SUBJECT: New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide)

RECOMMENDATION:

(a) That the draft Hamilton Private Tree and Woodland Conservation By-law, attached as Appendix “A” to Report PD02229(c), which has been prepared in a form satisfactory to the City solicitor, be approved, but enactment and implementation of the By-law be held in abeyance pending the outcome of Recommendation (e).

(b) That subject to final approval of the By-law, the fees for permits and appeals under the Private Tree and Woodland Conservation By-law be added to the User Fees and Charges By-law.

(c) That the Tree Protection Guidelines, dated July 2009, attached as Appendix “B” to Report PD02229(c), be adopted by Council. Further, that staff be directed to use these as the new Guidelines for the preparation of Tree Protection Plans (TPPs) associated with the approval of development applications.

(d) That the fees for reviews and approvals, under the Tree Protection Guidelines, be added to the User Fees and Charges By-law.

(e) That additional FTEs and costs for implementation and administration of the Private Tree and Woodland Conservation By-law be referred to the 2010 Budget process.

(f) That Planning and Economic Development Department staff be directed to prepare an Education and Awareness Strategy to promote the new Private Tree and Woodland Conservation By-law and Tree Protection Guidelines.
(g) That Planning and Economic Development Department staff be directed to initiate a process to define and identify an approach to the protection and management of heritage trees in Hamilton, which would be implemented in a future amendment to the Private Tree and Woodland Conservation By-law.

Tim McCabe
General Manager
Planning and Economic Development Department

**EXECUTIVE SUMMARY:**

In 2004, Planning and Economic Development Department staff prepared Report PD02229(a), which outlined the options for developing a Tree Cutting By-law for private property in Hamilton. The report indicated that a new By-law was needed to consolidate the existing Tree Cutting By-laws from the former Regional and local municipalities, which were out of date. Council directed staff to prepare a Tree Cutting By-law, and approved hiring one full-time enforcement officer to administer and enforce the existing By-laws from the former area and regional municipalities.

In May 2005, staff released a draft By-law for public review. There was a strong response from both urban and rural residents. Staff considered the comments and revised the By-law accordingly. The second version of the By-law was presented to Economic Development and Planning Committee in Report PD02229(b), in June 2008, as the basis for another round of public consultation.

Four Public Open Houses were held in the fall of 2008 to receive public and agency input on the draft By-law. Also, meetings were held with the Agricultural and Rural Affairs Advisory Committee, the Municipal Heritage Committee, the Hamilton-Halton Homebuilders' Association, and Clean Air Hamilton. Comments were also received from residents and agencies by telephone and e-mail. A summary of the main comments received on the draft By-law include:

- The By-law is needed and should have been passed long ago;
- Concern over government regulation of private property owners - seen as government interference;
- Permit fees are too high, and not necessary;
- Concern about the limit of 2.5 cords per hectare for harvesting trees for own use;
- How will the By-law be enforced;
Size of tree regulated (40 cm dbh) - some wanted smaller trees regulated, some wanted larger trees regulated; and,

Heritage trees - wanted definition and strong protection for them.

The revised Private Tree and Woodland Conservation By-law, attached as Appendix “A”, regulates the cutting of trees within woodlands of 1 hectare or more in size in the Rural area. In the Urban Area, tree cutting is regulated in woodlands of 0.2 hectares or more in size, and for individual trees with diameter at breast height (dbh) of 40 centimetres and greater. The By-law includes exemptions for City and Conservation Authority-owned lands, surveyors licensed under the Surveyors Act, public utilities, lands on which a pit or quarry is permitted under the Aggregate Resources Act, and trees cut in the interest of public safety (i.e. hazardous trees).

The Private Tree and Woodland Conservation By-law presented in this Report differs from the Forestry and Horticulture Section, Public Works Department By-law No. 06-151 (2006), which governs only trees on public lands, such as in parks and in road rights-of-way, whereas this By-law regulates trees and woodlands on privately-owned lands.

The Tree Protection Guidelines for development sites (the “Guidelines”), attached as Appendix “B”, provide guidance and information to landowners and developers who wish to remove trees as part of a Planning Act approval (e.g. draft plans of subdivision/condominium, site plan control, and consent applications) or as part of Niagara Escarpment Commission permit applications. In this way, there is a clear process for lands proposed for development. Permits would not be required once a Tree Protection Plan has been approved. These Guidelines were also presented for public review and comment during the four Public Open Houses in 2008, and revisions were made as a result.

If Council supports the adoption of the By-law and Guidelines, adequate additional resources for administration and enforcement of the By-law, and Education and Awareness to promote the By-law must be considered during the 2010 Budget process. To enforce the By-law, a total of 3.5 full-time employees would be required. Currently, there is one full-time employee enforcing the existing By-laws of the former area and regional municipalities. Consequently, an additional 2.5 new employees would be required. For By-law enforcement, 1.5 employees (an enforcement officer and a part-time clerk) would be required. In addition, one employee is needed to review and approve Tree Protection Plans, as required by the Guidelines for properties undergoing a Planning Act approval.

BACKGROUND:

Introduction

In 2002, the Planning and Economic Development Department and the Community Services Department prepared Report PD02229/CS02106, which discussed the need for a Tree Cutting By-law to regulate trees on privately-owned property, and outlined staff resource requirements if a By-law for the amalgamated City of Hamilton was
approved. In 2004, Planning and Economic Development Department staff prepared Report PD02229(a), which outlined the options for developing a Tree Cutting By-law for private property in Hamilton. The report indicated that a new By-law was needed to consolidate the existing Tree Cutting By-laws of the former Regional and local municipalities, which were out of date. At that time, Council approved hiring one full-time employee to administer and enforce the existing By-laws from the former regional and local municipalities. Council also directed staff to prepare a new By-law, with the scope outlined in Report PD02229(a), and to conduct public consultation.

In May 2005, staff released a draft By-law for public review. There was a strong response from both urban and rural residents. Staff considered the comments and revised the By-law accordingly. This version of the By-law (“revised second draft”) was presented to Economic Development and Planning Committee in Report PD02229(b), in June 2008, as the basis for another round of public consultation.

In the fall of 2008, four Public Open Houses were held to present the By-law and Guidelines, and to receive public input. In addition to the Open Houses, the public consultation process included presentations to stakeholder groups, distribution to the public and agencies, and posting the draft documents on the City’s web site. Generally, the Open Houses were not as well attended, and staff received fewer comments and concerns compared to the public consultation for the first draft in 2005. The comments received (see Appendix “C” for the By-law and Appendix “D” for the Guidelines) were considered, and minor revisions were made to produce the versions presented in this Report.

**Public Consultation Process**

As outlined in Report PD02229(b), the public consultation process for the revised second draft of the By-law included:

- Four Public Open Houses;
- Presentations to Stakeholders; and,
- Posting of the Draft By-law and Tree Protection Guidelines on the City’s web site.

The dates for public consultation events are outlined below:

- September 8, 2008 - Stakeholder meeting with Clean Air Hamilton.
- September 12, 2008 - Stakeholder meeting with the Hamilton-Halton Homebuilders Association.
- September 18, 2008 - Open House at the Beverly Community Centre, Rockton.
- September 23, 2008 - Open House at the Stoney Creek Municipal Centre, Stoney Creek.
September 30, 2008 - Open House at the Hamilton Public Library, Hamilton.

October 2, 2008 - Open House at the Dundas Town Hall, Dundas.

October 23, 2008 - Stakeholder meeting with Municipal Heritage Committee.

November 4, 2008 - Ward 11 meeting held at the Binbrook Municipal Service Centre, Binbrook.

May 28, 2009 - Stakeholder meeting with the Agriculture and Rural Affairs Advisory Committee.

A total of 50 people attended the four public Open Houses. Also, staff received approximately 25 e-mails and telephone calls from interested residents.

The draft By-law and Guidelines were also circulated to the following City Divisions and Sections for review:

- Planning and Economic Development Department - Economic Development and Real Estate Division, Community Planning and Design Section, Development Planning Section, Zoning By-law Reform Section, and Municipal By-law Enforcement Section;
- Corporate Services Department - Clerks Section, and Legal Services Division;
- Public Works Department - Forestry and Horticulture Section, Open Space Development Section, and Environmental Planning Section; and,
- Public Health Services Department - Environmental Health Section.

The drafts were also provided to the four Conservation Authorities in Hamilton (Conservation Halton, Grand River Conservation Authority, Hamilton Conservation Authority, and Niagara Peninsula Conservation Authority), and the Ontario Ministry of Natural Resources (MNR).

During the public consultation process, there were a variety of comments received from residents, stakeholders, City staff, and agencies. These detailed comments, and staff response to them, are found in Appendix “C” for the By-law and Appendix “D” for the Guidelines. A summary of the main comments received includes:

- Don’t like the permit fee; it is a tax grab;
- This By-law is needed; support it, and want it to be enacted as soon as possible;
- This By-law is not needed, and infringes on private property rights;
• Trees are a cash crop/resource for farmers, and the management of their woodlot is no one’s business but theirs;

• Concern over the 40 cm dbh regulation limit on urban trees. Some felt larger trees should be regulated, others felt smaller trees (e.g. 30 cm dbh, 10 cm dbh) should be regulated;

• The City cannot enforce the By-laws it has now - why add more?;

• Suggest changes to the composition of the Tree Permit Committee so it includes a farmer;

• The exemption which allows trees to be removed within 7 metres of a building should be reduced to account for smaller lots sizes in the future;

• Rural heritage trees are not protected in the By-law, and should be;

• Suggested changes to the list of non-native species which are exempted;

• Would like heritage trees to be defined and identified in the By-law;

• Education, awareness, and promotion will be key to successfully implementing this By-law;

• Concern about the exemption to harvest for own use - it limits the amount of wood a landowner can harvest to 2.5 cords per hectare; and,

• Concern about enforcement staff entering private property to check for violations.

During the public consultation process, staff noted that attendance at the Open Houses was low, and residents had fewer concerns. All comments received have been carefully considered and changes to the By-law and Guidelines have been made, where appropriate.

Contents of the Revised Hamilton Private Tree and Woodland Conservation By-law

The following section provides an outline of the contents of the By-law, attached as Appendix “A” and known as the “Hamilton Private Tree and Woodland Conservation By-law”.

Where does the By-law Apply?

The By-law regulates:

• Large woodlands across the municipality (woodlands 1 hectare or more in size within the rural areas of the City of Hamilton);
• Smaller woodlands within the urban boundary of the City (woodlands 0.2 to 1 hectare in size); and,

• Individual trees with a diameter at breast height (dbh) of 40 cm or more within the urban boundary of the City, with the exception of the following invasive species: Siberian Elm (*Ulmus pumila*), Norway Maple (*Acer platanoides*), Tree of Heaven (*Ailanthus altissima*), and Manitoba Maple (*Acer negundo*).

**What Trees and Woodlands are Exempt from the By-law (i.e. permit is not required)?**

The revised By-law contains a number of exemptions (refer to Section 8 of Appendix “A”), including:

• Fruit and nut orchards, tree nurseries, Christmas tree and other plantations, and hedgerows;

• Activities of the City, local boards, or Conservation Authorities;

• Surveyors, quarries, hydro, public utilities;

• Trees that are dead, dying, diseased, or pose a hazard to any person, building, or structure;

• Pruning a tree according to good arboricultural practices to maintain its health;

• Landowners harvesting trees for personal (own) use, provided the harvest is done using good forestry practices and the volume does not exceed 2.5 cords per hectare of woodland per year;

• Trees within 3 metres of the outer edge of a building or structure; and,

• Trees which must be removed to erect a building or structure as part of an approved building permit.

**When are Permits Required?**

Permits are required to remove individual trees in the Urban Area and for commercial woodland harvests in both Urban and Rural Areas.

Permits may be issued if the proposed tree removal follows good forestry practices, as approved by a Registered Professional Forester. Permits may also be issued if the trees have been damaged (i.e. by disease, wind, or insects) to such a degree that they will not recover or if there is concern that the pest/disease may spread to other trees.

Permits **will not** be issued if:
• The proposed tree removal will affect the functions of a wetland (including flood and erosion control); or,

• The proposed tree removal will affect a Sensitive Natural Area (defined in the By-law as Environmentally Significant Areas; Areas of Natural and Scientific Interest; wetlands; habitat of threatened, endangered or special concern species; Significant Woodlands, Wildlife Habitat, or Valleylands; and Core Areas in the City of Hamilton Natural Heritage System, as defined and designated in the Council approved Rural and Urban Hamilton Official Plans).

Permits **may be refused** if:

• Trees are healthy;

• A rare (threatened, endangered, or special concern) tree species will be impacted;

• The total basal area (a measure of woodland density and volume) will be reduced below 20 square metres per hectare; or,

• The number of trees in the woodland will be reduced below the minimum to constitute a woodland.

**Permit Conditions**

The By-law establishes the Director of Municipal Law Enforcement (and/or his/her designate) as the approval authority who may issue the permits and impose conditions. Conditions on a permit can include requiring that replacement trees be planted; requiring a security deposit to ensure compliance; specifying the timing and manner of tree removal; and the size, species, number, and location of trees to be removed.

**Appeal Process for Permits**

If the Director refuses to issue a permit, the owner may appeal the decision by requesting a hearing by the Tree Permit Committee within 30 days. The purpose of the Tree Permit Committee is to consider whether the permit should be granted based on all of the information presented to the Director or on grounds not originally presented. This Committee will hold a hearing and forward a report to Council for a final decision.

**Revisions to the Tree Cutting By-law**

As a result of public consultation, minor revisions were made to the By-law, including:

• Adding Tree of Heaven (*Ailanthus altissima*), as an exempted species, and removing Poplars (*Populus* species) and Willows (*Salix* species) as exempted species. This means that the By-law would not apply to the non-native invasive Tree of Heaven, and would apply to Poplar and Willow trees.
• Staff considered changing the dbh of trees regulated, from 40 cm to 30 cm dbh, as some suggested. However, regulating 40 cm dbh trees balances tree protection, landowners’ rights to manage trees on their property, and enforcement requirements.

• The exemption for cutting a tree within 7 metres of an occupied building was decreased to 3 metres, in consideration of the smaller residential lot sizes anticipated for intensification.

• Exemptions were added to allow the removal of a hazardous tree or a tree that must be removed for public safety reasons.

• Adding the option to replant trees on other lands owned by the landowner if there is no room for replanting on the site (refer to Section 16(a) of Appendix “A”).

• Adding a new Section (18), which allows the City to take cash as compensation for trees removed by the landowner if it is not possible to replant trees on site. This money would be used by the City to replant and maintain trees on City lands.

• Changes were made to the composition of the Tree Permit Committee, which hears appeals to permit approval decisions made by the Director. There are three members of this Committee: one member from the Environmentally Significant Areas Impact Evaluation Group (ESAI EG), one member must be a farmer, and the third member must be an arborist/registered professional forester/landscape architect.

These revisions are highlighted in the revised By-law, attached as Appendix “A”.

**Tree Protection Guidelines**

Trees growing on proposed development sites (i.e. those that are the subject of a Planning Act or a Niagara Escarpment Commission permit application) are not exempted from the provisions of the Tree-Cutting By-law, and applicants are required to prepare a Tree Protection Plan, to the satisfaction of the City.

Since there are currently no standard requirements for Tree Protection Plans (TPP), City staff prepared Tree Protection Guidelines based on ‘best practices’ to improve tree preservation on development sites and provide guidance to applicants.

**Public Consultation Process**

The following public consultation process occurred in conjunction with that for the Tree Cutting By-law:

• Four Open Houses were held. As part of the presentation of the By-law, staff also reviewed the content of the draft Guidelines, and received comments and questions from residents.
The draft Guidelines were presented to the Hamilton-Halton Homebuilders Association, the Conservation Authorities, the Agricultural and Rural Affairs Advisory Committee, the Municipal Heritage Committee, Clean Air Hamilton, and at a Ward 11 Meeting.

The draft Guidelines were available on the City’s web site, and some individuals took the opportunity to provide comments to staff by phone or e-mail.

During this public consultation process, input was received from approximately 13 individuals or stakeholder groups.

The main concern with the Tree Protection Guidelines was in balancing the need to protect trees with the smaller lot sizes required as part of intensification and redevelopment. Many in the development community felt that the draft Guidelines conflicted with the principle of compact urban form and would result in less dense development. Comments indicated that there is limited room on some development sites for tree preservation after grading, servicing, drainage, and road constraints are included.

The City recognizes that, particularly with new urban intensification targets, there may not be sufficient space on some development sites to save all trees. Also, City staff will assess tree preservation, along with grading and servicing constraints, to ensure that any trees identified for protection will be likely to survive construction impacts. Staff recognizes that the goal of maximizing tree preservation cannot be carried out in isolation, and planning and engineering constraints may exist which affect tree preservation. However, the key to preserving more trees on development sites lies in identifying trees of value early in the process, so that the site is designed to protect as many trees as possible; the Guidelines outline this process.

Other comments on the draft Tree Protection Guidelines included:

- Do street trees count as compensation for private trees lost to development? Would like the City to recognize street trees and park and open space plantings as part of the replacement numbers;

- Concerned with the requirement that an arborist has to be on site during construction to ensure Tree Protection Plan is implemented properly;

- Concerned that the required tree protection zone is large, and will take up too much room on a site;

- Concerned about the time period and amount of securities to be held; and,

- Asked for clarification on how compensation for trees removed will be calculated.
Revisions to the Draft Tree Protection Guidelines

Revisions were made based on the input received. The main changes are outlined below:

- Clarification on the relationship between the Tree Cutting By-law and the Tree Protection Guidelines was made.

