

A large, leafless tree stands in a grassy field under a cloudy sky. The tree has a thick trunk and many bare branches. In the background, there are other trees, a house, and power lines.

**393 Rymal Road West,
Hamilton, Ontario
Arborist Report**

**Client: Zest Communities Inc.
May 9th, 2023
HKLA Job# 2022-100**

PREPARED BY:

Henry Kortekaas & Associates Inc.

230 Westney Road S, Ajax, ON L1S 7J5 (905) 839-5599 info@hkla.ca

May 9th, 2023

Rob Baiocco
Zest Communities Inc.
393 Rymal Road
Hamilton, ON L9B 1V2



Re: 393 Rymal Road West - Arborist Report

HKA Ref No: 2023-010

Dear Brendan,

Henry Kortekaas and Associates was retained to provide the Arboricultural related consulting services and documentation for trees affected by the development project scheduled for 393 Rymal Road West in Hamilton, Ontario.

The purpose of this report is to provide the Tree Inventory Assessment and Preservation Plan (TAPP) (see Appendix C L-TP1) & Arborist Report.

We trust this documentation meets your needs. If you have any questions, please do not hesitate to contact us at (905) 839-5599.

Sincerely,

HENRY KORTEKAAS & ASSOCIATES INC.

Tyler Main, BLA, OALA, CSLA, ISA
President
Principal Landscape Architect
ISA Certified Arborist ON-2598A



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1. INTRODUCTION

HKLA was contacted by the LandxDevelopments advising that 393 Rymal Road West in Hamilton, Ontario is scheduled for development. A Tree Preservation Plan was identified to be completed through the Formal Consultation process.

HKLA was provided a copy of the Site Plan Prepared by SRM Architects + Urban Designers on May 8th, 2023. This has been overlaid on an aerial image. A survey base underlays the Tree Inventory drawing to accurately locate the trees.

Existing trees that conflict with the proposed development will be recommended for removal. All trees recommended for retention on the property will be protected by the City Hamilton approved Tree Protection Fencing, (see Appendix C, Drawing L-TP1).



Tree #1902B

2. MUNICIPAL TREE BYLAWS

We recommend that all trees scheduled to be retained are protected by the approved tree protection fencing placed at the distances specified. There are attached pre-amalgamation private tree by-laws in place for Ancaster and Dundas. Tree Protection By-Laws Number 2000-118 & 4513-99 (See Appendix E & F).

These By-Laws outline policies that prohibit the damage or destruction of trees.

3. STUDY PURPOSE

This project was undertaken to comply with the City of Hamilton policies regarding tree identification and protection of trees. The study objectives are:

1. To inventory the species and location of all significant trees 10 cm DBH or greater on the subject site. Each inventoried tree on site is given a number.
2. To record the size and condition of each tree.
3. To recommend which existing trees can be preserved within the proposed development.
4. To provide guidelines for the preservation and long-term health of these trees.

4. STUDY PROCESS

All specimens or tree groupings, 10 cm caliper or larger with the potential for preservation, (as dictated by the Survey and Site Plan) have been located.

5. SITE LOCATION

The site is located at 393 Rymal Road West, between Garth street and and Upper James street near the intersection of Garth street and Rymal Road in a gated community in Hamilton, Ontario.



6. INVENTORY

An inventory of the site vegetation was carried out on February 10th, 2023. From this inventory, specimen trees and tree groupings were tagged and identified. This data appears on the drawings 2023-010 L-TP1 (See Appendix C). There were no trees on, or adjacent to, the site rated as unique or endangered.

7. PRESERVATION ANALYSIS

In order to complete the new development in accordance with the proposed Site Plan, it will be necessary to remove one existing tree. This existing tree will conflict with potential grading and re-paving.

1.1. Size

Mature specimens add to the aesthetics of the site and maintain the mature vegetation character of the neighbourhood. Mature trees screen unwanted views, provide shade, block winds and improve the visual landscape of the area. Large trees, however, are less tolerant of change. Alteration of soil conditions will reduce the levels of air, water, and nutrients reaching the wide spread roots of mature specimens. Foundations and excavations for foundations will change water flow and cut root systems. The potential life span of a species in a 'fill or cut' situation or proposed new foundations must also be considered. There is less value in preserving a tree that is already at, or past its normal life expectancy and conflicts with the approved plan.



Tree #244

1.2. Condition

The health of a tree specimen is factored into that specimen's potential for preservation. A mature, desirable specimen will have a low preservation potential if it is in poor health. A tree's condition is determined visually based on branch structure and growth, trunk irregularities - such as cankers, broken limbs, wounds, heart rot and fungal growth, twig and foliage growth, and root restrictions, limb entanglement with utilities, etc.

