
Subject: Initiation of a Woodland Bylaw Review

Report to: Planning and Economic Development Committee

Report date: Wednesday, March 20, 2019

Recommendations

1. That Report PDS 13-2019 **BE RECEIVED** for information; and
2. That staff **BE DIRECTED** to engage the Local Area Municipalities, Niagara Peninsula Conservation Authority (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.

Key Facts

- The purpose of this report is to inform Committee of the initiation of the Woodland Bylaw Review project.
- 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.
- Niagara Region currently has such a bylaw titled: Tree and Forest Conservation Bylaw (30-2008).
- The Niagara Peninsula Conservation Authority (NPCA) has been administering the current Tree and Forest Conservation Bylaw, on the Region's behalf, since a Service Level Agreement was approved in August 2008.
- The bylaw is 11 years old. This review will consider legislative changes, alignment between the bylaw and the Regional Official Plan, best management practices and operational needs.

Financial Considerations

Financial costs of undertaking the review internally can be accommodated through the proposed 2019 Planning and Development Services Operating Budget.

Analysis

Background

Section 135 of the Municipal Act allows municipalities to prohibit and regulate the destruction or injuring of trees through enacting tree bylaws. Upper-tier municipalities may enact such a bylaw for trees in woodlands as defined in the Forestry Act that are greater than one hectare. Local municipalities may also enact such a bylaw 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 agreement.

Niagara Region's Tree and Forest Conservation Bylaw (30-2008) has been in place since 1981. The most recent update to the bylaw occurred in 2008 in response to changes to the Municipal Act, a request for amendments to the bylaw from the Township of West Lincoln, as well as to facilitate the transfer of responsibilities for enforcement of the bylaw to the NPCA (see Report DPD 133-2007 and CAO 4-2008).

As a result, the administration and enforcement of the bylaw was delegated to the NPCA and a Service Level Agreement was developed in August 2008. 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 bylaw.

Unique to Niagara's Bylaw is the inclusion of a Tree and Forest Conservation By-law Advisory Committee with the purpose of providing advice on matters of tree and forest conservation. Prior to the 2008, the advisory committee provided advice to staff and the former Planning and Public Works Committee. With the changes in administration and enforcement, the decision was made to establish a direct relationship between the advisory committee and the NPCA. However the committee has not met since April 2013.

The Tree and Forest Conservation Bylaw (30-2008)

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

Additionally, 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).

Initiation of Woodland Bylaw Review

The Regional Municipality of Niagara is currently undertaking a comprehensive review of the Region's Official Plan. Through the initial stages of the Region's Official Plan review, and based on previous discussions with the NPCA, the need to review the bylaw was identified. In 2014, for example, the Annual Report by the NPCA identified the need to revise the bylaw to update and improve the language to current best management practices/standards.

As detailed in Appendix 1: Project Scope Outline, the objective of this review is to ensure consistent service delivery and application of the bylaw across the Region. The review will consider changes to Provincial legislation, alignment between the bylaw and the current Niagara Region Official Plan policies, current best management practices, and opportunities for enhancements and efficiencies in processes for administration and enforcement.

As part of the review process, public engagement will occur and will at minimum include Local Area Municipality representatives, the North and South Federations of Agriculture, the Niagara Woodlot Association, the logging industry, the Niagara Parks Commission, the Niagara Homebuilders Association, the Niagara Construction Association and the public.

It is anticipated that the review will conclude by the end of 2019, at which time a summary of the review and any recommended changes to the bylaw will be presented for Council's consideration.

Alternatives Reviewed

The option of postponing the review of the bylaw 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 bylaw aligns with current best management practices, as identified in 2014. In addition, recent changes to the Municipal Act (more particularly section 270 which introduced the requirement for municipalities to adopt a policy addressing the manner in which the municipality will protect and enhance the tree canopy and natural vegetation in the municipality) warrant consideration through a review of comparator municipalities.

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.

Furthermore, the MOU between the Region and local area municipalities is currently being updated (see report PDS 4-2019). A review of the bylaw is timely to ensure administration and enforcement requirements remain clear.

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

Relationship to Council Strategic Priorities

“Doing Business Differently” and “Advancing Organizational Excellence” are strategic priorities of Council. The review will identify opportunities for continuous improvement and ensure consistent service delivery and application of the bylaw across the Region.

Other Pertinent Reports

- PDS 2-2019 Environmental Planning Function Overview
- PDS 4-2019 Memorandum of Understanding for Planning Function and Services between Niagara Region and Local Area Municipalities
- PDS 10-2019 Update on Natural Environment Work Program – New Regional Official Plan
- CAO 4-2008 Tree and Forest Conservation By-law Amendments
- DPD 133-2007 Tree and Forest Conservation Bylaw Amendments
- Service Level Agreement Tree and Forest Conservation By-Law August 2008

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Appendices

Appendix 1 Tree and Forest Conservation Bylaw (30-2008)
Appendix 2 Project Scope Outline

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. 30-2008

A BY-LAW TO PROHIBIT OR REGULATE THE
HARVESTING, DESTRUCTION OR INJURING
OF TREES IN WOODLANDS IN THE
REGIONAL MUNICIPALITY OF NIAGARA AND
TO REPEAL BY-LAW 47-2006, AS AMENDED