- During public consultation, concerns were raised that the Guidelines conflicted with urban intensification targets; if lots are smaller, there will be fewer opportunities to retain existing trees. To address this, staff added a section in the Guidelines stating that the City recognizes that, particularly with new urban intensification targets, there may not be sufficient space on some development sites to permit saving all trees. Also, City staff will assess tree preservation along with grading and servicing constraints, to ensure that any trees identified for protection will be likely to survive construction impacts. Staff recognizes that the goal of maximizing tree preservation cannot be carried out in isolation, and planning and engineering constraints may exist which affect tree preservation.

- The amount of time that the City will hold security deposits was reduced to two years (from three) to conform to the City’s normal practice for securities.

- Additional detail was added on how compensation plantings will be calculated by the City.

- A statement was included that compensation plantings will be in addition to those already required for streets, storm water management facilities, parks, and other open space as part of planning approvals (e.g. site plan, plan of subdivision, or condominium).

The revised Guidelines are attached as Appendix “B”, and changes from the draft are highlighted.

Content of the Revised Tree Protection Guidelines

The revised Tree Protection Guidelines will provide guidance, advice, and direction to landowners and developers on how to inventory trees on a proposed development site, and how to prepare a Tree Protection Plan (TPP). The Guidelines also lay out the principles for retaining trees, protecting trees during construction, and replanting requirements. The main principle of the Guidelines is that if trees and woodlands of value can be identified early in the planning process, they can be incorporated into site design and more trees can be preserved.

The Guidelines and the By-law are integrated; to satisfy the requirements of the By-law, landowners applying for Planning Act approval (e.g. draft plans of subdivision and condominium, site plan, consents), and Niagara Escarpment permit applications must fulfil the requirements of the Guidelines prior to any tree removal. While these applications go through a separate process (Tree Protection Plans) than permit
approval, enforcement in the event of a violation would be through the By-law and its appointed enforcement officers.

The Guidelines outline a four-step process to ensure tree protection for Planning Act applications:

1. Preparation of a General Vegetation Inventory (GVI) for all portions of the site.

2. Preparation of a Tree Protection Plan for areas containing existing quality vegetation that requires further study, as approved by the City in the GVI.

3. Implementation of the TPP, including installing tree protection measures during construction and monitoring, and collecting securities to ensure the TPP is implemented as approved.

4. Preparation of a Landscaping Plan, including required re-planting and transplanting.

Conclusion

Staff considered all comments and revised the By-law and Guidelines, where appropriate. These versions, attached as Appendices “A” and “B”, are now being presented to the Economic Development and Planning Committee for approval. The revised Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Guidelines are important tools for the City to protect and enhance tree cover. The versions of the By-law and Guidelines presented in this Report address comments received in previous consultations, protect a range of trees and woodlands, balance urban and rural concerns, and can be enforced with a small increase to the current staff levels.

ANALYSIS/RATIONALE:

During the consultation carried out in the fall of 2008, those who commented indicated areas of concern. All of these concerns had been expressed during previous public consultation for the first draft of the By-law; no new issues were raised. A summary of these concerns appears below.

Permit Fees

During public consultation, rural residents in particular were strongly opposed to permit fees. They felt that permit fees were a “tax” which was unfairly applied to rural residents who maintained woodlands, which benefit all residents (e.g. providing clean air and water, erosion and flooding control). If anything, they felt they should be compensated for this community benefit.

Currently, the former City of Stoney Creek Tree Cutting By-law requires a fee of between $25 and $100, depending on the number of trees to be cut. The former Towns of Ancaster and Dundas, and the former Region of Hamilton-Wentworth Tree Cutting By-laws do not have fees. Some other municipalities (e.g. Cities of Brampton,
Mississauga, Toronto, and Oakville) charge permit fees to offset administration costs. These fees range from $25 to $500. Other municipalities (e.g. City of London and the Region of Halton) do not charge permit fees, as they feel this will discourage compliance.

Staff recommends permit fees because permit applications and Tree Protection Plans will require a significant amount of staff time to inspect, review, and process. Permit fees provide a user-pay means to offset the costs of By-law administration and enforcement. Permit fees have been kept as low as possible and will only recover staff administration costs. For rural landowners who wish to commercially harvest trees in their woodland, the amount of income from the harvest will far exceed the $60 permit fee.

To address the concerns about permit fees, staff has structured them to ensure fairness by:

- Using permit fees that increase with the number of trees to be cut.
- Setting higher fees for General Vegetation Inventories and Tree Protection Plans to account for the greater amount of staff time needed to inspect, review, and process these applications and the greater potential impacts of tree removal.

Staff continues to recommend permit fees be required to implement the revised By-law and to review and evaluate Tree Protection Plans. Proposed amounts for permit fees are outlined under the Financial/Staffing/Legal Implications section of this Report.

Urban and Rural

In both Urban and Rural Areas, staff heard concerns from residents that the By-law infringed on their private property rights. Urban landowners wanted the right to cut a tree they had planted if it was no longer desirable or conflicted with activities they wished to do on their property. By keeping the minimum dbh for individual trees regulated in the Urban Area at 40 cm, staff believes this size of tree is large enough to allow some flexibility to landowners to manage their trees as they grow.

Rural landowners (particularly farmers) said they could not afford the permit fees and wanted to be able to remove trees for agricultural use. For this reason, the permit fees for rural commercial harvest were kept minimal ($60), and exemptions were added to address areas of concern for farmers, such as the ability to remove trees in hedgerows; remove dead, dying, and hazardous trees; and, cutting trees for their own use.

Rural landowners also felt that urban and rural needs were very different and, therefore, separate By-laws are required for Urban and Rural Areas. Staff has considered the need for separate By-laws for urban and rural trees. The revised By-law does distinguish between the types of trees regulated in Urban and Rural Areas, and, it would be an unnecessary duplication.
Heritage Trees

Residents indicated that they wanted strong protection for heritage trees in the By-law. A heritage tree is notable because of its physiology (size, age, shape, colour, rarity, distinctive characteristics), cultural importance, or value to the community (landmark, aesthetic value). Since the revised By-law regulates all trees 40 cm dbh or more in the Urban Area, it is assumed that most heritage trees within Urban Areas would be protected, as heritage trees would generally meet the 40 cm minimum size. However, there was concern that the revised By-law does not protect all rural heritage trees since only woodlands are regulated in the Rural Area. If a rural heritage tree is not growing in a woodland, it would not be protected.

Staff considered adding a definition of a heritage tree and a listing of known heritage trees in the By-law. However, to properly define and assess heritage trees, it would take additional staff time to consult with the public. In the interest of getting the By-law in place to protect trees now, staff recommends adoption of the By-law with a future amendment to the By-law dealing with heritage trees to be added at a later time, after public consultation and heritage tree nominations has occurred.

Enforcement Requirements

Throughout the public consultation process, one of the remaining questions asked was how the By-law would be enforced. If By-laws are not properly enforced, they may eventually be ignored and become ineffective. At the same time, residents indicated that they wanted a By-law that regulated the trees and woodlands warranting protection, rather than letting the limitations of enforcement resources dictate the scope.

It is estimated that administration and enforcement of a new By-law will require a total of 3.5 full-time employees. Since the City already has 1 full-time employee devoted to enforcing the existing Tree Cutting By-laws, 1.5 new additional employees are required (one full-time person to review and issue permits, one part time Clerk). One full-time person to review reports received with development applications, as required by the Tree Protection Guidelines, will be offset by allocating one of the vacant planning positions within the current Planning Division staff complement. The required staff enhancements will be referred to the 2010 budget process (see Recommendation (e)).

Appeal Body

The By-law establishes an Appeal Body composed of 3 residents, which would hear appeals to staff decisions on permit applications to cut trees. During public consultation, the farming community recommended that one member of the Tree Permit Committee be a farmer. Staff agrees that farmers have a perspective that is needed on the Committee, and has made this change to the By-law.
Education and Awareness Strategy

During the public consultation process, many staff and residents discussed the importance of publicizing the By-law and Guidelines. Some felt that a softer approach, which focused on education and awareness, might provide benefits in addition to the regulatory approach. A proposed Education and Awareness Strategy would provide information to residents, lumber companies, arborists, registered professional foresters, the development industry, and others. The following could be components of the Education and Awareness Strategy:

- The main focus of the Strategy would be on landowner stewardship, to balance the regulatory aspects of tree protection with education.

- Preparing a brochure on the By-law for distribution to residents. The brochure could be provided to partners such as the Hamilton-Halton Watershed Stewardship Project, Conservation Authorities, Hamilton Naturalists’ Club, and Environment Hamilton. It would also be available at City Service Centre locations and distributed at City events.

- Preparing and providing educational information brochures (i.e. good forestry practices, managing your woodlot, and the value of trees and woodlands).

- Revising the City’s web page to include the By-law, Guidelines, permit application form, educational materials, and Frequently Asked Questions (FAQs).

- Holding workshops for rural and urban landowners on the By-law and various forest-related topics. These could be in partnership with the Ontario Ministry of Natural Resources or the Hamilton-Halton Watershed Stewardship Project.

- Notifying those businesses with an interest (i.e. foresters, arborists, lumber yards) that a new By-law has been adopted in Hamilton.

- Holding training sessions with City staff to ensure that they are aware of the By-law and Tree Protection Guidelines.

- Meeting with the Hamilton-Halton Homebuilders Association to provide information on the By-law and Tree Protection Guidelines.

- Working with community organizations and residents to develop a “Nominate a Heritage Tree” program.

Once the By-law and Guidelines are approved by Council, staff will prepare a more detailed Education and Awareness Strategy. Cost estimates for implementing the Strategy are outlined under the Financial Implications section of this report.
ALTERNATIVES FOR CONSIDERATION:

The following three options could be considered:

Option A: Use the scope of the revised By-law:

The adoption of the revised By-law, attached as Appendix “A”, and the supporting Tree Protection Guidelines, attached as Appendix “B”, is the recommended option. This option provides the City with the measures to protect a range of trees and woodlands across the Rural and Urban Areas of the City. It provides a consistent, single source of information for residents and City staff. It has undergone extensive public consultation, balances urban and rural values to the greatest extent possible, and borrows from the By-laws of the former area and regional municipalities.

Option B: No new Tree Cutting By-law

This option would involve using the existing Tree Cutting By-laws that the former local and regional municipalities enacted. This would mean that there would be no protection for individual trees or smaller woodlands in the former municipalities of Glanbrook, Flamborough, Hamilton, and most of Stoney Creek and Dundas. If tree cutting occurred in these areas, the City would have no means of enforcement. The existing Tree Cutting By-laws from the former area and regional municipalities are out of date, and result in confusion and inconsistent tree-cutting practices across the City, as four different By-laws are in force.

As a part of Option B, the City could use the Tree Protection Guidelines as a means to ensure better protection of trees on development sites. However, if a tree cutting violation did occur on these sites, the City would have no means of enforcement in areas which currently are not regulated by a By-law (the former municipalities of Flamborough, Glanbrook, and Hamilton, and some areas of Dundas and Stoney Creek).

Option C: By-law with a Different Scope

This option would involve adjusting the scope of the revised By-law presented as Appendix “A” to regulate fewer or more trees and woodlands. For example, the By-law could be altered to regulate smaller trees (e.g. with a dbh of 30 cm), which would increase the scope of the By-law. The scope could also be reduced, by only regulating trees in the Urban Area. Option C is not recommended, as staff believes that, after extensive public consultation and revisions, the By-law attached in Appendix “A” reflects the needs and values of Hamilton’s urban and rural residents.
Financial Implications

Permit Fees

Permit fees have been calculated based on full cost-recovery, as outlined below. The fees are structured to completely cover the cost of By-law administration and enforcement. The permit fees are structured to fully recover the additional staffing and administrative costs of the By-law such that there is no impact on the levy.

The permit fees proposed for the By-law (full cost recovery) are:

- Permits for individual trees -Urban Area: $75 per tree; up to a maximum of $225
- Permits for Woodlands: $60
- For General Vegetation Inventory review: $375
- For Tree Protection Plan review: $950

It is estimated that permit fees will generate an annual revenue of $320,000.

Costs Associated with Education and Awareness Strategy

To implement the Education and Awareness Strategy, staff will be requesting an annual budget of $5,300, with individual cost components as shown in Appendix “E”. These components are for illustrative purposes and may change from year to year.

Staffing Implications

If the proposed By-law is enacted, it will require a total of 3.5 new employees for administration and enforcement. One full-time employee (FTE) is currently enforcing the existing By-laws of the former area and regional municipalities. Accordingly, 1.5 additional FTEs would be required to properly administer and enforce the new By-law. These staff requirements are outlined below:

- One existing employee (1.0 FTE) in the Parking and By-law Services Division of the Planning and Economic Development Department (enforcement officer);
- One new part-time employee (0.5 FTE) in the Parking and By-law Services Division of the Planning and Economic Development Department (a Clerk);
- One new full-time employee (1.0 FTE) in the Development Planning Section of the Planning and Economic Development Department would be required to review tree reports submitted as part of the Tree Protection Guidelines (i.e. General Vegetation Inventory, TPPs). (This position will be offset by allocating one of the vacant planning positions within the current Planning Division staff complement); and,
One new full-time employee (1.0 FTE) in the Parking and By-law Services Division of the Planning and Economic Development Department, to administer and enforce permits, would be required.

Enforcement and administration of the Tree Cutting By-law and Tree Protection Guidelines will involve:

- Processing approximately 132 permits per year (receive application, input data, conduct site visits, issue permits);
- Answering inquiries about the By-law and permits;
- Preliminary inspections;
- Organizing Appeal Hearings for those who contest permit conditions or denials;
- Receiving, responding to, and documenting complaints;
- Conducting pre-cut and post-cut site inspections (Verifying work has been done according to permit conditions);
- Reviewing and commenting on approximately 350 General Vegetation Inventories and 300 Tree Protection Plans;
- Establishing permit conditions; and,
- Periodically enforcing violations, collecting evidence, and appearing in court.

It is estimated that staff costs (salaries, vehicles, computers) for enforcing and administering the By-law and Guidelines will be $320,000 per year.

**Legal Implications**

The By-law has been prepared according to the requirements of the Municipal Act, and satisfies the intent of the legislation. As required under the Municipal Act, a Public Notice was published in the local newspapers 14 days in advance of the Economic Development and Planning Committee meeting. The purpose of this Notice is to inform the public that the Committee will be considering an amendment to its User Fees and Charges By-law to add fees under the proposed By-law. This Public Notice also would serve to notify the public about the By-law.

The By-law, if approved, repeals the existing By-laws which regulate trees on private property for the former Town of Ancaster, City of Stoney Creek, Town of Dundas, and Region of Hamilton-Wentworth. However, the intent and much of the content of these By-laws has been carried forward in the new By-law.
POLICIES AFFECTING PROPOSAL:

The revised By-law and Tree Protection Guidelines support the goals of the Provincial Policy Statement (PPS 2005), the Greenbelt Plan, and the Niagara Escarpment Plan to protect the biodiversity of natural heritage systems by ensuring that there are no negative impacts on significant woodlands, valley lands, wetlands, and wildlife habitat. The new City of Hamilton Rural and Urban Official Plans, approved by Council and pending Ministry approval, require that the City maintain and update the Private Tree and Woodland Conservation By-law, and protect tree cover on new development sites (Chapter C - City Wide Systems and Designations, Policy 2.11, Tree and Woodland Protection). The proposed By-law and Guidelines will also contribute to Vision 2020 goals to improve natural areas and corridors, improve water and air quality, and support the rural economy by allowing sustainable tree harvests. Finally, they contribute to the Environmental Stewardship goals in the Corporate Strategic Plan by ensuring that natural resources are protected and enhanced.

RELEVANT CONSULTATION:

In preparing the revised By-law and Guidelines, input was received from the four area Conservation Authorities, the Ontario Ministry of Natural Resources, Hamilton-Halton Homebuilders’ Association, Clean Air Hamilton, the Agricultural and Rural Affairs Advisory Committee, the Municipal Heritage Committee, Environment Hamilton, Hamilton Naturalists Club, interested residents, and the following City Departments and Divisions/Sections: Public Works Department (Forestry and Horticulture Section, Open Space Development Section, and Environmental Planning Section), Planning and Economic Development Department (Economic Development and Real Estate Division, Community Planning and Design Section, Development Planning Section, Zoning By-law Reform Section, and Municipal By-law Enforcement Section), Corporate Services Department (Clerks Section and Legal Services Division), and Public Health Services Department (Environmental Health Section).

Since the By-law was first drafted in 2004, it has undergone two public consultations, one in the spring of 2005 (two Open Houses), and another in the fall of 2008 (four Open Houses).

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Opportunities for physical activity are supported and enhanced.
Protecting and enhancing tree cover will result in cleaner air and water, and create recreational opportunities for a healthy, active lifestyle.
Environmental Well-Being is enhanced. ☑ Yes ☐ No
Ecological function and the natural heritage system are protected.
The revised By-law and Tree Protection Guidelines will protect and enhance existing natural areas and urban tree cover. Ecological functions such as allowing wildlife and plant movement between natural areas, flood and erosion control, air quality improvement, and providing habitat for wildlife will result in a healthy, sustainable environment.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Hamilton’s high-quality environmental amenities are maintained and enhanced.
Protecting and enhancing tree cover will support ecotourism and attract business to locate here. Encouraging good forestry practices allows a sustainable forest harvest of Hamilton’s timber resources and a healthy farm income.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No
Protecting and enhancing tree cover across the City of Hamilton will contribute to the appearance of green and liveable neighbourhoods, provide economic benefits by attracting tourism and business to Hamilton, improve Hamilton’s image, and contribute to clean air, water, and a healthy natural environment.