1.3. Landscape Function/Location

The relative "landscape" importance of a specimen on this or any site is also dependent on its function. Trees that perform a desirable function - wind break, shade, visual screen, or spatial divides between sites are rated as having medium to high value. Site boundary trees are particularly important to the surrounding landscape and have the highest potential for preservation.

1.3.1. Size

The size of a landscape plant is expressed by the dimensions of its above ground parts. It is typically expressed by trunk diameter, in this case taken at 1.37 meters (rounded to 1.40 meters) known as Diameter at Breast Height (DBH).

1.3.2. Contributing Rating

Functional and aesthetic contributions influence its value in most settings. Benefits may be affected by; plant size, shape, branch structure, foliage density and distribution. Plants contribute to the site by screening, privacy control, creating wildlife habitat opportunities, or energy saving qualities, among others.

High densities of trees lowers individual contribution. For example, if one (1) tree was removed from a windbreak (i.e., *Picea abies*, Norway Spruce), the benefit of the windbreak would remain.

1.3.3. Placement

The placement rating of the plant being appraised determines how effective it is in providing functional and aesthetic attributes. For example: the placement of a deciduous tree to provide summer shade and winter sun for a patio is critical. Placement is eventually important for wind breaks, snow deposition, erosion control and dust reduction. Placement is also important for an aesthetic view point when a plant can provide a landscape focus, frame a view or accent a building.

1.3.4. Location Factor

Location factor is determined as follows:

$$(\text{Site} + \text{Contribution} + \text{placement})/3 = \text{location rating}$$



Tree #248



Trees #246



Tree #1850D

8. SCOPE OF WORK

1. Visually inspect all trees regulated under City of Hamilton By laws and assess their condition;
 - b. Determine if they are suitable for preservation based upon the proposed development activity.
3. Provide recommendations for tree preservation as per the proposed site plan.
4. Determine if proposed construction will adversely affect the health of such trees.

9. TREE IDENTIFICATION & LOCATION CRITERIA

See Tree Inventory and Preservation Plan (L-TP1) for tree location and species identification, condition and recommendations.

The following chart is reflected on the tree preservation drawing. It demonstrates the identification and classification practices, and is separated by 9 criteria:

DBH (mm)	Diameter at breast height. Nominally 1.4m and measured in millimetres.
SP (m)	Spread. The average diameter of canopy coverage, measured in metres.
HT (m)	Height. The nominal height of the tree, measured in metres.
TI	Trunk Integrity. An indication of the structural integrity and general health of the tree. Measured as (G)ood, (F)air or (P)oor.
CS	Crown Structure. Correlated with tree condition/health. Measured as (G)ood, (F)air or (P)oor.
CV	Crown Vigour. General correlation with tree condition/health. Measured as (G)ood, (F)air or (P)oor.
CDB (%)	Crown Die Back. Measured as the percent of branch tips in the crown that are dead, as a percentage.
SPP	Species Potential. An experiential estimation of the suitability of the tree species compared to the existing/proposed site conditions. Measures as (H)igh (M)edium or (L)ow.
SIP	Site Potential. An experiential estimation of the tree's suitability compared to the existing/proposed site conditions. Measured as (H)igh, (M)edium or (L)ow.

Recommendation and Notes: A recommendation based on the noted criteria and design information to the site suitability of the tree.

10. RECOMMENDATIONS

10.1 With the proposed work, there are thirty-nine (39) trees/tree groupings recommended for removal. These include tags: #1850, #1849, #1848, #1847, #1846, #1845, #1850B, #1856, #1855, #1850C, #1854, #241, #240, #1853, #1850D, #243, #242F, #242E, #242G, #242D, #242C, #242B, #242, #245B, #245, #244, #244C, #243B, #244B, #248, #249, #249B, #249C, #249D, #249E, #249F, #249G, #249H and #249I.

10.2 We recommend that all trees scheduled to be retained are protected by City of Hamilton approved tree protection fencing placed at the distances specified. City of Hamilton By-laws and the attached City of Hamilton Tree Protection Guidelines (See Appendix D).

10.3 The remaining thirty-one (31) tree/tree groupings are recommended to be retained and protected. These include tags: #1902, #1902B, #1902C, #246, #246B, #246C, #246D, #246E, #247, #247B, #247C, #247D, #247E, #247F, #247G, #249J, #249K, #249L, #249M, #249N, #249, #250, #250B, #250C, #250D, #250E, #250F, #250G, #250H, #250I and #250J.