WHEREAS Section 135(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, permits the enactment of a by-law by the Council of The Regional Municipality of Niagara to prohibit or regulate the destruction or injuring of trees in Woodlands;

AND WHEREAS pursuant to Section 135(7) of the *Municipal Act*, a municipality may require that a permit be obtained to injure or destroy trees in Woodlands designated in the by-law and impose conditions on a permit, including conditions relating to the manner in which destruction occurs and the qualification of persons authorized to injure or destroy trees;

AND WHEREAS Regional Council deems it desirable to enact a Tree and Forest Conservation By-law for the purposes of:

- preserving and improving the Woodlands in the Regional Municipality of Niagara through Good Forestry Practices;
- promoting Good Forestry Practices that sustain healthy Woodlands and related natural habitats and environments;
- helping to achieve the goal of 30% forest cover in the Niagara Region;
- minimizing the destruction or injuring of trees in Woodlands;
- regulating and controlling the removal, maintenance and protection of trees in Woodlands;
- minimizing and guarding against dangerous conditions which may result in injury;
- protecting, promoting and enhancing the aesthetic values of Woodlands;
- contributing to human health, recreation, enjoyment and quality of life through the maintenance of woodland cover;
- providing for the production of wood and other products derived from trees;
- supporting the objective of the Regional Policy Plan to maintain, restore and, enhance the ecological health, integrity and biodiversity of the Core Natural Heritage System and its contributions to a Healthy Landscape as defined in the Regional Policy Plan; and
- enhancing and implementing processes and decisions made with respect to applications made under the *Planning Act*, R.S.O. 1990, c. P.13, as amended.

AND WHEREAS Section 447.4(1) of the *Municipal Act* permits a municipality to enter into agreements with a person or body in relation to matters of mutual interest for the purpose of coordinating the enforcement of by-laws;

AND WHEREAS Regional Council has approved entering into an agreement with the Niagara Peninsula Conservation Authority (the "NPCA") wherein the NPCA will administer and enforce this Tree and Forest Conservation By-law;

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

1. **DEFINITIONS**

In this By-law:

- 1.1 "Agricultural Use" means the commercial production of crops and/or raising of livestock for human use and includes ploughing, seeding, harvesting, leaving land fallow as part of a conventional rotational cycle, production of tree fruits and grapes, grazing, animal husbandry, and buildings and structures associated with these activities;
- 1.2 "Area Municipality" means any one of the municipalities of the Town of Fort Erie, Town of Grimsby, Town of Lincoln, City of Niagara Falls, Town of Niagara-on-the-Lake, Town of Pelham, City of Port Colborne, City of St. Catharines, City of Thorold, Township of Wainfleet, City of Welland, and the Township of West Lincoln;
- 1.3 "Basal Area" means the area of the cross-section of the stem or trunk of a tree taken at a point of measurement 1.37 metres above the highest point on the tree where the ground meets the stump;
- 1.4 "Board" means the Board of Directors for the NPCA;
- 1.5 "Building Permit" means a building permit issued by an Area Municipality under the *Building Code Act, 1992*, S.O. 1992, c.23, as amended;
- 1.6 "Bumper Tree" means a poor quality, low value tree that grows in close proximity to higher value trees and is located along skid roads to protect residual trees from damage during logging and skidding operations;
- 1.7 "Business day" means any day falling on or between Monday and Friday of each week but does not include statutory holidays;

- 1.8 “Circumference” means the measurement of the perimeter or outer boundary of a stem or trunk of a tree at a specified point of measurement with such measurement including the bark;
- 1.9 “Coppice growth” means clump growth where more than one tree stem grows from a single tree stump and the point of measurement for such growth means that point on each stem measured immediately above the point of fusion, provided such point of fusion is less than 1.37 metres above the highest point of undisturbed ground at the base of the coppice or clump growth;
- 1.10 “Damage” means lasting injury to trees remaining after the completion of the injuring or destroying of trees and caused by the harvesting, injuring or destroying of any trees, that has the effect of inhibiting or terminating growth and may include but is not limited to:
- 1.10. a broken branches in the crown of a tree;
 - 1.10. b the breaking off or splitting of the stem of any tree and the noticeable tipping of any tree;
 - 1.10. c the splitting of, removal of or damage to the bark of a tree; or
 - 1.10. d damage to the root structure of a tree;
- except that damage does not include injury to Bumper Trees;
- 1.11 “DBH” or “Diameter at Breast Height” means the diameter of the stem of a tree measured at a point that is 1.37 metres above the ground;
- 1.12 “Diameter” means the diameter of the stem of a tree measured at a specified point of measurement with such measurement including the bark of the stem;
- 1.13 “Ecological Functions” means the natural processes, products or services that living and non-living environments provide or perform within or between species, ecosystems and landscapes, including hydrological functions and biological, physical, chemical and socio-economic interactions;
- 1.14 “Farmer” means a person who has a current and valid farm registration number under the *Farm Registration and Farm Organizations Funding Act, 1993*, S.O. 1993, c. 21, as amended;
- 1.15 “Forest Management Plan” means a course of forest management action prescribed for a particular woodland area after specific assessments and evaluations have been made by a Registered Professional Forester or a member in good standing of the Ontario Professional Foresters Association in accordance with the Ministry of Natural Resources document “A Silvicultural Guide to Managing Southern Ontario Forests”, as amended from time to time;