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☑ Yes ☐ No
The management and protection of the City’s natural heritage resources attest to Council’s commitment to an ongoing program and policy of natural heritage conservation.

:CP
Attachs. (5)
CITY OF HAMILTON

BY-LAW NO. __________

To promote the conservation and sustainable use of trees and woodlands on private property in the City of Hamilton and to repeal By-law No. 4401-96 of the City of Stoney Creek, By-law No. 4513-99 of the Town of Dundas, By-law No. 2000-118 of the Town of Ancaster, and By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth.

WHEREAS Council desires to promote the conservation and sustainable use of trees and woodlands on private property in the City of Hamilton;

AND WHEREAS Sections 8, 9 and 10 of the *Municipal Act*, 2001, S.O. 2001, c. 25, authorize the City of Hamilton to pass by-laws necessary or desirable for municipal purposes, and in particular Paragraphs 5 and 7 of Subsection 10(2) authorize by-laws respecting the economic, social and environmental well-being of the municipality and the provision of any service or thing that it considers necessary or desirable for the public;

AND WHEREAS Subsection 135(1) of the *Municipal Act*, 2001, S.O. 2001, c. 25, provides that the City may prohibit or regulate the destruction or injuring of trees;

AND WHEREAS Subsection 135(7) of the *Municipal Act*, 2001, S.O. 2001, c. 25, provides that the City may require that a permit be obtained to injure or destroy trees and impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of a person authorized to injure or destroy trees;

AND WHEREAS Section 425 of the *Municipal Act*, 2001, S.O. 2001, c. 25, authorizes the City of Hamilton to pass by-laws providing that a person who contravenes a by-law of the City of Hamilton passed under that Act is guilty of an offence;
AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, further authorizes the City of Hamilton, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection orders, and to make orders to discontinue activity or to do work;

AND WHEREAS the *City of Hamilton Act, 1999*, S.O. 1999, c. 14, Sched. C, did incorporate, as of January 1st, 2001, the municipality “City of Hamilton”;

AND WHEREAS the City of Hamilton is successor to the following former area municipalities: The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Township of Glanbrook, The Corporation of the City of Hamilton, and The Corporation of the City of Stoney Creek; and the successor of the former Regional Municipality of Hamilton-Wentworth;

AND WHEREAS the *City of Hamilton Act, 1999*, S.O. 1999, c. 14, Sched. C, provides that the by-laws of the former area municipalities and the former Regional Municipality of Hamilton-Wentworth continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

Definitions

1. In this By-law:

   (a) “arborist” means a person who is a certified arborist under the International Society of Arboriculture;

   (b) “basal area” means:

       (i) the area of the cross-section of a trunk of a tree including the bark measured at the diameter breast height as square metres per hectare; and

       (ii) where there are multiple trunks, the total area of the cross-sections of the multiple trunks of a tree including the bark measured at the diameter breast height as square metres per hectare;

   (c) “business day” means any day on which the City of Hamilton’s administration buildings are open for business;

   (d) “City” means the geographical area of the City of Hamilton or the municipal corporation as the context requires;
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(e) “cord” means a unit of volume of wood that is equivalent to 3.62 cubic metres of wood or to a stack of wood 1.22 metres long by 2.44 metres wide by 1.22 metres high;

(f) “Council” means the Council of the City of Hamilton;

(g) “diameter breast height” (dbh) means:

(i) the diameter of a trunk of a tree including the bark measured at 1.37 metres above the highest point on the tree where the ground meets its trunk; and

(ii) where there are multiple trunks, the total diameters of the multiple trunks of a tree including the bark measured at 1.37 metres above the highest point on the tree where the ground meets one of those trunks;

(h) “Director” means the Director, Municipal Law Enforcement, for the City of Hamilton and any successor or his or her designate;

(i) “discontinuity” means a break in a woodland, which includes, but is not limited to, highways and roads, railway rights-of-way, lands, paths, golf course fairways, utility lines or natural open spaces;

(j) “drip line” means an imaginary line running directly beneath the outermost branches of an individual tree or of the trees forming the perimeter of the woodland;

(k) “farm” means the premises where a person who has a current and valid farming business registration number under the Farm Registration and Farm Organization Funding Act, 1993 operates that farming business;

(l) “Forest Management Prescription” means a course of woodland management prepared by a Registered Professional Forester for a particular woodland after specific assessments and evaluations of the woodland have been made by him or her;

(m) “good forestry practices” means 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 and the aesthetics and recreational opportunities of the landscape;

(n) “landscape architect” means a person who is a full member in good standing of the Ontario Association of Landscape Architects;
(o) "local board" means a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority;

(p) "Officer" means a Municipal Law Enforcement Officer or other person appointed or employed by the City of Hamilton for the enforcement of this by-law and includes the Director;

(q) "owner" means a person having any right, title, interest or equity in land including right, title, interest or equity to the trees standing on the land;

(r) "own use" means personal use and does not include a sale, exchange or other disposition of a destroyed or injured tree;

(s) "person" includes, but is not limited to, an individual, sole proprietorship, partnership, association or corporation;

(t) "Registered Professional Forester" means a person who is registered as a professional forester under the Professional Foresters Act, 2000;

(u) "Sensitive Natural Areas" include, but are not restricted to:

(i) Environmentally Significant Areas as identified by the City of Hamilton in its Official Plan(s);

(ii) Provincial or Regional Life Science Areas of Natural and Scientific Interest ("ANSI") as identified by the Ontario Ministry of Natural Resources;

(iii) Wetlands as identified by the Ontario Ministry of Natural Resources or a conservation authority;

(iv) Habitat of Threatened, Endangered or Special Concern Species as identified by the City of Hamilton, the Ontario Ministry of Natural Resources or the Species at Risk Act (Canada); (Note: Information is available through the City’s Natural Heritage Planner);

(v) Significant Wildlife Habitat as identified by the City of Hamilton, the Ontario Ministry of Natural Resources or a conservation authority; (Note: Information is available through the City’s Natural Heritage Planner);

(vi) Significant Woodlands as identified by the City of Hamilton in its Official Plan(s);
(vii) Significant Valley Lands as identified by the City of Hamilton, the Ontario Ministry of Natural Resources or a conservation authority; (Note: Information is available through the City’s Natural Heritage Planner); and,

(viii) Core Areas within the Natural Heritage System, as identified by the City of Hamilton in its Official Plans.

(v) “tree” means a self-supporting woody perennial plant which has reached or can reach a height of least 3 metres at physiological maturity;

(w) “Tree Permit Committee” means the Hamilton Tree Permit Committee established under section 19 of this By-law;

(x) “Tree Protection Plan” means a plan prepared by an arborist, landscape architect or Registered Professional Forester in accordance with the City of Hamilton’s Tree Protection Guidelines, which protects and preserves trees on private property where development or disturbance of the natural forest cover for the purposes of building construction and/or land division will be occurring; and,

(y) “woodland” means land measured to the drip line and including any discontinuity equal to or less than 30 metres in width with at least:

(i) 1,000 trees of any size, per hectare, calculated in proportion to the actual area of the woodland;

(ii) 750 trees with a diameter breast height of over 5 centimetres, per hectare, calculated in proportion to the actual area of the woodland;

(iii) 500 trees with a diameter breast height of over 12 centimetres, per hectare, calculated in proportion to the actual area of the woodland; or,

(iv) 250 trees with a diameter breast height of over 20 centimetres, per hectare, calculated in proportion to the actual area of the woodland;

but does not include:

(v) a cultivated fruit or nut orchard;

(vi) a tree nursery;

(vii) a plantation established for the purposes of producing Christmas trees and which is being actively managed and harvested for this purpose with trees being sold as Christmas trees within the preceding 10 years;
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(viii) a narrow linear strip of trees that defines a laneway or a boundary between fields; or,

(ix) a plantation established and continuously managed for the sole purpose of complete removal at rotation in accordance with a Forest Management Prescription.

Application and Interpretation

2. This By-law applies to:

(a) trees in a woodland equal or greater to 1 hectare or more located anywhere in the City;

(b) trees in a woodland of less than 1 hectare and equal to or greater than 0.2 hectares located within the urban boundary of the City as defined in the Official Plan(s) for the City; or,

(c) trees with a diameter breast height equal to or greater than 40 centimetres located within the urban boundary of the City as defined in the Official Plan(s) for Hamilton, except such trees that are:

   (i) located on a farm; or

   (ii) Siberian Elms (*Ulmus pumila*), Norway Maples (*Acer platanoides*), Tree of Heaven (*Ailanthus altissima*), or Manitoba Maples (*Acer negundo*).

3. 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 requires.

4. The headings used in this By-law shall not form a part of it, but shall be deemed to be inserted for convenience of reference only.

5. The requirements of this By-law are in addition to any requirements contained in any other applicable by-laws of the City or applicable provincial or federal statutes or regulations.

General Prohibitions

6. Except as otherwise permitted under this By-law, no person through their own actions or through the actions of any other person shall injure or destroy a tree or permit the destruction or injury of a tree.

7. No person through their own actions or through the actions of any other person shall:
(a) fail to comply with a notice, order or permit under this By-law; or,

(b) remove or deface any order posted under this By-law.

Exemptions - Not Requiring Permit

8. Notwithstanding Section 2, this By-law does not apply to:

(a) activities or matters undertaken by the City, a local board or a Conservation Authority;

(b) activities or matters undertaken in accordance with a licence issued under the *Crown Forestry Sustainability Act, 1994*;

(c) the injuring or destruction of a tree by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his or her agent while making a survey;

(d) the injuring or destruction of a tree in accordance with an approved Tree Protection Plan submitted with an application for a site plan, a plan of subdivision or a consent under Sections 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;

(e) the injuring or destruction of a tree in accordance with a Tree Protection Plan submitted with an application for a condominium plan under the *Condominium Act, 1998*;

(f) the injuring or destruction of a tree 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;

(g) the injuring or destruction of a tree by any provider of a public utility, as that term is defined in Subsection 1(1) of the *Municipal Act, 2001*, for the purpose of constructing and maintaining the public utility;

(h) the injuring or destruction of a tree 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*;

(i) the injuring or destruction of a tree undertaken on land in order to lawfully establish and operate or enlarge a pit or quarry on land,

(i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act; and,
(ii) on which a pit or quarry is a permitted land use under a By-law passed under Section 34 of the *Planning Act*;

(j) the injuring or destruction of a tree in a woodland where the wood resulting from the injuring or destruction of the tree is for the owner’s own use provided that:

(i) the injuring or destruction of the tree is in accordance with good forestry practices; and,

(ii) in each calendar year, the total volume of wood resulting from the injury or destruction of trees under this subsection is no more than 2.5 cords per hectare of woodland, calculated in proportion to the actual area of the woodland;

(k) the injuring or destruction of a tree which is a hazard to any person, building or structure;

(l) the injuring or destruction of a tree in the interest of public safety;

(m) the pruning of a tree in accordance with good arboricultural practice to maintain the tree’s health;

(n) the injuring or destruction of a tree with its trunk or trunks entirely located within 3 metres of the outer edge of an occupied building; or

(o) the injuring or destruction of a tree necessary for the erection of a building, structure or thing in respect of which a building permit under the *Building Code Act, 1992* has been issued.

**Permit Process**

9. An owner may injure or destroy their tree or permit the injuring or destruction of their tree provided that they comply with a permit issued by the Director to do so.

10. An owner shall apply for a permit under Section 9 by submitting to the Director a completed permit application form as prescribed by the Director and any application fee.

11. Before issuing a permit for the injuring or destruction of trees, the Director may require that:

(a) the owner submit a Forest Management Prescription; and,

(b) the trees to be injured or destroyed are marked with paint in accordance with the Forest Management Prescription.
12. No permit shall be issued for the injuring or destruction of trees unless:

(a) the permit application form has been completed and submitted to the Director;

(b) any application fee has been submitted to the Director; and,

(c) no substantially similar permit application has been previously refused, in whole or in part:

   (i) by the Director, under Section 14 or Section 15; or,

   (ii) by Council, under Section 29.

13. The Director may issue a permit for injuring or destruction of trees where he or she is satisfied that:

(a) the proposed injuring or destruction of trees is in accordance with good forestry practices and,

   (i) the trees have been damaged by disease, insects, wind, ice, fire, lightning or other natural causes to the extent that the health of the trees is likely to further deteriorate;

   (ii) the trees should be cut or removed to prevent disease or insects from spreading to other trees; or,

   (iii) the trees have been marked to be cut back or removed as part of a Forest Management Prescription; or

(b) the proposed injuring or destruction of the trees is necessary to protect the health or safety of the public.

14. The Director shall refuse to issue a permit for the injuring or destruction of trees where:

(a) a Sensitive Natural Area will not be adequately protected or preserved as determined in consultation with the relevant Conservation Authority; or,

(b) wetland functions, including flood or erosion control or drainage processes, will be negatively impacted as determined by the relevant Conservation Authority.

15. The Director may refuse to issue a permit for the injuring or destruction of trees where:

(a) the trees are healthy;
(b) a tree species which is nationally, provincially or locally rare, threatened, endangered or of special concern will be impacted;

(c) the total basal area of trees in the woodland will be reduced to below 20 square metres per hectare on trees greater than 10 centimetres dbh, calculated in proportion to the actual area of the woodland; or,

(d) the number of trees in the woodland will be reduced to below the minimum number of trees necessary to constitute a woodland.

16. Where the Director issues a permit, he or she may impose conditions on the permit, including, but not limited to, conditions:

(a) requiring that replacement trees be planted on the land where the injuring or destruction of the trees is to take place or, if that is not possible, on other land owned by the owner;

(b) requiring security be deposited with the City to ensure compliance with this By-law;

(c) as to the manner and timing in which injury or destruction is to occur;

(d) as to the species, size, number and location of trees to be destroyed or injured; or,

(e) specifying that damage to residual stems and the site shall not exceed the acceptable minimum standards contained in the Silvicultural Guide for Managing Southern Ontario Forests (OMNR 2000), as amended from time to time.

17. Where the planting of replacement trees has been imposed as a condition, the Director may impose further conditions on the permit, including, but not limited to, conditions:

(a) as to the species, size, number and location of the replacement trees;

(b) requiring the submission of a replanting plan satisfactory to the Director;

(c) requiring the submission of a written undertaking signed by the owner stating the replacement planting will be carried out; or,

(d) requiring that the replacement trees be planted and maintained to the satisfaction of the Director.

18. Where the planting of replacement trees is not possible on land owned by the owner, the Director may impose conditions on the permit requiring that an amount not to exceed the cost of replanting and maintaining for a period of 2 years the trees to be injured or destroyed, be paid to the City. Such amount is to be applied to replanting and maintaining trees on the City’s land.
19. A committee is hereby established pursuant to Section 23.5 of the *Municipal Act, 2001* under the name “Hamilton Tree Permit Committee”, which shall be composed of:

(a) one member of the Environmentally Significant Areas Impact Evaluation Group (ESAIEG) to be selected by ESAIEG for a term equal to or less than the remainder of their term as a member of ESAIEG at the time of their selection; and,

(b) one member shall be an arborist, landscape architect, or Registered Professional Forester, and one member shall be a farmer.

Once selected or appointed, a member of the Tree Permit Committee shall continue to be a member of the Tree Permit Committee until their successor has been appointed. Any vacancy on the Tree Permit Committee shall be filled forthwith.

20. The Tree Permit Committee shall select one of its members as a Chair.

21. Where the Director refuses to issue a permit, a notice shall be sent to the owner who applied for the permit. The notice of refusal shall be dated and shall include the grounds for the Director’s refusal to issue the permit.

22. An owner who does not agree with conditions imposed under Sections 16, 17 or 18 or who receives a notice of refusal under Section 21 may request a hearing and the Tree Permit Committee, in the place of Council, shall hear the parties to the hearing or afford these parties an opportunity to be heard. The parties are the City and the owner whose application for a permit has been issued with conditions or refused.

23. A request by an owner for a hearing under Section 22 shall be made, in writing, accompanied by the applicable fee and delivered to the Director within 20 days of date the permit is issued with conditions imposed under Section 16, 17 or 18 or of the date contained in the notice of refusal under Section 21. The owner shall also include the grounds for their request.

24. Where a request meeting the requirements of Section 23 has been delivered to the Director, a hearing shall be scheduled before the Tree Permit Committee and notice of the hearing date shall be given to the owner who made the request. The notice of hearing shall include:

(a) a statement of the time, date, location, and purpose of the hearing; and,

(b) a statement that if the owner does not attend the hearing, the Tree Permit Committee may proceed in their absence without notice to them.
25. The notice of refusal under Section 21 or the notice of hearing under Section 24 may be given by delivering it personally or by sending it by prepaid registered mail to the last known address of the owner on file with the City. Service by registered mail shall be deemed to have taken place 5 business days after the date of mailing unless the person to whom it is being given establishes that they, acting in good faith, through absence, accident, illness or other cause beyond their control did not receive the notice of hearing until a later date.

