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**Subject:** Woodland Conservation By-law Review  
**Report to:** Planning and Economic Development Committee  
**Report date:** Wednesday, October 14, 2020

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### Recommendations

1. That Regional Council **APPROVE** the Niagara Region Woodland Conservation By-law attached as Appendix 1 to this report, Report PDS 16-2020;
2. That staff **BE DIRECTED** to terminate the service level agreement with the Niagara Peninsula Conservation Authority (NPCA) for the enforcement of the Woodland Conservation By-law and advertise the Regional Forester position for external hire;
3. That staff **CIRCULATE** a copy of this report and the new Niagara Region Woodland Conservation By-law to the Local Area Municipalities, NPCA, Niagara North Federation of Agriculture, Niagara South Federation of Agriculture, Niagara Woodlot Association, Niagara Home Builders Association, Niagara Construction Association and Niagara Parks Commission; and,
4. That a copy of the Niagara Region Woodland Conservation By-law **BE POSTED** on the Region's website and local municipalities be requested to include a reference and link to the By-law in all pre-consultation applications.

### Key Facts

- The purpose of this report is to present the updated Niagara Region Woodland Conservation By-law for Regional Council review and approval.
- The Woodland Conservation By-law Review engagement strategy began in March 2020 and included two stakeholder sessions, a virtual public open house, online survey, and other comments/inquires received through the project email site.
- Section 135 (2) of the Municipal Act enables Regional Council to prohibit or regulate the destruction or injuring of trees in woodlands as defined in the Forestry Act larger than one hectare in size.
- The current Tree and Forest Conservation By-law is 12 years old and the review considered legislative changes, alignment between the By-law and the Regional Official Plan, best management practices and operational needs.
- Currently, the Niagara Peninsula Conservation Authority (NPCA) administers the By-law on the Region's behalf through a Service Level Agreement. Through the By-law

review, and discussions with NPCA, staff recommend terminating the Service Level Agreement (Appendix 2) in order to bring the Regional Forester Position back to the Region.

### Financial Considerations

Financial costs of undertaking the Woodland Conservation By-law review internally were accommodated through the 2019/2020 Planning and Development Services Operating Budget.

Currently, the NPCA administers the Tree and Forest Conservation By-law on the Region's behalf through a Service Level Agreement. The annual cost to the Region is \$108,985. Annual Reports are prepared to inform Council of the activities undertaken throughout the year by the NPCA to provide Good Forestry Practices, educate the public, and enforce the provisions of the by-law (Appendix 3).

Upon terminating the Service Level Agreement, the above will be repurposed to fund the internal Regional Forester Position (existing approved FTE) that has been left vacant to fund NPCA for this service.

### Analysis

#### Background

Section 135 of the Municipal Act allows municipalities to prohibit and regulate the destruction or injuring of trees through enacting tree by-laws. Upper-tier municipalities may enact such a by-law for trees in woodlands as defined in the Forestry Act that are greater than one hectare in area. Local municipalities may also enact such a by-law for individual trees and trees within woodlands that are less than one hectare. The Act also provides upper-tier and local municipalities with the option to delegate all or part of their power to pass such by-laws to each other, with an agreement.

Grimsby, Niagara-on-the-Lake, Niagara Falls and West Lincoln have delegated their authority to regulate trees in woodlands less than one hectare to the Region, as per the Municipal Act, s. 135 (10).

- **Tree and Forest Conservation By-law (30-2008)**

The current by-law regulates the destruction or injury of trees within woodlands that are greater than one hectare. The intent of the existing by-law is to encourage the conservation and improvement of woodlands in Niagara through Good Forestry Practices. The by-law prohibits the clearing of woodlands except under specific circumstances and requires landowners to follow Good Forestry Practices when

harvesting trees. This is accomplished by requiring landowners to submit a forest management plan or a silvicultural prescription prepared by a Registered Professional Forester (or a member of the Ontario Professional Foresters Association) to obtain a permit.