- 1.16 “Good Forestry Practices” means:
- 1.16.a the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values, including: significant ecosystems; important fish and wildlife habitat; soil and water quality and quantity; forest productivity and health; vulnerable, threatened and endangered species as regulated by Provincial or Federal statute and the aesthetic and recreational opportunities of the landscape;
 - 1.16.b the cutting and removal of hazardous, severely damaged, diseased and insect-infested trees which must be removed in order to prevent contamination or infestation of other trees or because they no longer contribute to the achievement of forest values;
 - 1.16.c in the case of hazardous, damaged, diseased or insect-infested trees, the maintenance of a Woodland after the cutting and removal is completed unless it is determined through a report prepared by a Registered Professional Forester or a member in good standing of the Ontario Professional Foresters Association that trees must be removed and a Woodland would not be maintained but in no case shall clearcutting be allowed; and,
 - 1.16.d the forestry management practices as set out in the Ministry of Natural Resources document “A Silvicultural Guide to Managing Southern Ontario Forests”;
- 1.17 “Heritage Tree” means a tree identified and designated by the Council of an Area Municipality as having heritage significance;
- 1.18 “NPCA” means the Niagara Peninsula Conservation Authority;
- 1.19 “Negative impact” means any impairment, disruption, destruction or harmful alteration to any living plant or animal or to their habitat or Ecological Functions;
- 1.20 “Officer” means an individual appointed by the NPCA for the administration and enforcement of this By-law;
- 1.21 “Owner” means a person having any right, title, interest or equity in land or any such person’s authorized representative;
- 1.22 “Own Use” means use that does not include a commercial sale, exchange or other disposition of trees destroyed or injured;
- 1.23 “Permit” means a permit to injure or destroy trees issued under Sections 5 and 6 of this By-law;

- 1.24 "Person" means an individual or a corporation and their respective heirs, executors, administrators or other duly appointed representatives;
- 1.25 "Point of Measurement" means the point on a tree trunk measured above the highest point at which the ground meets the tree. For Coppice Growth the Point of Measurement shall be at the point on the tree trunk where the tree stems separate provided that such point of separation is less than 1.37 metres from where the ground meets the tree;
- 1.26 "Prescription" means a written course of forest management action prescribed for a particular woodland area by a Registered Professional Forester or a member in good standing of the Ontario Professional Foresters Association after specific assessments and evaluations have been made by a Registered Professional Forester or a member in good standing of the Ontario Professional Foresters Association;
- 1.27 "Region" means the Regional Municipality of Niagara;
- 1.28 "Regional Council" means the Council of the Region;
- 1.29 "Registered Professional Forester" refers to that term as defined in the *Professional Foresters Act, 2000*, S.O. 2000, c.18, as amended;
- 1.30 "Sensitive Natural Area" means lands that are in a Woodland and:
- 1.30.a within the Environmental Protection designation of the Natural Heritage System and adjacent lands, as defined in the Regional Policy Plan; or
 - 1.30.b within a Natural Area as designated in the Niagara Escarpment Plan;
- 1.31 "Significant Community Tree" means a tree identified and designated by the Council of an Area Municipality as having community significance;
- 1.32 "Silviculture" means the theory and practice of controlling forest establishment, and the composition, growth and quality of forests to achieve the objectives of forest management;
- 1.33 "Total Basal Area" means the sum of the Basal Areas of individual trees;
- 1.34 "Tree" or "Trees" means any living species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 meters at physiological maturity;

- 1.35 “Tree Marker” means a person certified to mark trees as a result of successfully completing the Ministry of Natural Resources Tree Marker course; or a Registered Professional Forester; or a member in good standing of the Ontario Professional Foresters Association;
- 1.36 “Tree Saving Plan” means a plan, prepared for the purpose of protecting and preserving trees on properties where development or disturbance of the natural forest cover is to occur. Such plans shall attempt to retain as many trees as possible and as a minimum shall include all of the following:
- 1.36.a an inventory and graphic display of trees on the property including location, size, species, general age distribution health and any individual trees or grouping of trees with particular significance such as but not limited to age, species and size;
 - 1.36.b identification of natural features and functions present, whether they should be protected, and if not, why;
 - 1.36.c a statement identifying whether any threatened or endangered species are present and if so, how they are to be protected;
 - 1.36.d a description and a map of the trees to be removed and retained including written reasons why the trees are to be removed or retained;
 - 1.36.e an indication as to how the trees to be retained will be marked or otherwise identified as trees to be protected;
 - 1.36.f the layout of the proposed development superimposed on the woodland area, including existing and proposed grades, services/utilities, roads, surface drainage and building envelopes;
 - 1.36.g the specific measures to be used during and after construction or site disturbance to protect and preserve individual trees or clumps of trees identified for retention, including but not limited to fencing around the dripline, the avoidance of storage or dumping of materials over root zones and operation of equipment over root zones;
 - 1.36.h a tree replanting program using native species;
 - 1.36.i a statement indicating that the plan conforms to the Region’s Tree and Forest Conservation By-law; and
 - 1.36.j consideration of the relationship between an Environmental Impact Study, prepared as part of a development application, and requirements of the Regional Policy Plan;
- 1.37 “Wildlife” means all wild mammals, birds, reptiles, amphibians, fishes, invertebrates, plants, fungi, algae, bacteria and other wild organisms;