10.4. If grading works do occur within the tree protection zone, precaution and best practices are to be followed to limit damage done to the tree and its root systems.

If excavation is to occur in the root area of the tree, it is recommended that it is done by hand and all exposed roots are to be cut cleanly with disinfected blades by hand or pruning saw by the contractor. Once trimmed, exposed root ends are to be back filled with clean fill to prevent desiccation.

No soil compaction or storage of construction materials is to take place within the TPZ. If machinery needs to be used within the TPZ, it is recommended that plywood be placed over a layer of mulch (100mm thick minimum), to limit compaction. These mitigations are to be removed upon completion of work within the TPZ.

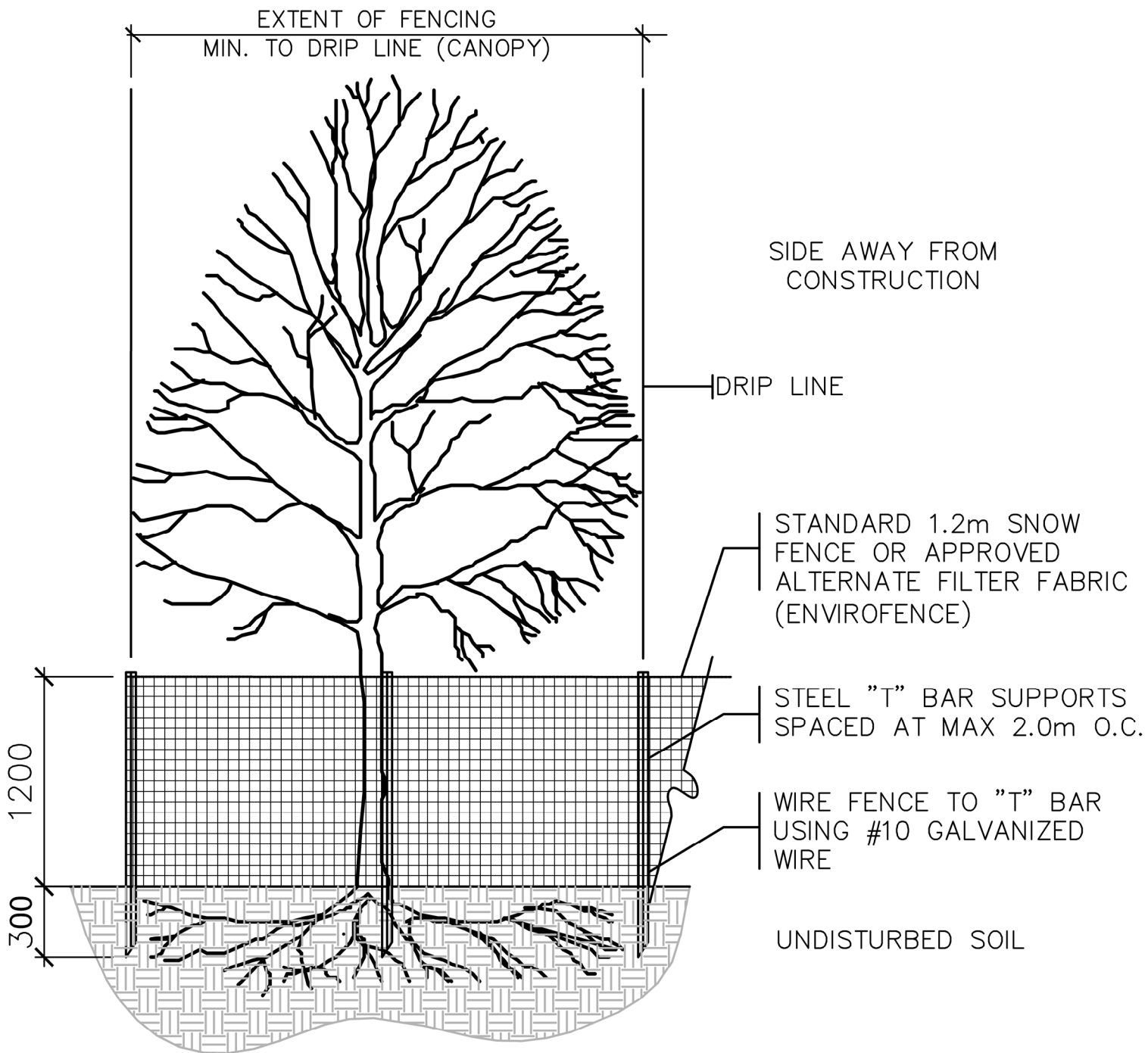
Any damage that occurs to the tree including broken limbs, roots or wounds inflicted to the trunk are to be reported to the consulting Arborist immediately.

