or controlled by it;

**AND WHEREAS** By-law 2005-83 of the Township of Muskoka Lakes (the "Noise By-law") authorizes the Township to reduce and control noise, including the granting of an exemption from the prohibition against emitting or causing the emission of sound in the Noise By-law;

**AND WHEREAS** By-law 2008-56 of the Township of Muskoka Lakes (the "Site Alteration By-law") authorizes the Township to regulate and prohibit modifications to the landscape on properties in the Township, including the granting of exemptions from the prohibitions in the Site Alteration By-law;

**AND WHEREAS** By-law 2014-029 of the Township of Muskoka Lakes (the "Dark Sky By-law"), authorizes the Township to regulate and prohibit with respect to outdoor illumination, including the granting of exemptions from the provisions of the Dark Sky By-law;

**NOW THEREFORE, THE COUNCIL OF MUSKOKA LAKES ENACTS AS FOLLOWS:**

**DEFINITIONS**

1. In this By-law:

**Alteration or Site Alteration** means a change in elevation from existing grade or finished grade resulting from the placing or dumping of fill, the removal of topsoil, placing, dumping, removal or blasting of rock, or any other action that alters the grade of land including the altering in anyway of a natural drainage course on a site;

**Construction** means erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, blasting, rock crushing, the laying of pipe and conduit whether above or below ground level, street and highway building, concreting equipment installation and alteration and the structural installation of construction components and material in any form or for any purpose and includes any work in connection therewith;

**Construction equipment** means any equipment or device designed and intended for use in construction of material handling, including but not limited to, air compressors, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks,

loaders, scrapers, pavers, generators, off-highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders, or other material handling equipment;

**Council** means the Council of the Corporation of the Township of Muskoka Lakes;

**Destroy** means the removal of a tree or harm resulting in the death, ruin, or removal of a tree by cutting, burning, uprooting, chemical application or other means including irreversible injury that may result from neglect, accident or design and the term "destruction" shall have a corresponding meaning;

**Dumping and Dump** means the depositing of *fill* in a location other than where the *fill* was obtained or the movement and depositing of *fill* from one location on a property to another location on the same property;

**Fill** means any type of material capable of being removed from or deposited on lands, such as soil, stone, sod, turf, concrete, wood, stumps, rock, and asphalt either singly or in combination excluding construction material which are incorporated into a building or structure within six months of deposit on the lands and excluding installed paving materials;

**Grade** means the elevation of the ground surface and shall be more particularly defined as follows,

**Existing grade** means the elevation of the existing ground surface of the lands upon which *dumping* and/or placing of *fill*, altering of the *grade*, removing of topsoil, or blasting of rock is propose and of abutting ground surface up to three metres wide surrounding such lands, except that where such activity has occurred in contravention of any by-law, *existing grade* shall mean the ground surface of such lands as it existed prior to the said activity,

**Finished grade** means the approved elevation of ground surface of lands upon which *fill* has been placed or *dumped*, the *grade* altered or topsoil removed, in accordance with By-law 2008-56;

**Injure** means to harm, damage or impair a tree and includes, but is not limited to, harm, damage or impairment caused by changing grades around a tree, compacting soil over root areas, severing roots, improper application of chemicals, improper pruning or the removal of branches and bark and the term "injury" shall have a corresponding meaning;

**Light Trespass** means the shining of light produced by a luminaire, or reflection beyond the boundaries of the property on which it is located.

**Light Pollution** means the shining of light upwards into the sky above the horizontal plane of the light fixture, or lighting that interferes with the ability to see the night sky caused by any of: light trespass; excess of glare; excess of direct light; excess of reflected light; light from fixtures that are not "full cut-off".

**Noise** means a sound prohibited by the Noise By-law;

**Person** means any individual, corporation, partnership, association, firm, trust, or other entity and includes anyone acting on behalf or under the authority of such entity;

**Premises** means the lands described in Schedule "A" to this by-law;

**Remove, removes or removal** means to move from a place or position occupied; or

- a) To transfer or convey from one place to another; or
- b) To take off; or
- c) To take away; withdraw; or
- d) To do away with; eliminate.

**Township** means the Corporation of the Township of Muskoka Lakes;

**Tree** means a plant of any species of woody perennial plant including its root system which has reached or can reach a height of at least 4.5 metres (15 feet) at physiological maturity;

## **APPLICATION OF THE BY-LAW**

2. This By-law applies to the Premises.

## **EXEMPTIONS FROM APPLICATION OF VARIOUS TOWNSHIP BY-LAWS**

3. Despite the provisions of the Tree Preservation By-law, during the term of the Lease, it is lawful for SREL, its employees, contractors, agents, heirs, legal representatives, successors and permitted assigns to injure or remove trees situated on the Premises.
4. Despite the provisions of the Noise By-law, during the term of the Lease, it is lawful for SREL, its employees, contractors, agents, heirs, legal representatives, successors and permitted assigns to emit or cause or permit the emission of noise in connection with:
  - a) the 24-hour-a-day, seven-day-a-week, operation of electric portable water pumps; and
  - b) the operation of construction equipment.
5. Despite the provisions of the Site Alteration By-law, during the term of the Lease, it is lawful for SREL, its employees, contractors, agents, heirs, legal representatives, successors and permitted assigns to place or dump fill; remove topsoil; place, dump, remove or blast rock; or alter the grade of land, on the Premises.
6. Despite the provisions of the Dark Sky By-law, during the term of the Lease, it is lawful for SREL, its employees, contractors, agents, heirs, legal representatives, successors and permitted assigns to light trespass or light pollute in connection with normal security practices.

## **SEVERABILITY**

7. If any section of this By-law, or parts thereof, are found by any court of law to be illegal or beyond the power of the Council to enact, such section, sections, part or parts shall be deemed to be severable, and all other sections or parts shall be deemed to be separate and independent therefrom and to be enacted as such.

This By-law shall take effect upon the date of passing thereof.

Read a first, second and third time and finally passed this 16<sup>TH</sup> day of December, 2016.

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Don Furniss, Mayor

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Cheryl Mortimer, Clerk

**SCHEDULE "A"**

**PREMISES**

- Parcel 1. The Landlord's freehold interest in the parcel of land immediately adjacent to and south of the North Bala Falls Small Hydro Project site that was transferred to the Township from the District in 2011 (PIN 48029- 0638);

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