### Benchmark Research

Woodland conservation by-laws from 13 upper tier municipalities across southern Ontario were compared according to a number of criteria (Appendix 4). The large majority of by-laws require a permit to cut, do not have by-law committees, and none are able to require direct compensation from fines (in accordance with legislation). A majority of by-laws allow personal use exemptions, and require permits or exemptions to be processed for tree removal where a building permit has been issued. Additionally, a majority of by-laws reviewed protect woodlands less than 1.0ha.

### Proposed Changes to the By-law

In 2013, various municipal by-law officers and staff from the Ministry of Natural Resources formed a Forest Conservation By-law Committee and developed a template for upper tier municipalities to use when creating and/or updating their Forest Conservation By-laws. It provides suggested legal text and best management practices and to encourage a more consistent format between Forest By-laws making it easier to adhere to when working in and across the boundaries of various municipalities. The proposed updates to the Niagara Region Woodland Conservation By-law includes suggestions from this template.

Changes to the Woodland Conservation By-law are proposed for Council approval. The majority of changes are minor and provide clarity and alignment with the *Municipal Act* and *Forestry Act*.

Key changes to the by-law include the following:

- **Administration of the By-law**

Niagara Region's existing Tree and Forest Conservation By-law (30-2008) has been in place since 1981. The most recent update to the by-law occurred in 2008 in response to changes to the Municipal Act, a request for amendments to the by-law from the Township of West Lincoln, as well as to facilitate the transfer of responsibilities for enforcement of the by-law to the NPCA

As a result, the administration and enforcement of the by-law was delegated to the NPCA and a Service Level Agreement was developed in August 2008. In 2018, the NPCA returned the environmental planning review functions back to the Region, including stormwater management review. At that time, the only role that was not fully

returned to the Region was the Regional Forester position. This position remained at the NPCA because the 2008 By-law needed to be updated to remove NPCA administration references from the By-law. To finalize the 2018 environmental planning review transfer to the Region, staff are recommending deleting NPCA references from the By-law and terminating the Service Level Agreement in order to bring back the Regional Forester Position to the Region. Returning the Forester position back to the Region is appropriate as we also undertake the prosecution.

The NPCA staff have provided comment and input into the Woodland Conservation By-law and aware of the changes being brought forward. The By-law includes a delayed enforcement date of January 31<sup>st</sup>, 2021 to allow the Region time to complete the hiring process for a Regional Forester and provide for the required 90 days' notice to terminate the service level agreement with the NPCA. Upon the Woodlands Conservation By-law taking effect on January 31<sup>st</sup>, 2021, the current by-law 30-2008 will be repealed.

- **External Committee**

Niagara Region is the only municipality in the province with an external advisory committee written into its Tree and Forest Conservation By-law. Having an external advisory committee for by-law enforcement is very irregular and is not required under the *Municipal Act*. Enforcement decisions under the by-law are to be made by a By-law Enforcement Officer, not an advisory committee. The purpose of the external advisory committee was to provide advice on matters of tree and forest conservation. The committee included, at a minimum, representatives of the local municipalities, the Niagara North and Niagara South Federations of Agriculture, the Niagara Woodlot Association and the logging industry. There was an expectation of the advisory committee to discuss compliance matters with members of the public and decide on whether charges should be laid. This practice was ended given it is highly improper to discuss compliance matters with members especially if charges are laid and court proceedings are to be conducted.

Staff are recommending the removal of the external committee from the by-law as it is not required by the *Municipal Act* and is in keeping with other municipal woodland by-laws in the Greater Toronto Hamilton Area (GTHA). Furthermore, staff suggest the use of the regional Agricultural Policy and Action Committee (APAC) as a forum to discuss any matters relating to tree and forest conservation.

- **Removal of Tree Preservation Plan requirements in By-law**

Previously the 2008 By-law included a definition for Tree Saving Plan including all the requirements. The Tree Saving Plan definition has been removed and instead will be replaced as a stand-alone guideline titled “Tree Preservation Guideline”, see Appendix 5.

#### Public Consultation Summary

The Woodland Conservation By-law Review was initiated in March 2019. Consultation included two stakeholder sessions, held on March 3, 2020, and a virtual public open house, held on June 17, 2020. Both the stakeholder sessions and open house consisted of a presentation and Q&A period moderated by a facilitator and Regional staff, respectively. In addition, an online survey was conducted. The results of the public consultation are summarized below.