APPENDIX A - DISCLAIMER / LIMITATIONS

Appendix A: Disclaimer/Limitations

1. Data has been verified insofar as possible; however Henry Kortekaas & Associates Inc. can neither guarantee nor be responsible for the accuracy of information provided by others.
2. Unless otherwise required by law, possession of this report or a copy thereof does not imply right of publication or use for any purpose in whole or in part by any other than the person to whom it is addressed, without the prior expressly written or verbal consent of Henry Kortekaas & Associates Inc.
3. Excerpts or alterations to this report, without the authorization of Henry Kortekaas & Associates Inc. invalidates its intent and/or implied conclusions. This report may not be used for any expressed purpose other than its intended purpose and alteration of any part of this report invalidates the report.
4. Unless expressed otherwise: 1) information contained in the report covers only those items that were examined and reflect the condition of those items at the time of inspection; and 2) the inspection was made using accepted arboricultural techniques and is limited to visual examination of accessible items without climbing, dissection, probing or coring, and detailed root examination involving excavation. Weather conditions such as thick snow cover will limit the potential for basal examination and further site visits may be required. While reasonable efforts have been made to assess trees outlined in this report, there is no warranty or guarantee, expressed or implied, that problems or deficiencies with the tree(s) or any part(s) of them may not arise in future. All trees should be inspected and reassessed periodically.
5. The determination of ownership of any subject tree(s) is the responsibility of the owner and any civil or common-law issues, which may exist between property owners with respects to trees, must be resolved by the owner. A recommendation to remove or maintain tree(s) does not grant authority to encroach in any manner onto adjacent private properties.
6. The scope of work undertaken in this report, with the noted site observations and resultant conclusion, was based on existing site conditions and the proposed schematic site development layout as referenced in the EIS.

APPENDIX B - STANDARD TREE PROTECTION FENCE

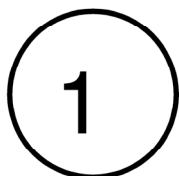


THE AREA WITHIN THE PROTECTIVE FENCING SHALL REMAIN UNDISTURBED AND SHALL NOT BE USED FOR THE STORAGE OF BUILDING MATERIALS OR EQUIPMENT.

THE CONTRACTOR SHALL TAKE EVERY PRECAUTION TO PREVENT DAMAGE TO TREES AND SHALL REPLACE ANY DEAD OR DAMAGED AT HIS EXPENSE TO APPROVAL OF LANDSCAPE ARCHITECT.

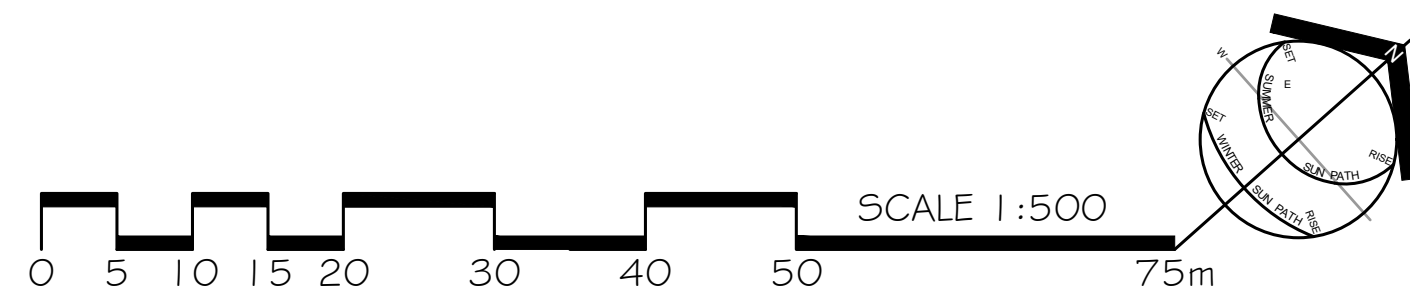
NOTES:

1. TREE PROTECTION SHALL REMAIN UNTIL THE SEEDING OR SODDING PHASE OF THE PROJECT IS STARTED, AND THEN REMOVED.
2. FENCING TO BE LOCATED AND STAKED BY LANDSCAPE ARCHITECT PRIOR TO CONSTRUCTION.
3. ALL MEASUREMENTS ARE IN MM UNLESS STATED OTHERWISE.