- 1.38 "Woodland" or "Woodlands" means land on one or more properties with a density of at least:
- 1.38.a 1,000 trees, of any size, per hectare;
 - 1.38.b 750 trees, measuring over five (5) centimetres in diameter at DBH, per hectare;
 - 1.38.c 500 trees, measuring over twelve (12) centimetres, in diameter at DBH, per hectare; or
 - 1.38.d 250 trees, measuring over twenty (20) centimetres, in diameter at DBH, per hectare;

but does not include:

- 1.38.f a cultivated fruit or nut orchard;
- 1.38.g a plantation established for the purpose of producing Christmas trees and which is being actively managed and harvested for the purposes for which it was planted, except that this does not refer to plantations that have ceased being managed or harvested for their intended purpose for a period of 15 years or more; or
- 1.38.h a bona fide tree nursery that is being actively managed and harvested for the purposes for which it was planted.

2. APPLICATION OF THE BY-LAW

This By-law shall apply to:

- 2.1 all Woodlands having an area of one (1) hectare or more;
- 2.2 all Woodlands having an area of less than one (1) hectare, upon delegation of such authority by an Area Municipality to the Region; and
- 2.3 Heritage Trees and Significant Community Trees identified and designated by the Council of an Area Municipality, upon delegation of such authority by an Area Municipality to the Region.

3. GENERAL PROHIBITIONS

- 3.1 No person through their own actions or through any other person shall injure or destroy any Tree located in Woodlands:
 - 3.1.a Unless exempted by Section 4; or
 - 3.1.b Unless in possession of a valid Permit issued by the NPCA under Sections 5 and 6 of this By-law and in accordance with its terms or conditions.

- 3.2 No person through their own actions or through any other person shall:
- 3.2.a Contravene the terms or conditions of a Permit issued under this By-law;
 - 3.2.b Fail to comply with an order issued under Section 8 of this By-law; or
 - 3.2.c Remove or deface any order that has been posted pursuant to Section 8 of this By-law.
- 3.3 No person through their own actions or through any other person shall injure or destroy any Tree that has been designated by the Council of an Area Municipality as a Heritage Tree or a Significant Community Tree, provided that the authority to regulate such trees has been delegated to the Region by the Area Municipality.

4. **EXEMPTIONS**

Despite Section 3 of this By-law, this By-law does not apply to:

- 4.1 activities or matters undertaken by a municipality or a local board of a municipality;
- 4.2 activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*, S.O. 1994, c.25, as amended;
- 4.3 the injury or destruction of trees by a person licensed under the *Surveyors Act*, R.S.O. 1990, c. s.29, as amended, to engage in the practice of cadastral surveying or his or her agent, while making a survey;
- 4.4 the injury or destruction of trees imposed after December 31, 2002:
 - 4.4.a as part of a Tree Saving Plan required as a condition of approval in a plan of subdivision that has received draft approval under Section 51 of the *Planning Act*;
 - 4.4.b as part of a Tree Saving Plan required as a condition on a consent approved under Section 53 of the *Planning Act*;
 - 4.4.c as a requirement in a Tree Saving Plan approved and included in an site plan control agreement or a subdivision agreement entered into under Sections 41 and 51 respectively of the *Planning Act*;
 - 4.4.d in a development agreement between an Owner and an Area Municipality;
 - 4.4.e as a condition to a development permit authorized by regulation made under Section 23(b) of the *Niagara Escarpment Planning and Development Act*, R.S.O 1990, c. N.2, as amended; or
 - 4.4.f 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;

- 4.5 the injury or destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act*, S.O. 1998, c.15, Sched. A, as amended, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- 4.6 the injury 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*, R.S.O 1990, c. A.8, as amended;
- 4.7 the injury or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land:
- 4.7.a that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act; and
 - 4.7.b on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*;
- 4.8 the injury or destruction of trees that is required in order to erect any building, structure or thing, including yard areas, in respect of which a Building Permit has been issued and has taken into consideration the protection of trees surrounding the structure or work within the building envelope, provided that only those trees necessary to accommodate the building structure or thing, including yard areas, are removed;
- 4.9 the injury or destruction of trees that is required in order to install and provide utilities, including a private waste disposal system, to the construction or use of the building, structure or thing in respect of which a Building Permit has been issued;
- 4.10 the injury or destruction of trees that is required in order to install, provide or maintain a driveway of sufficient width for vehicular access to the building, structure or thing in respect of which a Building Permit has been issued;
- 4.11 the injury or destruction of trees on lands, including buffer lands, used for the purpose of a licenced waste disposal site that has been approved, where applicable, under the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, as amended, the *Environmental Assessment Act*, R.S.O. 1990, c. E.18, as amended, the *Planning Act*, and/or the *Niagara Escarpment Planning and Development Act*;
- 4.12 the injury or destruction of trees for the construction of drainage works under the *Drainage Act*, R.S.O. 1990, c. D.17, as amended;