26. The Tree Permit Committee shall hold a hearing pursuant to the Statutory Powers Procedure Act at the time, date and place set out in the notice of hearing and the Tree Permit Committee may recommend to Council that a permit be refused or issued or that a condition be confirmed, rescinded, varied, or imposed on a permit.

27. The Tree Permit Committee shall have regard to the following matters, where relevant, as may be raised at a hearing:

   (a) this By-law and other applicable law;

   (b) circumstances and facts raised by the evidence of the parties; and,

   (c) whether strict application of the provisions of the By-law in the context of the circumstances and facts raised by the evidence of the parties would result in unusual hardship for the owner or be inconsistent with the general intent and purpose of this By-law.

28. The Tree Permit Committee shall forward a report to Council on its final decision arising from each hearing or opportunity for a hearing.

29. Council, after considering the report of the Tree Permit Committee, may refuse or issue a permit or confirm, rescind, vary or impose a condition on a permit, all without a hearing, having regard to the matters considered by the Tree Permit Committee, this By-law and other applicable law.

30. After Council has made a decision in respect of a report of the Tree Permit Committee, notice of that decision shall be sent to the owner by personal delivery or by registered mail to the last known address of the owner on file with the City.

31. Where the decision of Council is to issue a permit or a conditional permit, the Director shall issue the permit or the conditional permit, on the terms directed by Council.

32. A permit issued under this By-law shall be in the name of the owner and shall expire 1 year after its issuance, provided that where the owner gives the Director a written and signed request to extend the permit before the expiration date, the Director may approve an extension of up to 1 additional year.
33. No permit issued under this By-law is transferable without the prior written consent of the Director and, where such consent has not been given, a permit is deemed to be revoked upon the transfer of ownership of the land to which it applies.

**Administration and Enforcement**

34. The Director is authorized to administer and enforce this By-law and has delegated authority granted by Council to execute the provisions of the By-law, including the imposition of conditions as necessary to ensure compliance with this By-law.

35. Application, permit and other fees shall be as set and approved by Council from time to time under the User Fees and Charges By-law.

36. The Director may request Officers to enforce this By-law who shall have the authority to carry out inspections, issue orders and otherwise enforce this By-law, and the Director may assign duties or delegate tasks under this By-law whether in his or her absence or otherwise.

37. An Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

   (a) this By-law;

   (b) a direction or order made under this By-law;

   (c) a condition of a permit issued under this By-law; or,

   (d) an order made under s. 431 of the *Municipal Act, 2001*.

38. An Officer may, for the purposes of the inspection under Section 37:

   (a) require the production for inspection of documents or things relevant to the inspection;

   (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;

   (c) require information in writing or otherwise as required by the Officer from any person concerning a matter related to the inspection; or,

   (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
39. An Officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under Section 438 of the *Municipal Act, 2001* where he or she has been prevented or is likely to be prevented from carrying out an inspection under Sections 37 and 38.

40. If an Officer is satisfied that a contravention of this By-law has occurred, he or she 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 property on which the contravention occurred to discontinue the contravening activity.

41. An order under Section 40 shall set out:

(a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and,

(b) the date or dates by which there must be compliance with the order.

42. If an Officer is satisfied that a contravention of this By-law has occurred, he or she 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 property on which the contravention occurred to do work to correct the contravention.

43. An order under Section 42 shall set out:

(a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;

(b) the work to be completed; and,

(c) the date or dates by which the work must be completed.

44. An order to discontinue contravening activity made under Section 40 or an order to do work made under Section 42 may be served personally or by registered mail to the last known address of:

(a) the owner or occupier of the property where the contravention occurred; and,

(b) such other persons affected by it as the Officer making the order determines.

Service by registered mail shall be deemed to have taken place 5 business days after the date of mailing.
45. In addition to service given in accordance with Section 44, an order to discontinue contravening activity made under Section 40 or an order to do work made under Section 42 may be served by an Officer placing a placard containing the order in a conspicuous place on the property where the contravention occurred.

46. Where service cannot be given in accordance with Section 44, sufficient service is deemed to have taken place when given in accordance with Section 45.

47. Where a person does not comply with a direction or a requirement, including an order, under this By-law to do a matter or thing, the Director, with such assistance by others as may be required, may carry out such direction or requirement at the person’s expense.

48. The City may recover the costs of doing a matter or thing under Section 47 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.

49. The Director is authorized to give immediate effect to any direction or requirement where the costs of carrying out the direction or requirement do not exceed $10,000 and, where the costs do exceed $10,000, as the City’s Council may authorize.

50. Every person who contravenes any provision of this By-law is, upon conviction, guilty of an offence and is liable:

(a) on a first conviction, to a fine of not more $10,000 or $1,000 per tree, whichever is greater; and,

(b) on any subsequent conviction, to a fine of not more than $25,000 or $2,500 per tree, whichever is greater.

51. Despite Section 50, where the person convicted is a corporation,

(a) the maximum fines in Subsection 50(a) are $50,000 or $5,000 per tree; and,

(b) the maximum fines in Subsection 50(b) are $100,000 or $10,000 per tree.

52. Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order:

(a) prohibiting the continuation or repetition of the offence by the person convicted;
(b) requiring the person convicted to correct the contravention in the manner and with the period that the court considers appropriate.

General Provisions

53. This By-law may be referred to as the Private Tree and Woodland Conservation By-law or the Hamilton Private Tree and Woodland Conservation By-law.

54. If a court of competent jurisdiction declares any subsection, section or part of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.

55. The provisions of this By-law apply in addition to the provisions of any other City By-law and in the event of a conflict:

(a) where one or more conflicting provisions provides for public health or safety, then the provision which is most protective of public health or safety prevails; or,

(b) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

56. Notwithstanding the repeal of a By-law under Section 57:

(a) the By-law shall continue to apply to proceedings with respect of offences that occurred before its repeal; and,

(b) all permits or other approvals under the By-law that are in effect at the time of the repeal shall be deemed to be permits or other approvals under this By-law, with all necessary modifications, and all the rules, requirements and regulations of this By-law shall apply.

Enactment and Repeals

57. The following By-Laws, all as amended, are repealed:

(a) By-law No. 4401-96 of the City of Stoney Creek;

(b) By-law No. 4513-99 of the Town of Dundas;

(c) By-law No. 2000-118 of the Town of Ancaster; and,

(d) By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth.

58. This By-law comes into force on the date of its passing.
PASSED and ENACTED this day of , 2010.

_____________________________  ________________________________
Fred Eisenberger                 Kevin C. Christenson
Mayor                             Clerk
City of Hamilton

TREE PROTECTION GUIDELINES – CITY WIDE
Community Planning and Design Section
Planning Division
Planning and Economic Development Department

July, 2009
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1.0 Introduction

The City of Hamilton’s Tree Protection Guidelines (TPG) are intended to provide guidance, advice and direction for landowners and developers on how to inventory trees on a proposed development site and prepare a Tree Protection Plan. The guidelines also lay out the principles for retaining trees, protecting trees during construction, and replanting requirements.

The City of Hamilton is developing these guidelines together with the revised Hamilton Private Tree and Woodland Conservation By-law (2009) enacted under the Municipal Act. Until now, there have been no standard requirements for Tree Protection Plans (TPPs) and the quality of plans has varied greatly. The City wishes to enhance tree preservation on development sites, to ensure a healthy, sustainable urban forest and a green, livable city. These guidelines conform with the City of Hamilton’s VISION 2020 initiative and the City’s Corporate Strategic Plan by encouraging tree preservation and planting.

It should be noted that tree protection is divided among trees on private property and those on public property (e.g. parks, roadways). It is the intent of the Tree Protection Guidelines to protect and preserve trees and woodlands on private lands. The Hamilton Private Tree and Woodland Conservation By-law provides the legislative authority requiring an applicant to go through the process to develop a Tree Protection Plan. The Guidelines and the By-law are integrated; to satisfy the requirements of the By-law, landowners applying for Planning Act and Niagara Escarpment Plan permit application approval for projects involving tree cover must fulfill the requirements of the guidelines prior to any tree removal. While Planning Act applications go through a separate process (Tree Protection Plans) than permit approval, enforcement in the event of a violation would be through the by-law and its appointed enforcement officers.

For trees located on public lands owned by the City of Hamilton, a Tree By-law and Tree Protection Policies have been developed through the Forestry Division of the Public Works Department. The By-laws and guidelines for both public and private lands will work together to protect trees on all lands in the City of Hamilton.

2.0 Tree Protection Guidelines

2.1 General Approach

The Tree Protection Guidelines require the applicant to provide information and analysis of trees early in the planning process, to ensure that trees worth retaining are identified. This evaluation will then be used to guide the design of the development proposal.
The Guidelines apply to privately-owned lands subject to Planning Act approvals, (such as draft plans of subdivision/condominium, site plan approvals, part lot control, and consent applications), and/or Niagara Escarpment Plan permit applications in areas that are regulated by the Hamilton Private Tree and Woodland Conservation By-law.

The Hamilton Private Tree and Woodland Conservation By-law regulates the following areas:

- Woodlands 1 hectare or more in size within the City of Hamilton.
- Woodlands 0.2 hectares to 1 hectare in size within the urban boundary of the City of Hamilton (refer to map in Appendix “1”).
- Trees 40 cm or more in diameter at breast height (dbh) within the urban boundary of the City of Hamilton.

There is a four-step process to ensure tree protection for Planning Act applications proposed within regulated areas:

a) General Vegetation Inventory (GVI) – required for all portions of the site.

b) Tree Protection Plan (TPP) – required only for lots and blocks containing existing quality vegetation that requires further study as identified and approved by the City during the General Vegetation Inventory.

c) Implementation (installing tree protection measures during construction and monitoring).

d) Landscape Plan (re-planting and transplanting).

The owner/developer must employ a recognized tree management professional (e.g. certified arborist, registered professional forester, or landscape architect, as defined in the Glossary of Terms, Section 5.0) who will assess and evaluate the vegetation on a proposed development site. Depending on the nature of the vegetation and the development proposal, an application may not be required to go through all four steps.

The process will seek to:

- Ensure preservation of existing valuable trees in new development sites will be optimized.

- Ensure that the General Vegetation Inventory is used to guide the design of a proposed development.
• Ensure a consistent standard and clear process for staff, applicants, and the development industry, eliminating unnecessary delays.

• Maximize protection of trees worthy of saving by identifying what measures will be taken when designing road pattern, lot layout, building locations, and preliminary and final grading.

• Provide clear recommendations for tree management in relation to servicing, grading, drainage and storm water management.

• Identify opportunities to restore tree and woodland health through pruning, transplanting, re-planting, and landscaping. In locations where tree removal is necessary, the evaluation will recommend opportunities for re-planting and compensation planting.

The City recognizes that not all trees can and should be preserved. Trees that are structurally unstable, in poor health, or an undesirable species may be candidates for removal.

2.2 Process

2.2.1 Step 1: General Vegetation Inventory (GVI)

The General Vegetation Inventory will provide a description of the area proposed for development and the natural features on and abutting the site. This inventory must be included as part of the formal submission of Planning Act approvals (e.g. draft plan of subdivision/condominium, site plan control, part lot control, and consent applications) and/or as part of a Niagara Escarpment permit application. Note that only applications where the Hamilton Tree and Woodland Conservation By-law applies will be required to submit a GVI. If a site does not contain trees which are regulated under the By-law, these guidelines do not apply.

The intent of the GVI is to ensure that the applicant considers existing natural features and, where possible, incorporates them into site design at an early stage to maximize tree preservation. It is not intended to be a detailed inventory or tree protection plan, but to provide a general overview of vegetation on site.

The GVI will include:

• An inventory and brief description of vegetation units on site (trees, shrubs, and other vegetation);

• Site topography, soils, and drainage;
• Any significant natural and physical features (e.g. streams, ponds, steep slopes, wildlife habitat); and,

• Reasons for whether vegetation units require further analysis through a Tree Protection Plan (TPP). Areas of high quality vegetation must be identified for further study in the TPP (Step 2).

Requirements for Submission

A digital (pdf) and one hard copy of the GVI must be submitted to the Director of Planning with the Planning Act application. The City will not begin the internal review of the application until the GVI is received. The GVI will be circulated to appropriate departments, divisions, and sections (e.g. Building and Licensing, Community Planning and Design, Development Engineering, Public Works, and Forestry) and agencies (Conservation Authority, Niagara Escarpment Commission). The GVI will form the basis to determine whether more detailed information and analysis is required as part of a Tree Protection Plan.

The GVI must be completed by a tree management professional. Some items listed below may not be pertinent to a particular project. The Hamilton Natural Areas Inventory, Secondary and Master Plans, Source Water Protection Plans, and watershed studies (where they have been completed), may provide some of the required inventory information (such as soils, topography, wildlife habitat, surface features).

The following information is required for the GVI:

• Inventory of vegetation units;
• Map; and,
• Analysis of vegetation units on site.

These are described more fully in the following section.

Inventory of Vegetation Units

Distinct individual trees, groups of trees, or larger vegetation units must be identified on the site. General biophysical characteristics for each feature must also be identified, including:

• Vegetation type (e.g. coniferous, deciduous, hedgerow, deciduous woodland, marsh, etc). It is not necessary to identify vegetation communities using Ecological Land Classification (ELC) at this point.

• Number of trees (general descriptions of relative species abundance, dominant tree species, and density).
Trees or groups of trees that are significant to the local community and should be preserved for this reason (e.g. local landmarks, visual screens, heritage trees, rare or unusual species).

General tree condition (health and structural condition).

For woodlands, generally indicate the range of tree size using dbh to provide an indication of tree maturity and woodland age. It is not necessary to measure every tree in a woodland.

Mapping

A map (preferably overlaid on an air photo) must be provided that shows the following information:

Vegetation units surveyed and accurately located relative to property boundaries;

Tree drip line or woodland boundary locations that define the edge of a vegetation unit;

Identification number for all vegetation units;

Topography and slope;

Existing drainage patterns;

Surface characteristics (streams, ponds, wetlands); and,

Ground water features (recharge and discharge areas, seeps and springs) may be required to be mapped for some applications.

Analysis

The Analysis, both in text and graphic documentation, must identify the following:

Priority areas for tree retention (rare or unusual trees, heritage trees, high quality vegetation);

Potential development constraints;

Linkages to other natural habitat;

Recommendations and rationale for the future layout/design/grading for the proposed development; and,
• Recommendations and rationale for whether vegetation units require further analysis (through the more detailed TPP).

**If the City is satisfied that the GVI finds no trees or vegetation worth retaining, no further analysis is needed and the requirements of the tree cutting by-law are satisfied.**

**2.2.2 Step 2: Tree Protection Plan**

If the General Vegetation Inventory concludes that more detailed analysis is required, a Tree Protection Plan must be submitted with storm water management, grading, and servicing plans as a condition of draft plan of subdivision and condominium, site plan, or consent approval.

While the GVI identifies vegetation units worthy of protection, the TPP focuses on exactly which trees will be preserved and what protection and tree maintenance measures will be implemented to ensure their survival. At this point, the applicant will have reviewed the details of subdivision design (e.g. infrastructure, lot lines, building envelopes, and storm water management facilities) to preserve as many high quality trees as possible. The TPP requires an assessment of individual trees. The decision on whether to retain individual trees within a vegetation unit is determined based on their vigour, condition, aesthetics, age, and species.

The TPP will be carried out only for those high quality trees/vegetation units requiring it, as recommended in the GVI.

The City recognizes that, particularly with new urban intensification targets, there may not be sufficient space at some development sites to permit saving all trees. Also, City staff will assess tree preservation along with grading and servicing constraints, to ensure that any trees identified for protection will be likely to survive. Staff recognizes that the goal of maximizing tree preservation cannot be carried out in isolation, and planning and engineering constraints may exist which affect tree preservation.

If pre-grading is requested, the TPP must be approved before the grading approval is issued.

**Requirements for Submission**

The applicant must provide one digital (pdf) and one hard copy of the TPP to the Director of Planning. This will be circulated to staff for review and comment.
Where another environmental study, such as a subwatershed study, Secondary or Master Plan, Source Water Protection Plan or Environmental Impact Statement contains recommendations relating to tree preservation, these recommendations should be incorporated into the TPP.

The TPP is to consider and tag all trees:

- in woodlands 0.2 hectares or more in size that are regulated by the tree cutting by-law, having a dbh of 10 cm or more that may be affected by site clearing, grading, or other construction activities;
- having a dbh of 40 cm or more that are regulated by the by-law; and,
- rare, unusual, and heritage trees.

All trees must be tagged as a means of identification in the field and accurately located and assessed to determine:

- Which trees are to be protected and which are to be removed and why;
- Potential impacts of the proposed development layout, storm water management ponds, grading, and servicing on the remaining vegetation;
- How existing trees will be protected during construction (e.g. hoarding);
- Possible preservation or management techniques to enhance the condition of remaining trees (e.g. pruning);
- Recommendations of which individual trees or groups of trees should be transplanted; and,
- Mitigation and compensation options.

On sites with woodland or extensive tree cover, it is not necessary to tag every tree. On sites where there are scattered trees, every tree must be individually located by a surveyor.

The TPP must include a tree inventory chart, map, and analysis.

**Tree Inventory Chart**

Using the information gathered during the GVI, the TPP must include a chart (as illustrated in Appendix 2) with the following information for each tagged tree:

- Tree tag number;
• Tree species (common and scientific names-including genus and species);

• Diameter at breast height (dbh);

• Tree condition (vigour, specimen) rated in the following manner:
  o GOOD - dead branches less than 10%; signs of good compartmentalization on any wounds, no structural defects.
  o FAIR - 10-30% dead branches, size or occurrence of wounds present some concerns, minor structural defects.
  o POOR - more than 30% dead branches, weak compartmentalization, early leaf drop, presence of insects or disease, major structural defects.
  o DEAD - tree shows no signs of life; and,

• Recommended action (retain, remove, transplant).