TREE PROTECTION FENCE SNOW FENCE WITH T-BARS

**APPENDIX C - TREE INVENTORY AND PRESERVATION PLAN
(2023-010 L-TP1)**



***NOTE:** BASED ON THE CITY'S COUNCIL ADOPTED TREE PROTECTION GUIDELINES (REVISED OCTOBER 2010), THE TREE MANAGEMENT PROFESSIONAL (I.E., CERTIFIED ARBORIST, REGISTERED PROFESSIONAL FORESTER, OR LANDSCAPE ARCHITECT) IS TO PREPARE A VERIFICATION OF TREE PROTECTION LETTER TO THE SATISFACTION OF THE DIRECTOR OF PLANNING. THIS IS TO ENSURE THAT ALL TREE PROTECTION MEASURES HAVE BEEN IMPLEMENTED. THIS CORRESPONDENCE IS TO BE PROVIDED PRIOR TO ANY ON-SITE WORKS.

***NOTE:** ALL VEGETATION TO BE REMOVED BETWEEN SEPT. 1 AND MARCH 30 TO AVOID THE BREEDING SEASON (MARCH 31 TO AUGUST 31)

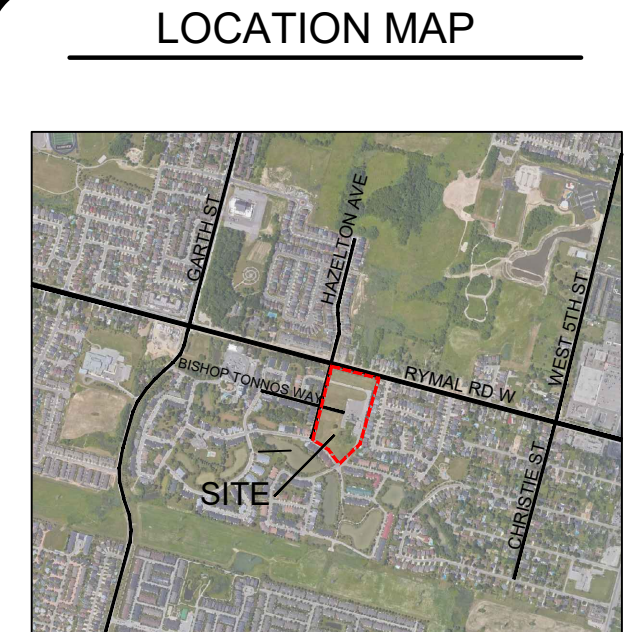
***NOTE:** TO ENSURE THAT EXISTING COVER IS MAINTAINED, THE CITY REQUIRES 1 FOR 1 COMPENSATION FOR ANY TREE (10 CM DBH OR GREATER) THAT IS PROPOSED TO BE REMOVED. A MINIMUM REQUIREMENT OF 67 NEW TREES ARE REQUIRED TO BE PROPOSED ON SITE.

- LEGEND**
- TREES TO BE REMOVED
 - TREES TO BE RETAINED
 - TREES PROTECTION FENCE

TEMPORARY TREE PROTECTION FENCING (POST SECTION AND ELEVATION, NTS)

CITY OF HAMILTON TREE PROTECTION FENCING

323133.99-87 N.T.S.



GENERAL NOTES

THE LOCATION OF PROPERTY LINES, ELEVATIONS AND FACILITIES ON THIS PLAN WERE DRAWN ON THE BASIS OF A DIGITAL SITE PLAN OR SURVEY DATA PROVIDED BY OTHER CONSULTANTS.

IT IS THE RESPONSIBILITY OF THE CLIENT AND HIS CONTRACTORS TO CONFIRM THE ACCURACY OF THE SETBACKS, LOCATIONS AND GRADES ETC. ANY VARIATIONS BETWEEN EXISTING CONDITIONS AND THIS PLAN SHOULD BE ADVISED ON SITE AND REPORTED TO THE CONSULTING LANDSCAPE ARCHITECT TO DETERMINE THE IMPACT OF THE VARIATIONS ON THE SUITABILITY OF THE PROPOSED DEVELOPMENT.