- 4.13 the injury or destruction of trees that:
- 4.13.a are dead;
 - 4.13.b are diseased, as identified in a Prescription or Forest Management Plan; or
 - 4.13.c pose a hazard to human safety or property;
- 4.14 the injury or destruction of trees by an Owner of a Woodland who may harvest, destroy or injure trees for his or her Own Use on his or her property provided that:
- 4.14.a the Owner, prior to the cutting, has advised the Officer of the proposed cutting;
 - 4.14.b the Owner has been the registered owner of the Woodlands for at least two (2) years prior to the date of the commencement of the destruction or injury of the trees;
 - 4.14.c Good Forestry Practices are employed in accordance with the Ministry of Natural Resources document "A Silvicultural Guide to Managing Southern Ontario Forests";
 - 4.14.d the destruction or injuring, in that part of the Woodland where trees have been destroyed or injured, does not reduce:
 - 4.14.d.i the number of trees per hectare below that necessary to constitute a Woodland; and
 - 4.14.d.ii the total basal area to below 20 square metres per hectare; and
 - 4.14.e the harvesting, injury or destruction of trees does not involve a Sensitive Natural Area, in which case a Permit under this By-law is required, except that for the purposes of this section no fee is required; or
- 4.15 the harvesting, injury or destruction of trees by a Farmer that involves the clearing of all or part of a Woodland for agricultural use on land that is owned by the Farmer doing the clearing and is part of a farm operation or farm corporation that has existed for at least three (3) years prior to such clearing.

The clearing shall be carried out in accordance with Normal Farm Practices as defined in the *Farming and Food Production Protection Act, 1998, S.O. 1998, c. 1*, as amended, provided that:

- 4.15.a the land that is cleared is put into agricultural use within three (3) years of the date on which such clearing commences;
- 4.15.b prior to the clearing, the Farmer advises the Officer of the proposed clearing. For the purposes of this section the marking of trees, a Forest Management Plan or a Prescription, a fee and a Permit are not required; and

- 4.15.c the land being cleared for agricultural use is outside the Urban Areas as defined in the Regional Policy Plan, and is designated and zoned for agricultural use in the Official Plan and Zoning By-law of the Area Municipality and, where applicable, in the Niagara Escarpment Plan;

except where the injuring or destruction of trees involves a Sensitive Natural Area in which case a Permit is required pursuant to the provisions of Sections 5 and 6 of this By-law, but no fee shall be required.

5. **PERMITS**

5.1 **GOOD FORESTRY PRACTICES PERMITS**

- 5.1.a Upon application by an Owner, the NPCA may issue a Good Forestry Practices Permit to permit the harvesting, injuring or destruction of trees in accordance with Good Forestry Practices provided that:

5.1.a.i a Prescription or Forest Management Plan, identifying accepted silviculture techniques and environmental protection measures where a Sensitive Natural Area is involved, has been authored by a Registered Professional Forester or a member in good standing of the Ontario Professional Foresters Association who is authorized to prepare Prescriptions or Forest Management Plans and the Prescription or Forest Management Plan has been submitted with the application for a Permit as per Section 6;

5.1.a.ii the trees to be cut are marked by a certified Tree Marker in accordance with a Prescription or Forest Management Plan and only such trees are cut; and

5.1.a.iii the injuring or destruction of trees will not reduce the number of trees per hectare below the minimum number of trees per hectare required to be considered a Woodland;

or provided that:

5.1.a.iv a plan, using Good Forestry Practices and including the identification of the trees to be cut, has been prepared to the satisfaction of the Officer by a certified Tree Marker with previous experience marking trees in Niagara Region and the plan has been submitted with the application for a Permit as per Section 6;

5.1.a.v the trees to be cut are marked by a certified Tree Marker in accordance with the plan under paragraph 5.1.a.iv and only such trees are cut; and

5.1.a.vi the injuring or destruction of trees will not reduce the number of trees per hectare below the minimum number of trees per hectare required to be considered a Woodland.

6. PERMIT APPLICATION PROCESS

6.1 Every person who intends to injure or destroy trees personally or through another person, where a Permit to do so is required under this By-law, shall first complete and submit an application for a Permit in the form approved by the NPCA from time to time.

6.2 Any person who submits an application under Section 6 shall post and display a copy of the Permit as issued pursuant to this By-law, in the immediate area where the destruction or injury of the trees is to occur, in a position that is clear and visible to all persons.

6.3 Applications for Permits will be processed only if:

6.3.a the appropriate application form, approved by the NPCA from time to time, has been completed in full, duly signed and submitted to the NPCA;

6.3.b the requirements that must be submitted with an application have been included;

6.3.c applications are in keeping with the general purpose and intent of this By-law; and

6.3.d except as otherwise stated in this By-law, the prescribed application fee, as set forth in Schedule "A" has been paid in full.

6.4 A Permit application that does not meet the requirements of clauses 6.3.a, 6.3.b and 6.3.c will be returned to the applicant with the prescribed fee within 30 days.

6.5 A Permit may be:

6.5.a issued by the NPCA to the Owner for a term of up to one (1) year from the date of issue and shall not be transferable; or

6.5.b renewed one time only by the NPCA for one term of up to one (1) year contiguous with the expiry date of the original Permit and after a written request from the Owner for renewal is made to the NPCA who must be satisfied that there are reasonable grounds for the renewal.