**Map**

The TPP must include a map prepared at an appropriate scale (e.g. 1:500) which clearly shows the following information:

• The drip line (refer to Figure 1, page 12) of existing individual trees and/or woodlands as well as an accurate location of all tagged trees showing their drip line relative to property boundaries;

• Tree Inventory Chart (showing tag number, tree species, condition, dbh, recommended action);

• Symbolized recommendations for each tree (retain, remove, transplant);

• Proposed lot locations, street layout, driveway locations, and building envelope;

• Location of all services and infrastructure;

• Grading information (existing and proposed grades, cut and fill areas, potential disruption of water drainage);

• Location and size of storm water management facilities;

• Location and nature of tree protection measures (e.g. hoarding);
• Location of soil stockpiles; and,

• Title with north arrow and legend, name of development, lot and concession, municipal address, scale, date, and a place for the Forester/Arborist/Landscape Architect stamp.

Appendix 3 includes a sample of the map layout and required information.

Analysis

The analysis must contain the following information:

• Recommendation for each individual tree/woodland and the rationale for removal or transplanting;

• Summary of anticipated grading and construction impacts;

• Description of protective measures, including:
  
  o Erosion control.
  o Protective fencing/hoarding and signs.
  o Buffers from natural features.
  o Tree transplanting and planting (timing, locations, moving procedures).
  o Maintenance of trees to remain on site (pruning, watering).
  o Landowner Maintenance Guide (stewardship).

2.2.3 Step 3: Implementation of the TPP

Once the TPP has been approved by the City, implementation according to the measures outlined in the TPP may begin. This includes having a recognized tree management professional on site at certain times during construction, monitoring protective fencing, and using reports and securities to ensure the work is completed as agreed to. These implementation measures are outlined below.

Tree Protection Measures - Verification Letter

Tree protection measures prevent injuries from construction activity by keeping equipment and materials away from the tree. The tree management professional must provide a Verification of Tree Protection Letter to the Director of Planning to confirm that all tree protection measures have been installed as shown in the TPP approved by the City of Hamilton.

The Verification of Tree Protection Letter must be provided to the City before any rough grading on the site can occur, servicing can commence, or building permit can be issued. The grading consultant must confirm that the TPP conforms to
the Lot Grading Control Plan before these Plans are approved by the Planning Division.

The City Forest Conservation By-law Officer will also check the site during the construction period.

**Tree Protection Fencing**

The applicant is responsible for ensuring that tree protection fencing (hoarding) is maintained throughout all phases of construction in the location and condition approved. Hoarding will provide protection to the individual trees, clumps of trees, and woodland edges to be retained. It should be placed a minimum of one metre from the drip line of the tree/woodland around the perimeter of individual/grouped trees/woodland (refer to Figure 1). Paige wire farm fencing shall be the standard form; snow fencing is not acceptable. A sign must be posted on the fence to indicate that it delineates a tree protection zone.

**Figure 1: Diagram showing the proper way of measuring protection zone**
To avoid damage to trees and soil compaction, access routes should be established away from tree protection zones. Areas protected by temporary fencing will remain undisturbed and will not be used for temporary storage, placement, or excavation of fill, top soil, construction materials or equipment, or debris. Construction contaminants (fuels, oils) must be kept clear of tree protection zones. The existing grades within the tree protection areas must not be disturbed.

Wherever possible, avoid cutting surface roots of trees to be retained. In excavation, if root cuts are necessary, they should be done quickly, making smooth, flush cuts supervised by a tree management professional. Then the roots should be backfilled and watered before they have a chance to dry out.

For the best results, developers must ensure their builders and subcontractors are educated about the TPP and its requirements before starting their work. All subcontractors must be supplied with a copy of the approved TPP.

**Lands to be Conveyed**

All lands to be conveyed to the City as Park, Open Space, or Hazard Lands are to be free of any dead or hazardous trees (in locations where there is a safety issue), litter, dump sites, debris, remnant fences, barbed wire, wells, and any unnatural material or disturbances that would be considered dangerous to the public or an inherited liability. These items must be removed or properly treated to the satisfaction of the Director of Planning prior to final approval of the Plan and conveyance of the land.

**Post-Grading Tree Maintenance Report**

After grading has been completed, the City requires that a Post-Grading Tree Maintenance Report be prepared and submitted to the Director of Planning.

The Post-Grading Tree Maintenance Report should:

- Assess damage to trees that were to be retained but have inadvertently been damaged or removed by site grading and clearing;

- Identify a dollar value for damaged trees and propose a compensation plan for replacing them; and,

- Recommend preservation methods such as crown and root fertilization, watering and pruning to improve the health of remaining trees.

Release of the tree preservation security deposit may be delayed until this report has been received and the requirements have been satisfied.
Security Deposits

A security deposit in the form of cash or acceptable letter of credit will be required for the TPP on lots or blocks that involve tree protection as part of an approved TPP. The dollar value of trees to be retained through the TPP will be determined through consultation with the City’s Forest Conservation By-law Officer. Factors to be considered in valuing the trees are: species, condition/quality of trees, and quantity of trees. Seventy-five percent of the deposit will be released once the consultant who prepared the TPP certifies that it has been implemented as shown. If trees have been removed or irreparably damaged during construction, the owner/developer must replace them to the satisfaction of the City or the deposit fee (or a portion of it) will not be refunded. Twenty-five percent of the fee will be held for a two year maintenance period. The amount returned at the end of the maintenance period may be reduced based on the survival of the trees.

2.2.4 Step 4: Landscape Plan

Where existing trees are to be removed, the Private Tree and Woodland Conservation By-law requires replacement trees. A Landscape Plan showing new planting must be submitted to the Director of Planning. All Landscape Plans must be prepared by or under the guidance of a Landscape Architect registered as a full member in good standing with the Ontario Association of Landscape Architects and must conform to the TPP and Site Plan.

The following information is required on the Landscape Plan:

- Name of development, consultant, lot and concession, municipal address, location within Hamilton, north arrow, scale, legend;
- Property boundaries and dimensions, existing and proposed uses, utilities, roads, fencing, parking;
- Location of trees to be retained or transplanted;
- Planting details, including tree species or variety, location, caliper/size, quantity, spacing;
- Description of proposed plantings and maintenance methods; and,
- Location of landscape features, topography, drainage, storm water management ponds, and grades.
General Principles for Planting

To ensure an increase in tree cover, the City requires compensation for any trees to be removed with trees of an equivalent diameter at breast height (dbh). For example, if three trees with a total combined dbh of 150 cm are removed, compensation would be for:

\[
\frac{1500 \text{ mm}}{50 \text{ mm caliper planting stock}} = 30 \text{ trees of 50 mm size.}
\]

If planting replacement trees on site is not possible (i.e. no space), the City may allow the landowner to re-plant trees on City lands or other suitable lands. The owner must pay the value of the trees and their maintenance for a period of two years to the City of Hamilton, to allow the City to plant trees elsewhere in Hamilton.

Compensation plantings will be in addition to those already required for streets, storm water management facilities, parks, and other open space as part of the approval of a site plan or plan of subdivision or condominium.

Native plant species are to be used wherever possible. Appendix 4 includes a list of native plant species. The use of non-native, invasive plant species as indicated in Appendix 5 is not permitted adjacent to Core Areas in the Natural Heritage System, as identified in the Official Plan. Plantings adjacent to high quality natural habitat (Core Areas) should include species representative of the existing native vegetation. Also, using drought-resistant plant material to conserve water and reduce long term maintenance requirements is recommended.

Other landscape guidelines:

- Transplanted stock should be restricted to specimens under 20 mm dbh.
- Minimum caliper for deciduous planting stock is 50 mm dbh.
- Minimum height for a conifer is 1.5 metres.
- Include a mix of tree species (no monocultures).
- Invasive species should not be transplanted. A list of invasive species in Hamilton is provided in Appendix 5.

3.0 Summary of the Approval Process

1. Applicants for Planning Act approval (e.g. draft plan of subdivision/condominium, site plan control, and consent applications) and/or as part of a Niagara Escarpment permit application will be required to submit a digital (pdf) copy of the GVI to the Planning Department with their application. The tree management professional should contact the City’s Planning Department before undertaking a GVI. Staff
will clarify what is required and may have background information on the site to provide.

2. City staff will conduct a site visit if required.

3. City staff will provide comments on the GVI report to the tree management professional and applicant. Staff will advise of any changes to the proposed plan that will be recommended and any draft conditions that will be included in the report to the Economic Development and Planning Committee. The applicant will be informed whether a Tree Preservation Plan (TPP) (detailed information) is required.

4. If a TPP is required, a digital copy of the TPP must be submitted to the Planning and Economic Development Department. As a condition of draft plan approval, the TPP must be approved by the Planning and Economic Development Department before any grading, servicing or construction can begin.

5. Once the TPP is approved by the City, the tree protection areas must be identified on all grading plans and servicing drawings to ensure coordination between tree protection and site development.

6. Before any grading, servicing, or construction can occur, a Verification of Tree Protection Letter must be prepared by the tree management professional and submitted to the Director of Planning. This will ensure the applicant is complying with the requirements of the TPP. If pre-grading is requested, the TPP must be approved before any grading can occur.

7. During construction, the applicant is responsible for ensuring that tree protection measures are maintained throughout construction. City staff will also visit the site during this time.

8. To implement the approved TPP through the subdivision or development agreement, securities will be deposited.

9. A Post-Grading Tree Maintenance Report must be prepared by the tree management professional before the tree protection security deposit is released.

10. If trees are to be replanted or transplanted on site, a Landscape Plan must be submitted to the Director of Planning for City staff review and approval.
4.0 Conclusion

The Tree Protection Guidelines will assist the City of Hamilton and the development community in ensuring that high quality vegetation is preserved on development sites. There are a number of actions the City of Hamilton is taking, through these Tree Protection Guidelines, to ensure that existing trees are protected to the greatest extent possible, including:

- Encouraging consideration of the natural features of the site early in the development process, so that sites are designed with a respect for these features. The GVI and TPP should be used to guide site design.

- Clarifying the process for tree protection in the development review process, minimizing time and cost.

- Recognizing that tree management is not an isolated process. Each participant in a project, from the owner, engineer, architect, and landscape architect to the grading, construction, and landscape contractors, must be committed to tree preservation and information must be communicated to everyone involved.

- Providing clear guidelines on submission requirements for tree protection plans.

- Requiring mapping of sites to accurately identify tree locations.

- Ensuring co-ordination between tree protection, grading, servicing and lot layout.

- Ensuring that the TPP is being implemented properly by conducting follow-up site inspections.

Properly implemented, these guidelines will benefit the community by creating healthy, green, and attractive neighbourhoods.
Appendix “B” to Report PD02229(c)
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5.0 Glossary of Terms

Arborist:

A person who is a certified arborist under the International Society of Arboriculture.

Basal Area:

Basal area means:

(i) the area of the cross-section of a trunk of a tree including the bark measured at the diameter breast height measured as m²/ha.; and,

(ii) where there are multiple trunks, the total area of the cross-sections of the multiple trunks of a tree including the bark measured at the diameter breast height;

Caliper:

The diameter of a tree measured 1.3 metres above ground level.

City:

The City is the geographical area of the City of Hamilton or the municipal corporation.

Corridor:

Corridor means a break in a woodland, which includes, but is not limited to, highways and roads, railway rights-of-way, lands, paths, golf course fairways, utility lines or natural open spaces.

Diameter:

The diameter of the stem or trunk of a tree including any existing bark at a specified point of measurement.

Diameter at Breast Height (dbh):

Diameter breast height means:

(i) the diameter of a trunk of a tree including the bark measured at 1.37 metres above the highest point on the tree where the ground meets its trunk; and,
(ii) where there are multiple trunks, the total diameters of the multiple trunks of a tree including the bark measured at 1.37 metres above the highest point on the tree where the ground meets one of those trunks.

Development Application:

An application under the Planning Act, specifically, applications for draft plan of subdivision, plans of condominium, site plan approval, and consents. Development applications also include Niagara Escarpment Plan permits.

Drip Line:

An imaginary line running directly beneath the outermost branches of the trees forming the perimeter of the woodland.

Good Forestry Practices:

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, including the aesthetics and recreational opportunities of the landscape.

Forest Fragments:

Forest fragments are small, isolated remnants of what once was a larger, contiguous forest.

High Quality Vegetation:

Trees, groups of trees, and shrubs that are desirable in terms of health, condition, growth form, species, age, heritage value, aesthetic value, cultural significance, rare or uncommon species, or value for wildlife.

Hoard ing:

A temporary fence placed around a tree, group of trees, or woodland which physically separates and protects them from construction activities.

Invasive Tree Species:

A tree species having the tendency to disrupt and/or invade a natural area through natural succession.
**Landscape Architect:**

A person who is registered as a Landscape Architect by the Ontario Association of Landscape Architects (OALA).

**Native Tree:**

A tree growing naturally in Canada, being indigenous to the Hamilton area.

**Rare or Unusual Tree Species:**

A tree that may be described as a heritage, historic, landmark, special interest, mature tree, or an interesting or rare species locally that should be protected.

**Registered Professional Forester (R.P.F.):**

A person who is certified as a R.P.F. under the Professional Registered Foresters Act, 2000, as amended.

**Tree Management Professional:**

Includes an arborist, registered professional forester, or landscape architect.

**Woodland:**

Land measured to the drip line and including any corridors equal to or less than thirty (30) metres in width with at least:

(i) 1,000 trees of any size, per hectare, calculated in proportion to the actual area of the woodland;

(ii) 750 trees with a diameter breast height of over five (5) centimetres, per hectare, calculated in proportion to the actual area of the woodland;

(iii) 500 trees with a diameter breast height of over twelve (12) centimetres, per hectare, calculated in proportion to the actual area of the woodland; or

(iv) 250 trees with a diameter breast height of over twenty (20) centimetres, per hectare, calculated in proportion to the actual area of the woodland;

but does not include:

(i) a cultivated fruit or nut orchard;

(ii) a tree nursery;
(iii) a plantation established for the purposes of producing Christmas trees and which is being actively managed and harvested for this purpose with trees being sold as Christmas trees within the preceding ten (10) years;

(iv) a plantation established for the exclusive purpose of harvesting trees; or

(v) a narrow linear strip of trees that defines a laneway or a boundary between fields.
6.0 References


City of Ottawa.  Tree Protection Guidelines.  2 pgs.

City of Owen Sound.  Tree Preservation Policy.  4 pgs.


City of Thunder Bay. 2005.  Tree Protection Standards 1 page.


City of Waterloo.  2001.  Urban Forest Policy. 32 pgs.


Town of Newmarket.  Tree Preservation, Protection, Replacement, and Enhancement Policy.  8 pgs.
Appendix 1:

Map of Hamilton’s Urban Boundary
Appendix 2:

Tree Protection Plan – Sample Tree Inventory Chart (to be included on or attached to the map for the Tree Protection Plan).