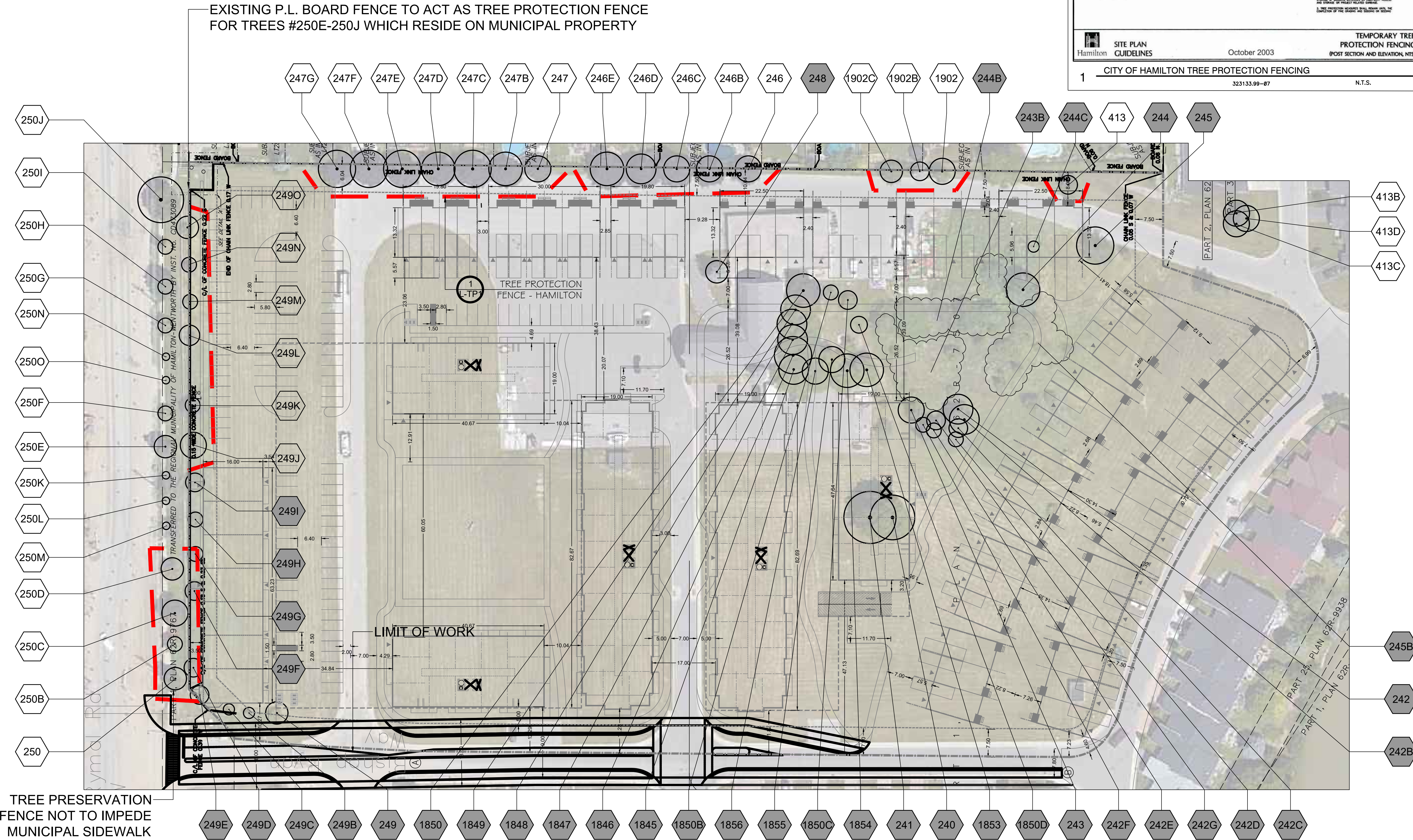
CONSTRUCTION MUST CONFORM TO ALL CODES AND REQUIREMENTS OF AUTHORITIES HAVING JURISDICTION.

REVISIONS

NO.	DATE	NOTES	KL	BY
1	2023-02-17	TIPP		

THESE LANDSCAPE DRAWINGS SHALL ONLY BE USED FOR THE PURPOSES INDICATED BELOW AS NOTED AND WHEN SIGNED BY THE CONSULTING LANDSCAPE ARCHITECT.