- 6.6 NPCA may impose conditions to a Permit that relate to, but which are not restricted to:
- 6.6.a the manner and timing in which harvesting, injury or destruction is to occur;
 - 6.6.b the species, size, number and location of trees to be injured or destroyed or to be planted;
 - 6.6.c the marking of trees to be cut with paint;
 - 6.6.d the qualifications of persons authorized to injure or destroy trees;
 - 6.6.e the submission of additional information required before the Permit becomes effective;
 - 6.6.f measures to be implemented to mitigate the direct and indirect effects of the injuring or destruction on Sensitive Natural Areas; and
 - 6.6.g a follow-up fuelwood (firewood) harvest.
- 6.7 When denying a Permit, the NPCA will notify the applicant in writing by registered mail. The Board shall provide written reasons for its decision to the applicant.

7. APPEALS TO REGIONAL COUNCIL

- 7.1 An applicant for a Permit under Section 6 may appeal to Regional Council if the NPCA refuses to issue a Permit, within 30 days after the refusal.

8. ORDERS TO DISCONTINUE ACTIVITY

- 8.1 Where an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make an Order requiring the person who contravened the By-law or who caused or permitted the injuring or destruction of trees in contravention of the By-law to stop the injuring or destruction of trees. The order shall set out:
- 8.1.a the municipal address or the legal description of the land;
 - 8.1.b reasonable particulars of the contravention; and
 - 8.1.c the period within which there must be compliance with the order.
- 8.2 An Order issued under this section may be served personally or by registered mail to the last known address of:
- 8.2.a the Owner of the Woodland; and
 - 8.2.b the person identified as injuring or destroying trees.
- 8.3 Where service of an Order is made by registered mail, service shall be deemed to have been served on the fifth day after the order is mailed.

- 8.4 Where service cannot be carried out under subsection 8.2, it is deemed sufficient if the Officer places a placard containing the terms of the Order in a conspicuous place on the affected lands. The placing of the placard shall be deemed to be sufficient service of the Order on the person to whom the Order is directed. The placard shall not be removed without the approval of the Officer.
- 8.5 If the person to whom the Order is directed is not satisfied with the terms of the Order, the person may appeal to the Board by filing a notice of appeal by personal service or registered mail to NPCA within 30 days of the date of the Order.
- 8.6 Where an appeal has been filed, the Board shall, at a public hearing, consider the appeal and a report from the Officer concerning the appeal.
- 8.7 Before conducting a hearing under this section, the NPCA shall give notice to the applicant and to such persons as the NPCA considers should receive notice and in the manner directed by the NPCA.
- 8.8 After hearing an appeal, the Board may confirm or revoke any Order issued under this By-law or may issue a Permit with conditions, provided that in the opinion of the Board, the general intent and purpose of this By-law has been maintained.
- 8.9 The proceedings at the hearing held by the Board shall be in accordance with the provisions of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended. The decision of the Board under this section shall be final.

9. PENALTY

- 9.1 Any person who contravenes any provision of this By-law, or an Order issued under section 8 is guilty of an offence and is liable:
- 9.1.a on first conviction, to a fine of not more than \$10,000 or \$1,000 per tree, whichever is greater; and
 - 9.1.b on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree, whichever is greater.
- 9.2 Despite subsection 9.1, where the person convicted is a corporation:
- 9.2.a the maximum fines in clause 9.1.a are \$50,000 or \$5,000 per tree; and
 - 9.2.b the maximum fines in clause 9.1.b are \$100,000 or \$10,000 per tree.

- 9.3 If a person is convicted of an offence for contravening this By-law or an Order issued under section 8, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to rehabilitate the land or to plant or replant trees in such a manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

10. ENFORCEMENT

- 10.1 Regional Council hereby delegates to the NPCA the authority to enforce this By-law, to issue Permits under this By-law and to impose conditions to such Permits.
- 10.2 The Board may appoint from time to time by resolution, persons it deems qualified and necessary to act as Officers to administer and enforce the provisions of this By-law.
- 10.2 An Officer, appointed by resolution of the Board, or any person authorized by an Officer, may at all reasonable times enter upon and inspect any land and Woodland for the purposes of enforcing this By-law, determining compliance with this By-law, determining compliance with terms and conditions of a Permit issued under this By-law, determining compliance with an Order issued under Section 8 of this By-law or laying charges under this By-law.
- 10.3 Any person who obstructs or interferes with an Officer, or any person or agent 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.

11. TREE FOREST CONSERVATION BY-LAW ADVISORY COMMITTEE

- 11.1 The NPCA will establish a Tree and Forest Conservation By-law Advisory Committee, which shall be a technical advisory committee to the NPCA. Representation on the committee shall include, at a minimum, representatives from the Area Municipalities, Niagara North Federation of Agriculture, Niagara South Federation of Agriculture, the Niagara Woodlot Association, and logging industry.
- 11.2 The Tree and Forest Conservation By-law advisory Committee shall review and provide advice on matters of tree and forest conservation as requested by the NPCA.