<table>
<thead>
<tr>
<th>TREE #</th>
<th>SPECIES (botanical name)</th>
<th>CALIPER (DBH in cm)</th>
<th>TREE CONDITION</th>
<th>ACTION</th>
<th>REASONS (for removal or transplanting)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Sugar Maple (Acer saccharum)</td>
<td>25</td>
<td>good</td>
<td>retain</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Beech (Fagus grandifolia)</td>
<td>25</td>
<td>fair</td>
<td>retain</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>White Ash (Fraxinus Americana)</td>
<td>32</td>
<td>poor</td>
<td>remove</td>
<td>Condition, split trunk</td>
</tr>
<tr>
<td>4.</td>
<td>Mixed Forest</td>
<td>5 to 20</td>
<td>poor-good</td>
<td>retain</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Sugar Maple (Acer saccharum)</td>
<td>13</td>
<td>good</td>
<td>relocate</td>
<td>Conflict with infrastructure</td>
</tr>
</tbody>
</table>

Consultant: ____________________________________________________
Address: ________________________________________________________
Telephone: ______________________________________________________
Fax #: _________________________________________________________
E-Mail: _________________________________________________________
Date of Inventory: _____________________________________________
Appendix 3:

Sample Tree Protection Plan Map

Tree Inventory Table

<table>
<thead>
<tr>
<th>IDENTIFIER#</th>
<th>SPECIES</th>
<th>DBH (cm)</th>
<th>CONDITION</th>
<th>ACTION</th>
<th>REASON</th>
</tr>
</thead>
<tbody>
<tr>
<td>TP#9 / TR#1</td>
<td>Balsam Fir</td>
<td>30</td>
<td>E</td>
<td>Protect</td>
<td></td>
</tr>
<tr>
<td>TR#11</td>
<td>White Cedar</td>
<td>15</td>
<td>D</td>
<td>Remove</td>
<td>Deed</td>
</tr>
</tbody>
</table>

Legend:

- **X**: TR# - Tree to be Removed
- **O**: TP# - Tree to be Protected
- **TT#**: TT# - Tree to be Transplanted

Property Address:
123 Fifth Avenue

*Note: All submissions should be sealed drawings.*
Appendix 4:

List of Native Tree Species (recommended for planting)

Acer rubrum (Red Maple)
Acer saccharinum (Silver Maple)
Acer saccharum spp nigrum (Black Maple)
Acer saccharum (Sugar Maple)
Abies balsamea (Balsam Fir)
Betula alleghaniensis (Yellow Birch)
Betula papyrifera (White Birch)
Carpinus caroliniana (Blue Beech)
Carya cordiformis (Bitternut Hickory)
Carya glabra (Sweet Pignut Hickory)
Carya ovata (Shagbark Hickory)
Castanea dentata (Sweet Chestnut)
Celtis occidentalis (Hackberry)
Cornus florida (Flowering Dogwood)
Fagus grandifolia (American Beech)
Fraxinus americana (White Ash)
Fraxinus nigra (Black Ash)
Fraxinus pennsylvanica (Red Ash)
Hammaemelis virginiana (Witch-hazel)
Juglans cinerea (Butternut)
Juglans nigra (Black Walnut)
Juniperus virginiana (Red Cedar)
Larix laricina (Tamarack)
Liriodendron tulipifera (Tulip Tree)
Morus rubra (Red Mulberry)
Nyssa sylvatica (Black Gum)
Ostrya virginiana (Ironwood)
Picea mariana (Black Spruce)
Pinus strobus (White Pine)
Platanus occidentalis (Sycamore)
Populus balsamifera (Balsam Poplar)
Populus deltoids (Cottonwood)
Populus grandidentata (Large-toothed Aspen)
Populus tremuloides (Trembling Aspen)
Prunus serotina (Black Cherry)
Prunus virginiana (Chokecherry)
Quercus alba (White Oak)
Quercus bicolor (Swamp White Oak)
Quercus ellipsoidalis (Hill’s Oak)
Quercus macrocarpa (Burr Oak)
Appendix 4:

List of Native Tree Species (recommended for planting) (Continued)

Quercus muehlenbergii (Chinquapin Oak)
Quercus rubra (Red Oak)
Quercus velutina (Black Oak)
Salix nigra (Black Willow)
Sassafras albidum (Sassafras)
Thuja occidentalis (White Cedar)
Tilia americana (American Basswood)
Tsuga canadensis (Eastern Hemlock)
Ulmus Americana (White Elm)
Ulmus rubra (Red Elm)
Ulmus thomasii (Rock Elm)
Appendix 5:

List of Invasive Tree Species (not recommended for planting; do not plant adjacent to Core Areas in the Natural Heritage System)

*Acer platanoides* (Norway Maple)
*Acer negundo* (Manitoba Maple)
*Aesculus hippocastanum* (Horse Chestnut)
*Ailanthus altissima* (Tree-of-heaven)
*Alnus glutinosa* (European or Black Alder)
*Betula pendula* (Silver Birch or European White Birch)
*Elaeagnus angustifolia* (Russian Olive)
*Elaeagnus umbellata* (Autumn Olive)
*Morus alba* (White Mulberry)
*Picea abies* (Norway Spruce)
*Pinus sylvestris* (Scots or Scotch Pine)
*Populus alba* (White Poplar)
*Populus nigra* var. *italica* (Lombardy Poplar)
*Rhamnus cathartica* (European or Common Buckthorn)
*Rhamnus frangula* (Glossy Buckthorn)
*Robinia pseudoacacia* (Black Locust)
*Sorbus aucuparia* (European Mountain Ash)
*Ulmus pumila* (Siberian Elm)
Comments Received on the Private Hamilton Tree and Woodland Conservation By-law (Fall 2008)
(Note that references to Sections in the By-law are based on the By-law shown in Appendix “A”)

<table>
<thead>
<tr>
<th>#</th>
<th>Agency-Individual</th>
<th>Date</th>
<th>Comments</th>
<th>Staff Response</th>
<th>Action Taken</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Urban Resident</td>
<td>June 4, 2008</td>
<td>Setting a 2.5 cord cutting limit would greatly increase the amount of fuel oil we will have to use and increase our carbon footprint. How would this limit be enforced? Would I be fined if found with more than 2.5 cords in my possession? What if the wood is purchased elsewhere? What if the wood is from previous years? What if the wood is from deadfall?</td>
<td>The limit for wood for your own use is set at 2.5 cords per hectare per year. This seems to be a reasonable amount of wood to harvest for a landowner’s own use. This by-law will most likely be enforced through complaints. The intent of this section of the by-law is to ensure that landowners who harvest wood are not clear cutting sections of their woodland. Harvesting wood for own use implies that the landowner will remove individual deadfall, diseased, hazardous, and other trees throughout their woodlot using good forestry practices.</td>
<td>No change required.</td>
</tr>
<tr>
<td>2.</td>
<td>Urban Resident</td>
<td>June 4, 2008</td>
<td>The limit is totally independent on the size of the woodlot. There is no distinction made between the owner of a 2-hectare woodlot and one with a 60-hectare woodlot.</td>
<td>The limit is stated as 2.5 cords per hectare, so a landowner with a 60 hectare woodlot could harvest more than a landowner with a 2 hectare woodlot.</td>
<td>No change required.</td>
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<td>#</td>
<td>Agency-Individual</td>
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<td>Comments</td>
<td>Staff Response</td>
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<td>3.</td>
<td>Urban Resident</td>
<td>June 4, 2008</td>
<td>The limit makes no distinction between native and invasive tree species, nor does it take into account wood from diseased trees. There is no distinction between cultivated and naturally occurring trees.</td>
<td>The section on limit of own use cutting does not specify this, but the by-law does. To understand this, it is important to read the entire by-law from start to finish. Diseased trees can be removed without a permit and certain non-native species are exempted from the by-law.</td>
<td>No change required.</td>
</tr>
<tr>
<td>4.</td>
<td>Urban Resident</td>
<td>June 4, 2008</td>
<td>Will this by-law force me to go through the extra expense of hiring professional arborists or foresters to cut down Manitoba Maples? Who benefits from this by-law? The professional consultants do for sure.</td>
<td>Manitoba Maples (and certain other invasive, non-native species) are exempted from the by-law, so a permit is not needed to remove them. The City is enacting the by-law because it believes that it is needed to protect the City’s valuable trees and forests, not to generate revenue for consultants.</td>
<td>No change required.</td>
</tr>
<tr>
<td>5.</td>
<td>Urban Resident</td>
<td>June 4, 2008</td>
<td>What ever happened to “best practices”? With amalgamation, the citizens of the new City were promised the best practices of the old communities. Just decide which (former) municipality had the best by-law and adopt it City-wide.</td>
<td>Staff has included the best features of each former municipal by-law in this new by-law. The intent was to capture what was important to the former municipalities and to balance urban and rural needs, which has been very challenging. Each of the by-</td>
<td>No change required.</td>
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<td>laws of the former municipalities had positive and negative aspects and all needed to be updated based on changes to the Municipal Act. It is not as simple as picking the best by-law; this exercise has presented an opportunity to craft a by-law that incorporates ‘best practices’ of all by-laws.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Urban Resident</td>
<td>September 12, 2008</td>
<td>I could not find any section in the Municipal Act that would allow the City to enter private property to enforce this by-law.</td>
<td>Section 436 of the Municipal Act, 2001 authorizes entry and is reflected in the draft by-law, as required, in ss. 37, 38, and 39.</td>
<td>No action required.</td>
</tr>
<tr>
<td>7.</td>
<td>Urban Resident</td>
<td>September 12, 2008</td>
<td>Government is too big now, why get involved in private matters? I cannot understand if a homeowner plants a tree at his expense on his own property and 20 years later, it becomes too big and a nuisance and the owner is too old to clean up the leaves, why he cannot cut it down without first obtaining approval and paying for a permit. To me this is just another tax grab. Please have the City look after public matters and leave private matters to private homeowners.</td>
<td>The City does not intend this by-law to interfere with how landowners manage their private property. In both urban and rural areas, trees and woodlands are a valuable resource which benefits the entire community. There is a by-law which regulates trees on publicly-owned property, but this only represents a portion of the trees and woodlands in Hamilton. Additional regulations are needed to protect tree cover.</td>
<td>No action required.</td>
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<tr>
<td>#</td>
<td>Agency-Individual</td>
<td>Date</td>
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<td>Staff Response</td>
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<td>8</td>
<td>Rural Resident</td>
<td>September 15, 2008</td>
<td>Trees are a cash crop/resource for farmers and the management of their woodlot is no-one's business but theirs.</td>
<td>The City recognizes that this is an important source of income for rural landowners. It simply wants to ensure that forests are managed sustainably so they remain healthy in the future.</td>
<td>No action required.</td>
</tr>
<tr>
<td>9</td>
<td>Rural Resident</td>
<td>September 15, 2008</td>
<td>It is easy to read between the lines and see yet another TAX GRAB being hatched on this already OVERTAXED area.</td>
<td>Permit fees have been set to recover staff administration costs. The City is enacting the by-law because it believes that it is needed to protect the City’s valuable trees and forests, not to generate revenue.</td>
<td>No action required.</td>
</tr>
<tr>
<td>10</td>
<td>Rural Resident</td>
<td>September 15, 2008</td>
<td>The City of Hamilton has been very negligent over the years in their own responsibility towards tree cutting. Concessions are lined with hundreds of DEAD or DYING trees that pose a clear danger to motorists, cyclists, power and communications lines and pedestrians. Clean up your own backyard and leave ours alone.</td>
<td>In the rural areas, Forestry staff responds on a complaint basis. There is no grid trimming program in place for rural areas. If an investigator responds to a residents' concern over a dead tree, and there is a row of trees in proximity that require attention, all of these will be addressed when a crew is on site.</td>
<td>No action required.</td>
</tr>
<tr>
<td>#</td>
<td>Agency-Individual</td>
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<td>Comments</td>
<td>Staff Response</td>
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<tr>
<td>11</td>
<td>Public Information Centre in Beverly</td>
<td>September 18, 2008</td>
<td>This by-law should have happened a long time ago. Trees convert CO₂ to oxygen. The leaf area of a tree (rather than the trunk diameter) should determine whether a tree is protected or not.</td>
<td>Agree that tree canopy is the 'working' area of the tree, which provides air quality benefits. However, dbh is the standard measurement used by arborists and foresters for trees and is easier for a homeowner to measure than tree canopy.</td>
<td>No action required.</td>
</tr>
<tr>
<td>12</td>
<td>Public Information Centre in Beverly</td>
<td>September 18, 2008</td>
<td>This proposed by-law contradicts best practices identified by the province. Farmers are good stewards of the land, we do not need to be babysat.</td>
<td>Staff agrees that farmers are good stewards of their land. The majority of rural landowners are responsible with how they manage their forests. We know farmers plant more trees than they remove. However, by-laws are required to provide the City with recourse if a violation occurs. The proposed by-law also consolidates existing by-laws, so there is one City-wide by-law.</td>
<td>No action required.</td>
</tr>
<tr>
<td>13</td>
<td>Public Information Centre in Beverly</td>
<td>September 18, 2008</td>
<td>Can cutting down one tree in a woodland be considered a commercial harvest if the tree is sold? We must make clear what is considered a commercial harvest.</td>
<td>The City is not concerned with the removal of a single tree in a forest. We are more concerned with ensuring commercial harvests, which typically involve the removal of many trees, are carried out using good forestry practices.</td>
<td>No action required.</td>
</tr>
<tr>
<td>#</td>
<td>Agency-Individual</td>
<td>Date</td>
<td>Comments</td>
<td>Staff Response</td>
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<tr>
<td>14</td>
<td>Public Information Centre in Beverly</td>
<td>September 18, 2008</td>
<td>The City has too many by-laws; most of them are not enforced.</td>
<td>Generally, by-laws are enforced on a complaint basis. That does not mean that by-laws should not be enacted. Staff reports to complaints from neighbours and passers-by with respect to possible violation.</td>
<td>No action required.</td>
</tr>
<tr>
<td>15</td>
<td>Public Information Centre in Beverly</td>
<td>September 18, 2008</td>
<td>A definition of what makes a hazardous tree should be included in the by-law.</td>
<td>Section 8(k) indicates what a hazardous tree is.</td>
<td>No action required.</td>
</tr>
<tr>
<td>16</td>
<td>Public Information Centre in Beverly</td>
<td>September 18, 2008</td>
<td>If a professional forester has set a harvest plan, we should not need a permit to harvest. We should not have to pay to harvest our crops.</td>
<td>Staff assumes this is referring to the Managed Forest Tax Incentive Program (MFTIP) with the Province. MFTIP does not conflict with municipal by-laws (there is no duplication) because MFTIP is considered an overarching management plan and does not contain specific harvest plans. When the landowner is ready to harvest a woodland according to the objectives in the MFTIP plan, the municipality (not the Province) is responsible for approving these plans under their by-law.</td>
<td>No action required.</td>
</tr>
<tr>
<td>#</td>
<td>Agency-Individual</td>
<td>Date</td>
<td>Comments</td>
<td>Staff Response</td>
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<tr>
<td>17</td>
<td>Public Information Centre in Beverly</td>
<td>September 18, 2008</td>
<td>Section 19 of the by-law deals with Committee members. People from rural areas should comprise at least half of the committee so that farmers have their views represented.</td>
<td>Staff agrees that one member should be a farmer, who would understand rural issues.</td>
<td>Composition of Tree Permit Committee (Section 19) was changed to include the requirement that one farmer sit on the Committee.</td>
</tr>
<tr>
<td>18</td>
<td>Public Information Centre – Stoney Creek</td>
<td>September 23, 2008</td>
<td>Concerns with hazardous trees. If a tree is hazardous, the landowner will not want to wait for permission from the City to have it removed, because it could fall on someone or something.</td>
<td>Agree that this is an issue. In some cases, the removal of a hazardous tree must be done quickly. However, this was included because staff felt a need to confirm that the tree is indeed hazardous, so that this is not used as an excuse by a landowner wishing to remove a healthy tree. Staff has re-worded the exemption.</td>
<td>Reference in Section 8(k) to having an arborist or RPF certify that the tree is hazardous was removed.</td>
</tr>
<tr>
<td>19</td>
<td>Public Information Centre – downtown Hamilton</td>
<td>September 30, 2008</td>
<td>Are there any conflict resolution mechanisms in the by-law if a tree is located on a property line?</td>
<td>The by-law does not deal with boundary trees. The ownership of boundary trees is dealt with under s.10 of the Forestry Act, but there is no conflict resolution mechanism in the Act.</td>
<td>No action required.</td>
</tr>
<tr>
<td>#</td>
<td>Agency-Individual</td>
<td>Date</td>
<td>Comments</td>
<td>Staff Response</td>
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</tbody>
</table>

**Boundary trees**

10. (1) An owner of land may, with the consent of the owner of adjoining land, plant trees on the boundary between the two lands. 1998, c. 18, Sched. I, s. 21.

**Trees common property**

(2) Every tree whose trunk is growing on the boundary between adjoining lands is the common property of the owners of the adjoining lands. 1998, c. 18, Sched. I, s. 21.