CONCEPTUAL	TENDER
PRELIMINARY	CONTRACT
SITE PLAN	CONSTRUCTION
PERMIT	AS-BUILT



TREE PRESERVATION FENCE NOT TO IMPEDE MUNICIPAL SIDEWALK

SPA FILE #
393 RYMAL ROAD WEST
HAMILTON, ON L9B 1V2

TREE PRESERVATION PLAN

DRAWN BY: KL SCALE: 1:500
CHECKED BY: TJM DATE: 2023-02-14
JOB NO.: 2023-010

L-TP1
DRAWING
1 of 2

File #2023-010

Landscape Architects & Consulting Arborists
230 Westney Road S Unit 308, Ajax, ON L1S 7J5
O (905) 858-5599 | Email: info@kla.ca | Web: www.kla.ca

THESE DRAWINGS ARE INSTRUMENTS OF SERVICE AND THE LANDSCAPE ARCHITECT RETAINS OWNERSHIP OF THESE DRAWINGS. THEY ARE FOR SITE PLAN APPROVAL ONLY AND MAY REQUIRE FURTHER CONSTRUCTION DETAILING AND COORDINATION WITH OTHER ASSOCIATED PROFESSIONAL DESIGN SERVICES BEFORE ACTUAL TENDER AND CONSTRUCTION COMMENCES. DIMENSIONS ARE TO BE VERIFIED PRIOR TO CONSTRUCTION. DRAWINGS ARE NOT TO BE SCALED. IT IS ADVISED THAT CONTRACTORS CONTACT THE LANDSCAPE ARCHITECT PRIOR TO CONSTRUCTION TO ENSURE THE USE OF THE LATEST REVISED DRAWINGS. THE LANDSCAPE ARCHITECT IS NOT LIABLE FOR ERRORS OR OMISSIONS ARISING FROM UTILIZATION OF THESE PLANS BEFORE THE SAID DRAWINGS ARE SCALED, SIGNED AND DATED, AND THE LANDSCAPE ARCHITECT IS CONTRACTED TO PROVIDE CONSTRUCTION ADMINISTRATION AND CERTIFICATION SERVICES BY THE OWNER. ALL APPARENT DISCREPANCIES ARE TO BE REPORTED IN WRITING TO THE LANDSCAPE ARCHITECT BEFORE CONSTRUCTION COMMENCES.

APPENDIX D - CITY OF HAMILTON - TREE PROTECTION GUIDELINES



Hamilton

City of Hamilton

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

Revised October 2010

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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.

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 ensuring that that City's natural heritage resources are protected. 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.

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. As well, some areas of the City of Hamilton have existing tree cutting by-laws in effect which regulate the removal of trees on private property (Ancaster, Dundas, Stoney Creek, and the Region of Hamilton-Wentworth). 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 along with engineering and grading information to guide the layout 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.

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 applicant has the option of submitting the full TPP at the time of application, eliminating the need to prepare and submit a GVI. The City may accept this approach, as it provides detailed information on trees early in the development review process and allows grading and servicing plans to reflect tree protection requirements. However, if the TPP is submitted at the time of application, it should be understood that, despite the amount of work already completed by the applicant, it is still possible that the City will request changes to the site layout. At the time of formal consultation, City staff and the applicant would discuss using this approach to determine if it is feasible for that particular site.

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 (or Tree Protection Plan if this approach is agreed to during formal consultation) is used to guide the layout 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 them early in the process and in conjunction with 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.

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.

Also, with new urban intensification targets, there may not be sufficient space at some development sites to permit saving all trees. 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.

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.

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 and requisite fee have been 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 must identify the following using diagrams and text:

- 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.

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.

The applicant also has the option of proceeding directly to this step and eliminating the need for a GVI if this approach is agreed to at the Formal Consultation stage. In this case, the applicant would submit the TPP at the time of application.

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.

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 and the requisite fee to the Director of Planning. The TPP 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:

- Individual trees or trees in woodlands having a dbh of 10 cm or more; 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 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

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.