- **Stakeholder Sessions**

Invitations to the stakeholder sessions were sent to 181 individuals. There were 24 attendees at the morning stakeholder session, including biologists, arborists, ecologists, planners, developers and project managers. There were 14 attendees at the afternoon session, including planners from the local area municipalities and representatives from local environmental groups. The sessions consisted of a presentation and facilitated question and answer period. Questions at the stakeholder sessions focussed on existing and proposed exemption policies, changes to definitions, the connection between the By-law and Official Plan, the status of the By-law advisory committee and enforcement policies.

- **Survey**

A survey to gather feedback on the by-law was posted on the Region’s website and advertised through social media posts from June 11, 2020 to July 5, 2020. There were 372 survey responses, with 273 of them being complete and 99 partially complete. “Providing increased protection for woodlands from unauthorized clearing or cutting” ranked as the highest priority for the by-law review by those that provided input via the online survey.

Please refer to Appendix 6 for a full summary of the survey results.

- **Virtual Open House**

Invitations were sent to 255 individuals, and contact information for registration was posted on the project webpage two weeks prior to the virtual open house. 82 people registered in advance to attend, and 79 people attended. The virtual open house was

presented in the same format as the stakeholder sessions and consisted of a presentation followed by a question and answer period with Regional staff. Questions at the open house had a similar focus as the questions received at the Stakeholder Sessions.

- **Comments Received**

The input received on the by-law update revealed a keen interest to recognize the challenges and limitations of the current By-law, as well as identifying opportunities for the review and finalization of the updated By-law. A full summary of all comments and questions received are included in Appendix 7. Input collected throughout the review has been considered in drafting the updated By-law and is reflected in the draft By-law presented today.

#### Alternatives Reviewed

The option of postponing the review of the by-law until the Regional Official Plan review has concluded was considered but is not recommended. The Regional Official Plan review is a multi-year project, and there are items that require immediate attention such as ensuring the language of the by-law aligns with current best management practices. The Woodland Conservation By-law will often compliment the intent of the natural heritage policies of the new Niagara Official Plan in preserving woodlands by prohibiting their removal for development or construction unless properly assessed and the correct planning and building approvals are provided first.

In 2018, the responsibility for plan review and technical clearance for the natural environment policies of the Regional Official Plan (Chapter 7) returned to the Region. A review of the by-law is timely to ensure administration and enforcement requirements remain clear.

Postponing the review could result in an extended period with an out of date by-law, and may result in issues with interpretation and enforcement. Given the aforementioned changes, and considering there has been no review of the by-law since its approval in 2008, the option to move forward with the review immediately is prudent and responsible.

#### Relationship to Council Strategic Priorities

The Woodland Conservation By-law aligns with objective 3.2 Environmental Sustainable Stewardship:

*“A holistic and flexible approach to environmental stewardship and consideration of the natural environment, such as in infrastructure, planning and development, aligned with a renewed Official Plan.”*

### Other Pertinent Reports

- DPD 49-2006 Update on the Tree Conservation By-law
- CAO 4-2008 Tree and Forest Conservation By-law Amendments
- DPD 133-2007 Tree and Forest Conservation By-law Amendments
- Service Level Agreement Tree and Forest Conservation By-law August 2008
- PDS 13-2019 Initiation of a Woodland By-law Review
- CWCD 41-2020- Woodland By-law Review Update

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*This report was prepared in consultation with Adam Boudens, Senior Environmental Planner, Britney Fricke, Senior Development Planner, Vanessa Aykroyd, Landscape Architect, Patricia D'Souza, Legal Counsel, and reviewed by Donna Gibbs, Director Legal and Court Services.*

### **Appendices**

Appendix 1	Woodland Conservation By-law
Appendix 2	Service Level Agreement
Appendix 3	2019 Annual NPCA Report
Appendix 4	Benchmark Municipalities
Appendix 5	Tree Preservation Guidelines
Appendix 6	Survey Results
Appendix 7	Comments Received