**Offence**

(3) Every person who injures or destroys a tree growing on the boundary between adjoining lands without the consent of the land owners is guilty of an offence under this Act. 1998, c. 18, Sched. I, s. 21.
<table>
<thead>
<tr>
<th>#</th>
<th>Agency-Individual</th>
<th>Date</th>
<th>Comments</th>
<th>Staff Response</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>Public Information Centre – downtown Hamilton</td>
<td>September 30, 2008</td>
<td>Would a circulation to neighbours be required when someone applied for a permit to remove a tree?</td>
<td>No circulation is required.</td>
<td>No action required.</td>
</tr>
<tr>
<td>21</td>
<td>Public Information Centre – downtown Hamilton</td>
<td>September 30, 2008</td>
<td>Public education is needed for residents, arborists, and foresters when the by-law is passed.</td>
<td>Agreed. The City should develop workshops, brochures, and web site information.</td>
<td>In the future, staff will develop a strategy to publicize the by-law.</td>
</tr>
<tr>
<td>22</td>
<td>Public Information Centre - Dundas</td>
<td>October 2, 2008</td>
<td>40 cm trees are too small to protect; we should be regulating the larger ones.</td>
<td>Staff believes that a 40 cm dbh tree is a sizable tree, with a well-established canopy that should be protected.</td>
<td>No action required.</td>
</tr>
<tr>
<td>23</td>
<td>Public Information Centre – Dundas</td>
<td>October 2, 2008</td>
<td>All trees should be regulated, even those under 40 cm. You are protecting large trees but not small ones; we should be protecting the small ones.</td>
<td>Many landowners want the ability to manage trees on their property and regulating very small trees would unduly restrict them. It is larger trees which have the well-established canopy which, if they were removed, would most affect community aesthetics and health.</td>
<td>No action required.</td>
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<tr>
<td>#</td>
<td>Agency-Individual</td>
<td>Date</td>
<td>Comments</td>
<td>Staff Response</td>
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<tr>
<td>24</td>
<td>Public Information Centre – Dundas</td>
<td>October 2, 2008</td>
<td>I would suggest the by-law defines what constitutes an orchard in the rural area.</td>
<td>An orchard is generally recognized as a group of cultivated fruit trees. These are exempt in rural areas (not included in the definition of a 'woodland'). However, individual fruit trees which attain the minimum dbh would be regulated in the urban area.</td>
<td>No action required.</td>
</tr>
<tr>
<td>25</td>
<td>Public Information Centre - Dundas</td>
<td>October 2, 2008</td>
<td>Is there any way to notify neighbours before issuance of a permit?</td>
<td>No circulation is required to notify neighbours before a tree is going to be cut.</td>
<td>No action required.</td>
</tr>
<tr>
<td>26</td>
<td>Rural Resident</td>
<td>October 7, 2008</td>
<td>Concerned about government regulation of private property owners. Although the by-law had flexibility to address landowners' reasons for removing a healthy tree, I am concerned that enforcement staff would not be flexible, use no discretion or common sense when enforcing the by-law (i.e. the tree is healthy so you can't cut it down, even though there may be other considerations, such as too close to a fence, ugly tree).</td>
<td>These situations will be assessed individually. Enforcement officers will consider the homeowner's circumstances when determining whether to issue a permit.</td>
<td>No change required.</td>
</tr>
</tbody>
</table>
| 27 | Municipal Heritage Committee       | October 23, 2008 | The exemption for trees within 7 metres of the edge of an occupied building should be reduced.                                                                                                                                                                      | Agreed. The distance from the edge of the building will be 3 metres, to account for smaller lot sizes.                                                                                                                                                                     | Section 8(m) was revised to state: “the injuring or
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<th>Date</th>
<th>Comments</th>
<th>Staff Response</th>
<th>Action Taken</th>
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<tbody>
<tr>
<td>28</td>
<td>Municipal Heritage Committee</td>
<td>October 23, 2008</td>
<td>Concerned that utilities can cut trees along the street without any notification to landowners.</td>
<td>Trimming and cutting trees by utility companies is exempt from the by-law and is done for safety reasons.</td>
<td>No action required.</td>
</tr>
<tr>
<td>29</td>
<td>Rural Resident</td>
<td>October 24, 2008</td>
<td>Ordinary residential properties should be excluded from this by-law, to allow homeowners the ability to plant and remove trees as they see fit, without interference and unnecessary cost to them. An ordinary residential property might be considered one acre or less in size.</td>
<td>Staff does not agree that the by-law should regulate trees growing on properties of a certain size. This has no relationship to the ecological value of the trees or woodlands and is not a fair way of implementing the by-law.</td>
<td>No action required.</td>
</tr>
<tr>
<td>30</td>
<td>Rural Resident</td>
<td>October 24, 2008</td>
<td>I have spoken with more of my neighbours. They also feel that this tree cutting by-law is unnecessary.</td>
<td>Tree cutting by-laws are needed because they provide a means for the City to protect and replant trees. Staff agrees that the majority of Hamilton residents are very responsible with the trees on their property.</td>
<td>No action required.</td>
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<td>31</td>
<td>Rural Resident</td>
<td>October 24, 2008</td>
<td>By the way, they had no knowledge of this new by-law. (Democratic?)</td>
<td>Four Public Open Houses were held on September 18, 23, 30, and October 2, 2008. They were advertised in the Spectator, and local papers. A notice was also posted on the City of Hamilton’s web site. This is the standard notification method for Open Houses.</td>
<td>No action required.</td>
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<tr>
<td>32</td>
<td>Councillor</td>
<td>October 29, 2008</td>
<td>I would like to see urban trees protected with a 12 inch (30 cm) dbh as is the case in Toronto.</td>
<td>Staff believes that a 16 inch (40 cm) dbh tree is a reasonable size to regulate because it balances tree protection, landowner rights for managing the trees on their property, and enforcement requirements.</td>
<td>No change required.</td>
</tr>
<tr>
<td>33</td>
<td>Councillor</td>
<td>October 29, 2008</td>
<td>I believe that some non-native trees should be protected where they perform a valuable tree canopy function in the city (i.e. Norway Maples).</td>
<td>Staff agrees that Norway Maples and other exotics do perform valuable functions in the urban area. However, they are also highly invasive in natural areas, short-lived, and susceptible to disease. Staff recommends that Norway Maples remain an unregulated species.</td>
<td>No change required.</td>
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<td>34</td>
<td>Councillor</td>
<td>October 29, 2008</td>
<td>It seems that rural “heritage” or “specimen” trees remain unprotected – they should have protection as they do in the City.</td>
<td>Agree that there is a slight gap in the by-law relating to heritage tree protection. To protect heritage trees, they must be identified. This will require that staff develop (through research and public consultation) criteria for identifying heritage trees. It may also involve compiling a list of heritage trees in Hamilton. Since this process is expected to take some time (at least one year), staff propose that this by-law proceed through the approval process without the heritage tree component, so that tree protection is in place and the by-law is not delayed. Staff will begin the process of identifying heritage trees later. This section will be added to the by-law when it is completed.</td>
<td>No change required at this time. Starting in 2010, staff will prepare criteria for identifying heritage trees. The by-law can then be revised to include additional protection for heritage trees when this process is complete.</td>
</tr>
<tr>
<td>35</td>
<td>Councillor</td>
<td>October 29, 2008</td>
<td>I would suggest that the City, utilities, etc only be exempted when there are emergency reasons for moving quickly; otherwise, they should be subject to the by-law like everyone else; too often we exempt ourselves from our own rules.</td>
<td>Generally, the City and utilities follow the requirements of the by-law. This exemption is standard. The exemptions for the municipality and electrical utility are mandated by statute – s. 135(12)(a) and (f) of the</td>
<td>No change required.</td>
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<td>36</td>
<td>Staff meeting</td>
<td>October 30, 2008</td>
<td>Is the by-law applicable law for building permits?</td>
<td>No, the by-law is not applicable law, and a building permit cannot be refused on the basis that the proposed building, construction, or demolition would contravene the by-law. However, the legal requirements of the by-law still have to be met. If trees are protected by means of a Tree Protection Plan that forms part of a site plan, then approval of the Tree Protection Plan would be applicable law.</td>
<td>No action required.</td>
</tr>
<tr>
<td>37</td>
<td>Staff meeting</td>
<td>October 30, 2008</td>
<td>What about trees that are causing problems with house structure or services – will people be allowed to remove these? Shouldn’t the City allow people to remove trees if they are impacting infrastructure?</td>
<td>These situations will be assessed individually. Enforcement officers will consider the homeowner’s circumstances when considering whether to issue a permit. A landowner can appeal a decision of the enforcement officer and Section 27 (b) and (c) allows consideration of</td>
<td>No change required.</td>
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<td>“unusual hardship of the owner” and “circumstances and facts raised by the evidence of the parties”.</td>
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<td>38</td>
<td>Staff meeting</td>
<td>October 30, 2008</td>
<td>Issue of trees growing on one person’s property and overhanging another neighbour’s. Landowner who owns tree does not want to prune it. Neighbour wants tree trimmed and landowner does not.</td>
<td>The by-law does not regulate this situation. This is a civil matter between the two neighbours.</td>
<td>No action required.</td>
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<td>39</td>
<td>Dundas Valley</td>
<td>October 31, 2008</td>
<td>We feel the 40 cm dbh should be decreased to 20 cm dbh. Other factors need to be taken into account, for instance, the total height of the tree in question.</td>
<td>Staff feels 20 cm is too small to regulate. It is too restrictive for landowners who wish to manage their trees and will require substantial increases to staff resources to process permits. Accordingly, 40 cm dbh standard should be retained.</td>
<td>No action required.</td>
</tr>
<tr>
<td>40</td>
<td>Dundas Valley</td>
<td>October 31, 2008</td>
<td>There are some native species that should require a permit regardless of diameter, for example, cucumber trees.</td>
<td>These native species are already protected through the new Endangered Species Act (2007), which requires that the Minister of Natural Resources issue a permit if any landowner proposes to remove a rare tree of any size. The City does not wish to duplicate this process. Also, Section 15(b) of the draft</td>
<td>No action required.</td>
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<td>41</td>
<td>Dundas Valley Tree Keepers</td>
<td>October 31, 2008</td>
<td>Under the list of exemptions, section 2c (ii), we would like the list expanded to include invasive trees, such as tree of heaven. As well, the species of poplar may need to be re-defined as some poplars are invasive and others are not – invasive hybrids should be exempt but not native species such as Bigtooth Aspen, Eastern Cottonwood and Trembling Aspen.</td>
<td>by-law allows the City to not issue a permit if a tree is a locally rare species. Staff believes rare trees are adequately protected through the Endangered Species Act, 2007 and the by-law.</td>
<td>Section 2(c) (ii) changed to remove willow and poplar species, and added Tree of Heaven (<em>Ailanthus altissima</em>) which is considered a problem invasive species in Hamilton.</td>
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<tr>
<td>42</td>
<td>Dundas Valley Tree Keepers</td>
<td>October 31, 2008</td>
<td>We want to see the creation of a “heritage trees” definition. The Dundas Tree by-law covers trees that have “individual significance” as well as those that “contribute to flood and erosion control” and includes a criterion for “general desirability” of the tree. Perhaps</td>
<td>Staff agrees that heritage trees are an important aspect of any tree by-law and should be protected. Originally, staff had hoped that the blanket regulation of 40 cm dbh trees in the urban area would protect</td>
<td>No change required at this time. Starting in 2010, staff will prepare criteria for identifying</td>
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<td>some or all of these elements can be incorporated into the draft by-law.</td>
<td>heritage trees. There are some gaps in the by-law application (i.e. rural heritage trees, urban trees that may be important to the community, but are less than 40 cm dbh). To resolve this, staff proposes to develop a list of specific heritage trees in the future. This list can be revised from time to time.</td>
<td>heritage trees and will revise the by-law to include additional protection for heritage trees when this process is complete.</td>
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<tr>
<td>43</td>
<td>Dundas Valley Tree Keepers</td>
<td>October 31, 2008</td>
<td>Expanding the definition of the “exemptions – not requiring a permit”. For example, if a septic tank needs to be installed, this could be exempted from the by-law. Also, under the same heading, 8(n), trees located 7 metres from an occupied building. We feel that this distance is quite large, especially given the small size of many front yards and suggest decreasing the length to 4 metres.</td>
<td>Staff does not consider this an issue, as septic tanks are mostly installed in the rural area, where individual trees are not regulated. Under Section 8(n), staff agree that 7 metres is too great a distance, especially given the smaller lot sizes that are inevitable as part of intensification targets in the urban area. Staff proposes reducing it to 3 metres from the edge of an occupied building.</td>
<td>Section 8(n) was revised to state: “the injuring or destruction of a tree with its trunk or trunks entirely located within 3 metres of the outer edge of an occupied building.”</td>
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<td>44</td>
<td>Dundas Valley</td>
<td>October 31, 2008</td>
<td>We are concerned about the dissemination of the new by-law. As it</td>
<td>Agree that there needs to be an education and awareness campaign to publicize</td>
<td>Staff to prepare an education and awareness strategy for the by-law.</td>
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<td>Tree Keepers</td>
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<td>stands now, some members of the Tree Keepers were not aware that the</td>
<td>the new by-law when it is enacted. This could consist of workshops, brochures,</td>
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<td>Dundas tree by-law existed and we are concerned that other residents will also</td>
<td>web site information, posters in public places, and media coverage.</td>
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<td>be uninformed about the new by-law, once it has been created.</td>
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<td>45</td>
<td>Anonymous</td>
<td>November 2, 2008</td>
<td>Section 2(c), the 40 cm diameter should be reduced to somewhere between 20-30 cm.</td>
<td>Staff feels 20 cm is too small to regulate. It is too restrictive for</td>
<td>No action required.</td>
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<td>landowners who wish to manage their trees and will require substantial increases to</td>
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<td>staff resources to process permits. The 40 cm dbh regulation is a reasonable</td>
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<td>balance of tree protection, landowner rights, and enforcement costs.</td>
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<td>46</td>
<td>Anonymous</td>
<td>November 2, 2008</td>
<td>Section 8(c), why are surveyors exempt?</td>
<td>This is a standard exemption in many tree cutting by-laws under the Municipal</td>
<td>No action required.</td>
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<td>Act. The exemption for surveyors is mandated by statute s. 135(12)(c) in order</td>
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<td>to allow them to complete a survey.</td>
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<tr>
<td>47</td>
<td>Anonymous</td>
<td>November 2, 2008</td>
<td>Section 8(j), ii, 2.5 cords per hectare is not very much wood. This amount should be increased.</td>
<td>The 2.5 bush cords per hectare limit for harvesting for your own use was derived from public consultation and follows Region of Halton’s by-law. It is intended to provide a limit on harvesting for own use, so that this provision cannot be abused. No one has provided a suggestion or justification for a larger amount of wood per hectare, so staff proposes no increase.</td>
<td>No action required.</td>
</tr>
<tr>
<td>48</td>
<td>Anonymous</td>
<td>November 2, 2008</td>
<td>Sections 13, 14, and 15, the word destruction in many places should be replaced with “harvest”. Destruction implies a little bias in the by-law.</td>
<td>The word ‘destruction’ is routinely used in tree cutting by-laws. ‘Harvest’ is not the most suitable word because not all trees are being used after they are cut. There is no intent of bias in the use of the word ‘destruction’. The authority under s. 135(1) of the Municipal Act, 2001 is “to prohibit or regulate the destruction or injuring of trees.”</td>
<td>No action required.</td>
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<td>49</td>
<td>Anonymous</td>
<td>November 2, 2008</td>
<td>Section 19(b), the Committee should have one or two woodland owners as sitting members.</td>
<td>This is a good suggestion and would improve the function of the Tree Permit Committee by providing representation of rural woodlot owners.</td>
<td>This section of the by-law has been revised to require one member of the three-person Tree Permit Committee to be a farmer.</td>
</tr>
<tr>
<td>50</td>
<td>Anonymous</td>
<td>November 2, 2008</td>
<td>The permit fee is too high and do we need a fee at all?</td>
<td>Permit fees are based on cost recovery for staff time needed to administer the by-law. They have been set as low as possible and reflect the different amounts of staff time needed to process permits.</td>
<td>No action required.</td>
</tr>
<tr>
<td>51</td>
<td>Staff person</td>
<td>November 3, 2008</td>
<td>Overall, I think the by-law captures the major points the Province was contemplating at the time I reviewed these types of by-laws (i.e. permit, reference to ANSIs, PSWs, fines, area of application).</td>
<td>N/A.</td>
<td>No action required.</td>
</tr>
<tr>
<td>52</td>
<td>Staff person</td>
<td>November 4, 2008</td>
<td>We would recommend restating the definition of a “landscape architect” as a person who is a full member in good standing with the Ontario Association of Landscape Architects.</td>
<td>Agreed.</td>
<td>Definition of a Landscape Architect changed to state, “in good standing”.</td>
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<td>53</td>
<td>Ward 11 Meeting</td>
<td>November 4, 2008</td>
<td>Are search warrants required for City enforcement staff to enter private property? Concerned about the power of staff.</td>
<td>No search warrants are required. If an enforcement officer receives a complaint and has reason to believe there is a violation, he may enter a property to investigate. Staff tries to contact the homeowner before they arrive. Section 436 of the Municipal Act, 2001 authorizes entry and is reflected in the draft by-law, as required, in ss. 37, 38, and 39.</td>
<td>No action required.</td>
</tr>
<tr>
<td>54</td>
<td>Ward 11 meeting</td>
<td>November 4, 2008</td>
<td>Concerned about permit fees – should not be charging them; they are too high.</td>
<td>Permit fees are based on cost recovery for staff time needed to administer the by-law. They have been set as low as possible and reflect the different amounts of staff time needed to process permits.</td>
<td>No action required.</td>
</tr>
<tr>
<td>55</td>
<td>Ward 11 Meeting</td>
<td>November 4, 2008</td>
<td>There should be some direction in the by-law that native trees should be used for replanting.</td>
<td>While staff agrees with this, Official Plan policies and the Tree Protection Guidelines already state that native species should be replanted wherever possible.</td>
<td>No action required.</td>
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<td>56</td>
<td>Rural Resident</td>
<td>November 25, 2008</td>
<td>Concerned about ability of landowners to manage their trees on their property. He has fruit trees and he wants to be able to remove Black Walnut which inhibit the growth of these trees. Landowners should have the ability to remove trees they have planted if they no longer desire the tree when it gets bigger. Cannot afford permit fees.</td>
<td>Staff has tried to balance tree protection with the landowner’s right to manage trees on their property. By setting the dbh for regulated trees at 40 cm, staff believes that this gives landowners an opportunity to manage trees on their property even when they are relatively mature. Permit fees have been kept as low as possible, but are set to recover costs for staff administration and enforcement.</td>
<td>No action required.</td>
</tr>
<tr>
<td>57</td>
<td>Hamilton-Halton Homebuilders Association (HHHBA)</td>
<td>December 15, 2008</td>
<td>Definition of Woodlands, Section 1(z) – Based on the definition of woodland, can it be deduced that if there were 675 trees with diameter of over 5 cm per hectare, of which there were less than 500 trees over 12 cm diameter and less than 250 trees over 20 cm diameter, that this would not constitute a woodland and the by-law would then only apply to single trees with a dbh of 40 cm or more.</td>
<td>This interpretation is not correct. The woodland definition applies to groups of trees (woodlands) with an area of 0.2 ha (urban) or 1.0 ha (rural). The densities and dbh measurements in the definition are derived from the Municipal Act, and are meant to be used as a general guideline for what constitutes a woodland. There is always variation in ecological systems. If the density does not exactly match the definition, but generally does, it would still be considered a woodland and would be</td>
<td>No action required.</td>
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<td>58</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>Exemptions not requiring permit – Section 8(a), “activities or matters undertaken by the City, a local board, or a Conservation Authority”. Understand that this is a private property by-law and that Section 1.0 of TPP refers to public land by-law for lands owned by City. Does public by-law also regulate boards and agencies?</td>