12. ADMINISTRATION

- 12.1 Schedule "A" shall form part of this By-law.
- 12.2 If any section or part of this By-law is found by any court of competent jurisdiction to be illegal or beyond the power of Regional Council to enact, such section or part shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be enacted as such.
- 12.3 The short title of this By-law is the "Tree and Forest Conservation By-law".
- 12.4 By-law 47-2006 of the Regional Municipality of Niagara and all amendments thereto, are hereby repealed.
- 12.5 Despite subsection 11.4, By-law 47-2006, as amended, shall continue to apply to proceedings in respect of offences that occurred before its repeal.
- 12.6 This by-law shall come into force on July 31, 2008.

THE REGIONAL MUNICIPALITY OF NIAGARA



(Peter Partington, Regional Chair)



(Pam Gilroy, Regional Clerk)

Passed: April 10, 2008

**REGIONAL MUNICIPALITY OF NIAGARA
TREE AND FOREST CONSERVATION BY-LAW
SCHEDULE A – FEES**

Application for a Good Forestry Practices Permit	\$0.00
Application for a Special Permit	\$0.00

PROJECT SCOPE OUTLINE

Project Title: Woodlands Bylaw Review
Prepared By: Adèle Labbé and Vanessa Aykroyd
Date of Document: January 2019

1. INTRODUCTION

1.1 Project Background and Purpose/Justification

The Regional Municipality of Niagara is currently undertaking a comprehensive review of the Region's Official Plan. Included in that official plan review is the existing Environmental Policy Chapter 7 and the Region's Woodland By-law 30-2008 (hereon in referred to as "the bylaw"). This work has identified the need to review the bylaw as it is 10 years old.

The Niagara Peninsula Conservation Authority (NPCA) has been administering the bylaw, on our behalf, since a service level agreement was developed in August 2008. At that time, the NPCA was also fulfilling the role of plan review and technical clearance for Chapter 7 of the Regional Official Plan as described in the 2014 Memorandum of Understanding (MOU) between the Region, the NPCA and the Local Area Municipalities (LAMs). In 2018, the responsibility for plan review and technical clearance for Chapter 7 of the Regional Official Plan returned to the Region. Furthermore, the MOU between the Region and LAMs is currently being revised. A review of the bylaw is timely to ensure administration and enforcement requirements remain clear.

1.2 Project Objectives – Specific, Measureable, Attainable, Relevant, and Timely

The Objective is to review the bylaw in 2019 to ensure consistent service delivery and application of the bylaw across the Region and to consider the following:

1. A review of any changes to provincial legislation that provide RMoN with the power to enact/delegate the administration and enforcement of such a bylaw.
2. A review alignment between the Regional Official Plan and the by-law.
3. Whether the bylaw is in line with similar municipal tree and forest protection bylaws within the GGH and commonly accepted best practices.
4. Whether the bylaw is able to fulfill the current objectives as outlined in the preamble of the current bylaw, and any other objectives identified through the review.
5. Enhancements to the administration and enforcement (i.e., processes for exemption, permitting, enforcement, etc.) of the bylaw
6. Efficiencies in administration and enforcement of the bylaw in the context of the Service Level Agreement and the Protocol for Planning Services between the NPCA and the Region.
7. A review of the administration and enforcement resource requirements for operational budget review.

2. PROJECT DESCRIPTION

2.1 Project Scope

IN SCOPE	OUT OF SCOPE
Review of the bylaw committee structure and purpose to support the review	No anticipated updates to the ROP at this time
Recommend changes to bylaw as required by provincial legislation	No anticipated updates to any other bylaws
Recommend changes to bylaw as required to align with current ROP	
Recommend changes to bylaw as required to align with current or potential bylaw objectives	
Recommend changes to bylaw to align with comparative municipal woodland, forest, and tree conservation bylaws	
Recommend changes to bylaw to include current Best Management Practices	
Provide recommendations to enhance the administration and enforcement processes	
Provide recommendations regarding resource requirements to inform the operational budget	
Provide recommendations to the Environmental Work Program as deemed necessary	
Consult with Local Area Municipalities regarding any changes or recommendations	
Consult with other local stakeholders with regarding any changes or recommendations	
Provide recommendations regarding the Service Level Agreement in the context of a recommended Updated Bylaw	
Determine whether the bylaw can apply to Regionally owned trees outside of woodlands	

2.2 Project Deliverables

1. Legislation and Policy Review
2. Similar Bylaw and BMP Comparison
3. Engagement Plan
4. Communication Plan
5. Information reports to Committee/Council
6. Draft 2019 Woodland Bylaw if needed
7. Recommendation report to Committee/Council

2.3 Completion Criteria

1. All pertinent information presented and reviewed to SMT/CLT (as necessary) and to Council via information reports.
2. Community Engagement has taken place and incorporated into the draft bylaw as deemed appropriate and desirable.
3. A Communication Plan is enacted to provide information on the bylaw review project as well as changes to the bylaw to those persons or entities affected.
4. A recommendation report is considered by Regional Council.

2.4 Constraints

1. There is no separate funding associated with the project at this time.
2. Project team must attend to the other responsibilities of their roles within the department, which may take time away from the project.
3. Data regarding woodlands is dated (early 2000s) and based on work that was undertaken to inform the development of Chapter 7 Natural Environment of the existing Official Plan.