<td>No, the public by-law does not regulate boards and agencies.</td>
<td>No action required.</td>
</tr>
<tr>
<td>59</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>In Section 18, “where the planting of replacement trees is not possible on the land, the Manager may impose conditions on the permit requiring that: (a) replacement trees be planted on other suitable land.” Can we assume that the choice of lands would be through a negotiated process? (b) “an amount be paid equaling 120% of the cost of replanting and maintaining the trees for a period of two years”. What is the justification for 20% more than actual cost?</td>
<td>(a) Yes, the choice of lands for replanting would be through a negotiated process.</td>
<td>Section 18 was changed to remove requirement for 120% of the cost of replanting and replacement. It now requires compensation that is equal to the cost of replanting and maintenance for a period of 2 years.</td>
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<tr>
<td>60</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>Given that Planning development applications are exempt from requiring a permit and are regulated through the Planning approvals process as per conditions in a Tree Protection Plan, it is unclear how the by-law officer interfaces with the development process. This needs to be clarified as the by-law is directed more to the application issuance and enforcement of a tree cutting permit, which is separate from the development process.</td>
<td>The by-law officer would be responsible for processing permits for commercial forest harvests and removal of individual trees when there is not a Planning Act application (e.g. removal of a tree which is hazardous on private property). Where the owner has made a Planning Act application and wishes to remove trees, he/she would have to go through the Tree Protection Plan process outlined in the Tree Protection Guidelines. This process is outlined in the Sections 8(d) and 8(e). A staff person would review the Tree Protection Plans and would work with the enforcement officer as required (i.e. when there is a violation).</td>
<td>No change required.</td>
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<tr>
<td>61</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>Will any owner who wishes to cut down a tree on private lands be required to obtain a permit under the proposed by-law? If a permit is required, then Clause #9 on page 11 is contrary to Clause #2 on page 8. It appears in Clause #9 that the cutting of any tree requires a permit, therefore the criteria under Clause #2 is redundant.</td>
<td>No, not everyone who wishes to cut a tree is required to get a permit. The by-law only applies to trees which meet the criteria in Section 2. If they do not meet these criteria, then the by-law does not apply and no permit is required. Also, certain situations are exempt from the By-law (Section 8).</td>
<td>No change required.</td>
</tr>
<tr>
<td>62</td>
<td>Urban Resident</td>
<td></td>
<td>Worried that by-law would not allow him to remove a tree growing too close to his home.</td>
<td>Section 8(n) has an exemption for trees growing within 7 metres of an occupied building. This distance will be changed to 3 metres, to account for the trend toward smaller lots.</td>
<td>Section 8(n) was revised to state: “the injuring or destruction of a tree with its trunk or trunks entirely located within 3 metres of the outer edge of an occupied building.”</td>
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<tbody>
<tr>
<td>1</td>
<td>Hamilton-Halton</td>
<td>September 12, 2008</td>
<td>This policy conflicts with the principles of compact urban form.</td>
<td>There is recognition in the Guidelines that intensification is occurring and preservation of every tree may not be possible. Tree protection cannot be carried out in isolation of other planning considerations and objectives (such as compact urban communities, servicing, and grading). However, the Guidelines were developed because there is a need for improved preservation of existing trees on site. The Guidelines are meant to provide a clear process and to outline City expectations for Tree Protection Plans.</td>
<td>Staff has added a section on Page 8 of Appendix “B” which states that staff will assess tree preservation along with grading and servicing constraints.</td>
</tr>
<tr>
<td>2</td>
<td>HHHBA meeting</td>
<td>September 12, 2008</td>
<td>Are existing draft approved developments subject to this by-law?</td>
<td>No, developments which are draft approved are subject to the requirements of the by-laws which are in effect at the time of their approval.</td>
<td>No action required.</td>
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<td>3</td>
<td>Dundas Valley Tree Keepers</td>
<td>October 31, 2008</td>
<td>We suggest that new trees are required to be planted to replace all trees removed from the site to accommodate development.</td>
<td>The Tree Protection Guidelines require the developer to replace all trees of value regulated by the by-law with trees of equivalent dbh.</td>
<td>No action required.</td>
</tr>
<tr>
<td>4</td>
<td>Staff person</td>
<td>November 3, 2008</td>
<td>The Greenbelt Plan required vegetation protection zones (VPZ) to protect natural features. I wonder if the Tree Protection Plan could refer to VPZ for the rural areas, where the Greenbelt applies (i.e. no development is to occur within the VPZ of a significant woodland).</td>
<td>Staff agrees that development and site alteration should not occur within VPZs. However, the new Urban and Rural Official Plan policies require that no development or site alteration will be permitted within VPZs, so it does not seem necessary to duplicate this in the Guidelines.</td>
<td>No action required.</td>
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<tr>
<td>5</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>This by-law contradicts the intensification/infill development policies of the City. This policy will result in less dense development.</td>
<td>There is recognition in the Guidelines that intensification is occurring and preservation of every tree may not be possible. However, the Guidelines were developed because there is a need for improved preservation of existing trees on site. The Guidelines are meant to provide a clear process and to outline City expectations for Tree Protection Plans.</td>
<td>No action required.</td>
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<td>6</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>Need clarification about tree replacement. Do street trees count as tree replacement? The City needs to look at the net result overall at a particular development site.</td>
<td>No, street trees that are already required through the Site Plan Guidelines for streets and parks cannot be counted as compensation for private trees lost on site. These trees have to be planted as part of the current development process, so they cannot be considered compensation. If public plantings are deducted from compensation requirements, this would not be fair to landowners who have no regulated trees on site.</td>
<td>Clarified in the Guidelines that street and park trees cannot be included as compensation.</td>
</tr>
<tr>
<td>7</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>Section 2.2.1, Step 1- General Vegetation Inventory (GVI) – “The GVI will provide a description of the area proposed for development and the natural features on and adjacent to the site”. How far “adjacent” do they have to go? Concerned that there is duplication of information with the natural heritage policy for the urban Official Plan.</td>
<td>This will be clarified in the Guidelines to state “abutting natural features”.</td>
<td>Changed text to refer to abutting natural features.</td>
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<td>8</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>Section 2.2.2, Tree Protection Plan (TPP) – the section that required TPPs only for lots or blocks within draft plan where the GVI has identified retention on corner lots and interior lots greater than 40 foot frontage. This section would imply that TPPs are limited to certain blocks. This needs further clarification particularly in light of the statement at the top of page 9 that “the TPP is to consider all trees having a dbh of 10 cm or more that may be affected…”</td>
<td>The TPP is to consider all individual trees with a dbh of 40 cm or more. In woodlands 0.2 ha or more in size, all trees 10 cm or more dbh should be assessed if they are to be affected by the development. The 10 cm size does not correspond with the by-law, but the woodland size does, so any tree within that woodland can be assessed. To minimize the work required, only trees 10 cm dbh should be assessed. The section that requires a TPP only for larger and corner lots will be corrected, as TPPs are actually required for all areas on site where the GVI has identified trees of value to be retained.</td>
<td>Wording placed in Guidelines to clarify what size of trees should be assessed in the TPP. The section requiring TPPs only for larger and corner lots has been removed.</td>
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<tr>
<td>9</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>Step 3 – Implementation of TPP – Section 2.2.3 – Concerned about “tree management professionals must be on site with a copy of the approved TPP during critical stages of grading and construction”. This can</td>
<td>Agree that this requirement is not necessary, since the tree professional will be on site to confirm compliance with protective measures and filing the Verification letter and post grading maintenance report.</td>
<td>Removed the requirement for a tree management professional to be on site during grading and construction.</td>
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<td>be unnecessarily costly and can be delegated to the on site construction supervisor to ensure compliance.</td>
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<td>10</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>Tree Protection Fencing – Step 2 recognized the constraints of intensification/smaller lots on construction. Hoarding placed at the drip line is impractical, if not impossible in most cases, other than delineation of woodlands.</td>
<td>At sites where space is limited, City staff may consider smaller tree protection zones on a site specific basis. However, the general principle of properly protecting the trees to be retained by hoarding placed one metre from the drip line should remain in the Guidelines, to ensure a certain standard is achieved.</td>
<td>No change required.</td>
</tr>
<tr>
<td>11</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>Page 13 – We find it difficult to justify manual changing of grades within 3 metres of the tree protection zone. This would be costly and impractical. Recommend that a more reasonable distance from the trunk of the tree be stated to avoid damage to the trunk and compaction of roots nearer the trunk.</td>
<td>Staff agrees this may be impractical and will remove this requirement. As long as hoarding is in place within one metre of the tree drip line, then tree roots should be adequately protected.</td>
<td>Removed this requirement.</td>
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<td>12</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>Lands to be conveyed – “All lands to be conveyed to the City as Park, Open Space or Hazard Lands are to be free of any dead or hazardous trees, litter, dump sites, debris, etc.” We agree with this statement for lands which are required for dedication for parks and open space under the Planning Act. For lands dedicated over and above this requirement, developer should not be solely responsible for removal.</td>
<td>The City does not wish to incur any liability from unsafe conditions in natural areas to be conveyed.</td>
<td>No change was made.</td>
</tr>
<tr>
<td>13</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>Security deposits – “Twenty-five percent of the fee will be held for a three year maintenance period. We recommend that the hold back be 10% and that the time period be two years to be consistent with the maintenance provisions in the by-law, Section 18(a).</td>
<td>Staff agrees that the time period can be changed to 2 years to conform with the draft Private Hamilton Tree and Woodland Conservation By-law. This is a standard time period for other securities. For the amount of securities, staff has set the hold back at 25% because it needs to ensure that there are adequate</td>
<td>Time period to hold securities was changed to 2 years.</td>
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<td><strong>funds to replant any trees that die in two years. In the past, the City has found that mortality of trees has been high, so security hold-back was set at 25%.</strong></td>
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<td>14</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td><strong>2.2.4 – Step 4 – Landscape Plan – “To ensure an increase in tree cover, two trees must be planted for each tree removed”. We support the need to replace lost trees and to continue with the greening of our City. It is recommended that in this effort, the City recognize street trees and park and open space planting as part of the replacement numbers.</strong></td>
<td><strong>For public trees, there is a Council-approved formula that is used by the Forestry Department. It requires financial compensation for any public trees removed so Forestry can re-plant. The City may excuse the developer from payment if they provide equivalent caliper trees. Since these Guidelines apply to privately-owned land, the requirements would differ slightly.</strong> Generally, the City will require equivalent diameter at breast height (dbh) for trees lost. For example, if one tree with a dbh of 90 mm were cut, then the developer would have to replace with 2 trees with a caliper of 45 mm. There is Text in the Guidelines was changed to require equivalent dbh as compensation and to clarify options for replanting and cash-in-lieu.</td>
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<td>certainly room for flexibility, to accept cash-in-lieu for planting elsewhere, if a site cannot accommodate all of the replacement trees required. Intensifying planting in parks is another option. City staff will work with the development community to arrive at solutions. The City should not accept street planting or park planting as compensation for the loss of private trees. Developers, as part of Planning Act approval, currently have to plant trees in parks and along streets. While staff agrees that park and street trees add to the canopy cover of a neighbourhood, the purpose of the by-law and Guidelines is to ensure that private trees are protected, and if not, properly compensated. If the compensation were included in the public tree total, it would not be compensation over and above what developers are currently</td>
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<tr>
<td>15</td>
<td>HHHBA</td>
<td>December 15, 2008</td>
<td>What happens if the developer does all of the tree protection measures correctly and the tree still dies? Do they have to replace the tree?</td>
<td>If the tree dies within the time frame for securities (2 years), then it has to be replaced. After securities are released, it is assumed that the trees are established and if they die, it is because of other factors beyond the control of the developer.</td>
<td>No action required.</td>
</tr>
<tr>
<td>16</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>Will the Guidelines just be referenced in the Official Plan, but not form part of the Official Plan?</td>
<td>Yes, the Tree Protection Guidelines are simply referenced in the Official Plan.</td>
<td>No action required.</td>
</tr>
<tr>
<td>17</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>Who determines whether a General Vegetation Inventory is required in the absence of any Planning Act approvals?</td>
<td>The requirement for a GVI is only triggered when there is a Planning Act approval (i.e. an application for development). Otherwise, the tree cutting by-law permit process would be used.</td>
<td>No action required.</td>
</tr>
<tr>
<td>18</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>Given the wording of the tree by-law and guidelines, is it possible for an owner to cut down a tree without requiring either draft plan approval or a tree cutting permit?</td>
<td>Yes, this is possible. If a landowner meets any of the exemptions in Section 4 of the by-law, they would be able to cut a tree without a permit.</td>
<td>No action required.</td>
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<td>19</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>Who determines whether a General Vegetation Inventory is required in the absence of any Planning Act approvals?</td>
<td>A GVI is required at the time of application for a Planning Act approval. If a Planning Act application is not being made, then a permit under the tree cutting by-law is required. This is determined by the by-law enforcement officers, in consultation with Development Planning Division.</td>
<td>No action required.</td>
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<tr>
<td>20</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>How exactly is the additional step of requiring a General Vegetation Inventory (GVI) going to minimize time and cost? Is the City’s review of the GVI going to be given priority so that any major changes needed to an applicant’s draft plan are identified early?</td>
<td>The GVI will reduce time and cost because it will provide information on trees of value early in the process. By dealing with any potential conflicts with trees early on, the approval process should avoid costly and time-consuming delays. City staff will circulate the GVI as part of the regular circulation of the development application, so a response will be available during the same time frame.</td>
<td>No change required.</td>
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<td>21</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>There needs to be a clear timeframe for the City’s review and approval of these applications (i.e. 30 days from submission date).</td>
<td>City staff will circulate the GVI as part of the regular circulation of the development application, so a response will be available during the same time frame.</td>
<td>No change required.</td>
</tr>
<tr>
<td>22</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>Street trees and any tree planting within parks, open space areas, buffer blocks, and storm water management ponds should be included as a form of compensation.</td>
<td>The City should not accept street or park/open space planting as compensation because developers, as part of Planning Act approvals, are currently required to do these plantings in public areas. If the compensation were included in this total, it would not be compensation, as all developments, whether they have private trees regulated by the by-law or not, have to provide this. If private trees regulated by the by-law are removed, trees planted to compensate for their loss should be added to the total required as part of normal requirements.</td>
<td>No action required.</td>
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<td>23</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>Compensation needs to be more clearly defined, both in terms of how compensation fees are to be calculated, and what sort of planting could qualify as compensation.</td>
<td>Staff agrees that how compensation is calculated should be more clearly defined in the Guidelines. As for the types of plantings, this is already described in the “General Principles for Planting”.</td>
<td>More detail on how compensation is to be calculated was added.</td>
</tr>
<tr>
<td>24</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>The City should prepare a Tree Compensation Schedule identifying various fees that will be charged which should be updated annually. Section 35 of the by-law should be amended to include this compensation schedule as an item to be reviewed by Council from time to time.</td>
<td>Section 35 of the by-law already refers to “application, permit and other fees”, so staff does not feel it is necessary to specifically include compensation requirements.</td>
<td>No change required.</td>
</tr>
<tr>
<td>25</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>Security deposits required should be held for 2 years to be consistent with the by-law and not 3 years as presently indicated on page 14.</td>
<td>Agreed.</td>
<td>Time period to hold securities was changed to 2 years.</td>
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<td>26</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>On page 15 of the Guidelines, the second sentence should be revised, “In the event tree re-planting compensation is required, but is not possible on the subject property, the owner shall be permitted to re-plant trees on other lands of the owner, or other suitable lands based on the requirements of the by-law…”. By-law should also be revised accordingly.</td>
<td>Agree that the Guidelines could include the option of re-planting on other properties, as this is currently not included. It is not necessary to revise Section 18(a) of the tree cutting by-law, as the statement, “replacement trees be planted on other suitable land” is felt to capture this option.</td>
<td>Wording in Guidelines was changed to add the option of re-planting on other properties of the owner.</td>
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<tr>
<td>27</td>
<td>Landmart Homes</td>
<td>December 16, 2008</td>
<td>On page 5, 6th bullet point, there should be wording added to the end of this statement to the effect of “…in such areas as street boulevards, parks, open space areas, buffer blocks, stormwater management ponds, and within the lots themselves”.</td>
<td>This request again relates to including trees which are normally planted in public spaces as compensation. The City should not accept street or park/open space planting as compensation because developers, as part of Planning Act approvals, are already required to do this planting in public areas. If the compensation were included in this total, it would not be compensation, as all developments, whether they</td>
<td>No change required.</td>
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<td>have private trees regulated by the by-law or not, have to provide this. If private trees regulated by the by-law are removed, trees planted to compensate for their loss must be added to the total required as part of normal subdivision agreements.</td>
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## Education and Awareness Strategy Financial Cost Estimate

<table>
<thead>
<tr>
<th>Budget Item</th>
<th>Estimated Cost</th>
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<tbody>
<tr>
<td>Prepare and print brochure on the By-law</td>
<td>$700</td>
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<td>Educational Workshops (1-2 per year) with partners (Conservation Authorities, Ministry of Natural Resources)</td>
<td>$2,200</td>
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<tr>
<td>Prepare and print educational brochures on various topics (1 per year)</td>
<td>$700</td>
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<td>Meetings with Stakeholders</td>
<td>$600</td>
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<tr>
<td>Heritage Tree Nomination Program (printing, workshop)</td>
<td>$1,100</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$5,300</strong></td>
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