2.5 Assumptions

1. Community Engagement may be contentious due to two separate, high profile incidents within the past year that have garnered media attention. These incidents are not involved in the purpose or focus of this bylaw review.
2. Responsibility of the administration and enforcement of the bylaw is undecided at this time.
3. Regional Council is interested in better understanding the administration and enforcement of the bylaw, and agree that a review is necessary.

2.6 Known Risks

1. Potential for concerns by private residents since the bylaw applies to private property.
2. Potential for illegal or legal clearing of woodlands to occur by persons or parties who may assume that the review will result in increased/additional constraints to development.
3. Undetermined status/potential changes to Provincial Legislation by the current government may affect the outcomes of the review and deliverables.

2.7 Project Team

Name	Role	Department/Organization	Contact Information
Rino Mostacci	Sponsor/Commissioner	Niagara Region	X3276
Diana Morreale	Director, Development Approvals	Niagara Region	X3367
Jennifer Whittard	Manager, Environmental Planning	Niagara Region	X3430
Adèle Labbé	Project Manager/ Senior Environmental Planner	Niagara Region	X3250

Name	Role	Department/Organization	Contact Information
Vanessa Aykroyd	Project Manager/ Landscape Architect	Niagara Region	X3493
Donna Gibbs	Director, Legal and Court Services	Niagara Region	X3651
Shawn McCauley	Ass. Director, Transportation Ops, Public Works	Niagara Region	X3321
Lyndsey Ferrell	Planning Finance	Niagara Region	X3425
Peter Criscione	Communications Consultant	Niagara Reigon	X3747

2.8 Key Project Stakeholders

Name	Role	Department/Organization	Contact Information
Dan Drennan (Current Bylaw Inspector)	Collaborate with project team	NPCA	905-788-3138 x 247
Mickey Cruickshank	Legal Counsel	Niagara Region	X3472
Bylaw Advisory Committee	Consult with Project Team	Area Municipalities, Niagara North Federation of Agriculture, Niagara South Federation of Agriculture, Niagara Woodlot Association, logging industry.	
Niagara Homebuilders Association	Consult	Niagara Homebuilders Association	
Niagara Construction Association	Consult	Niagara Construction Association	
Niagara Parks Commission	Consult	Niagara Parks Commission	
Public	Consult	Public	

3. PROJECT STRATEGY

3.1 Project Approach

Waterfall Methodology: Plan project phases and execute.

Phase 1: Project Initiation

1. Review previous file information
2. Develop Project Charter, obtain sponsorship and present to CLT
3. Initiation (Information) Report to Council

Phase 2: Background Research

1. Confirm status of Tree Forest Conservation Bylaw Advisory Committee
2. Legislation and Policy Review
3. Similar Bylaw and BMP Comparison
4. Review resource requirements to administer and enforce the bylaw and compare to neighbouring Regional Municipalities
5. Collaboration meeting with current Bylaw Inspector

Phase 3: Engagement and Communication Planning

6. Develop Engagement Plan
7. Develop Communication Plan
8. Information Report to Committee/Council (Phases 2 and 3)

Phase 4: Engagement and Analysis

9. Execute engagement plan
10. Analyze feedback
11. Determine direction of bylaw update (major updates/changes)
12. Information Reports to Committee/Council (Phase 4)

Phase 5: Draft new Bylaw

13. Draft 2019 Woodland Bylaw
14. Recommendation report to Committee/Council

3.2 Communication Plan

3.2.1 Project Meeting Schedule

Purpose	Date	Location
Working meetings – Project Managers (Vanessa and Adele)	Bi-weekly	PW Boardroom
Project Check-in with Project Team	End of each phase and as needed	TBD
Collaboration meetings with Bylaw Inspector	During Phase 2	TBD

3.3 Project Schedule

Task/Deliverable	Task Lead	Estimated Start Date	Estimated Completion Date
Initiation Report to Council (Project Charter, direction to strike up Advisory Committee)	Adele/Vanessa	February 2019	February 20, 2019 (for March 20 PEDC)
Legislation and Policy Review	Adele	February 2019	End of February 2019
Similar Bylaw and BMP Comparison	Vanessa	February 2019	End of February 2019
Other Background research	Adele/Vanessa	February/March 2019	End of March 2019
Engagement Plan	Adele/Diana	March 2019	Mid-March 2019
Communication Plan	Vanessa	March 2019	Mid-March 2019
Information report to Committee/Council (Background Research Summary, Engagement)	Adele/Vanessa	Mid-March 2019	April 10, 2019 (for May 8 PEDC)
Execute Engagement	Adele/Vanessa	After May 16, 2019 (council meeting)	Mid-June 2019
Analysis of engagement results	Adele/Vanessa	Mid-June	End of June
Information Report to Council	Adele/Vanessa	End of June	July 11, 2019 (for August 7 PEDC)
Draft 2019 Woodland Bylaw	Adele/Vanessa/Legal	July	End of August (for circulation and review to key stakeholders)
Recommendation report to Committee/Council	Adele/Vanessa	Mid-September	October 9, 2019 (for Nov 6 PEDC)

3.4 Project Budget

Expense/Purchase	Estimated Budget	Expended to Date	Estimate to Complete	Variable Costs
Engagement sessions (# of sessions tbd): refreshments, light snacks, materials	TBD			
Solicitor (potential)	TBD			