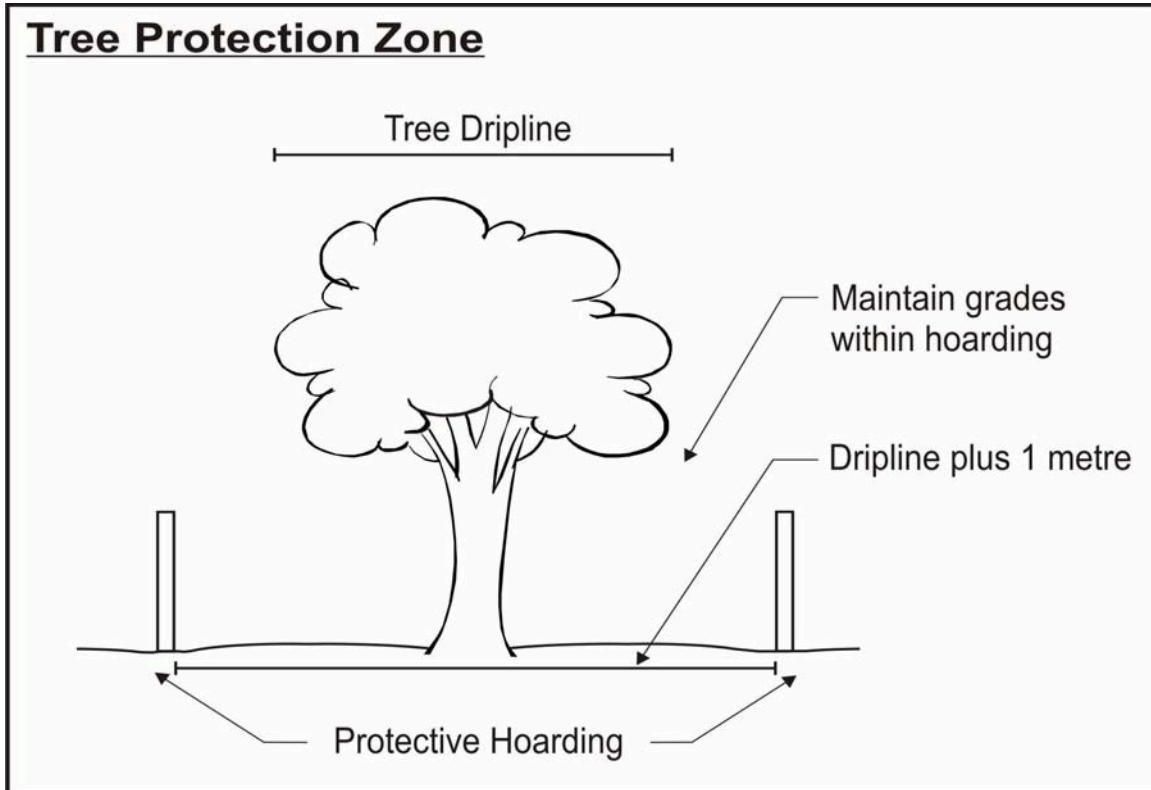
Where existing tree cutting by-laws are in effect, the City Forest Conservation By-law Officer may also check the site during the construction period.

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.

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 protection 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 City staff. 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

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.

Compensation

To ensure existing tree cover is maintained, the City requires 1 for 1 compensation for any trees to be removed.

If it is not possible to replant trees on site (i.e. no space), Cash-in-lieu will be provided to the City to plant trees elsewhere.

Where compensation planting is required, credit will be given for street trees planted, as required under a Subdivision Agreement.

General Principles for Planting

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 in the Official Plan) 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. During Formal Consultation, City staff will discuss with the applicant whether a GVI or a full TPP will be required when the Planning Act application is submitted. If a GVI is required, proceed to Step 2. If a TPP is required, proceed to Step 5.
2. 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 one hard copy and one digital (pdf) copy of the GVI and the requisite fee to the Planning Department with their application.** The tree management professional should contact the City's Planning and Economic Development Department before undertaking a GVI. Staff will clarify what is required and may have background information on the site to provide.
3. City staff will conduct a site visit, if required.
4. 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 Planning Committee. The applicant will be informed **whether a Tree Preservation Plan (TPP) (detailed information) is required.**
5. If a TPP is required, one hard copy and a digital (pdf) copy of the TPP and the requisite fee 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.
6. Once the TPP is approved by the City, the tree protection areas must be identified on all grading plans and servicing drawings to ensure co-ordination between tree protection and site development.
7. 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.
8. 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.

9. To implement the approved TPP through the subdivision or development agreement, **securities will be deposited.**
10. A **Post-Grading Tree Maintenance Report** must be prepared by the tree management professional before the tree protection security deposit is released.
11. If trees are to be planted 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 technical information in these reports should be considered, along with engineering and grading when designing the layout of the site.
- 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.

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 $m^2/ha.$; 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.

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 an individual tree or 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.

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.

Hoarding:

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:

A treed community with 35 to 60% cover of coniferous or deciduous trees.

6.0 References

City of Kitchener. Feb. 2002. Tree Management Policy - Council Policy Resolution. 38 pgs.

City of London. 2005. Tree Preservation Policy.

City of Mississauga. 2002. Tree Protection Measures (diagram).

City of Ottawa. Tree Protection Guidelines. 2 pgs.

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

City of Surrey, B.C. 1997. Developer's Guideline to the Tree Preservation By-law. 4 pgs.

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

City of Toronto. June 2002. "Tree Protection Policy and Specifications for Construction near Trees". Urban Forestry Services. 8 pgs.

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

City of Waterloo. "Protective Measures for trees during Construction". 6 pgs.

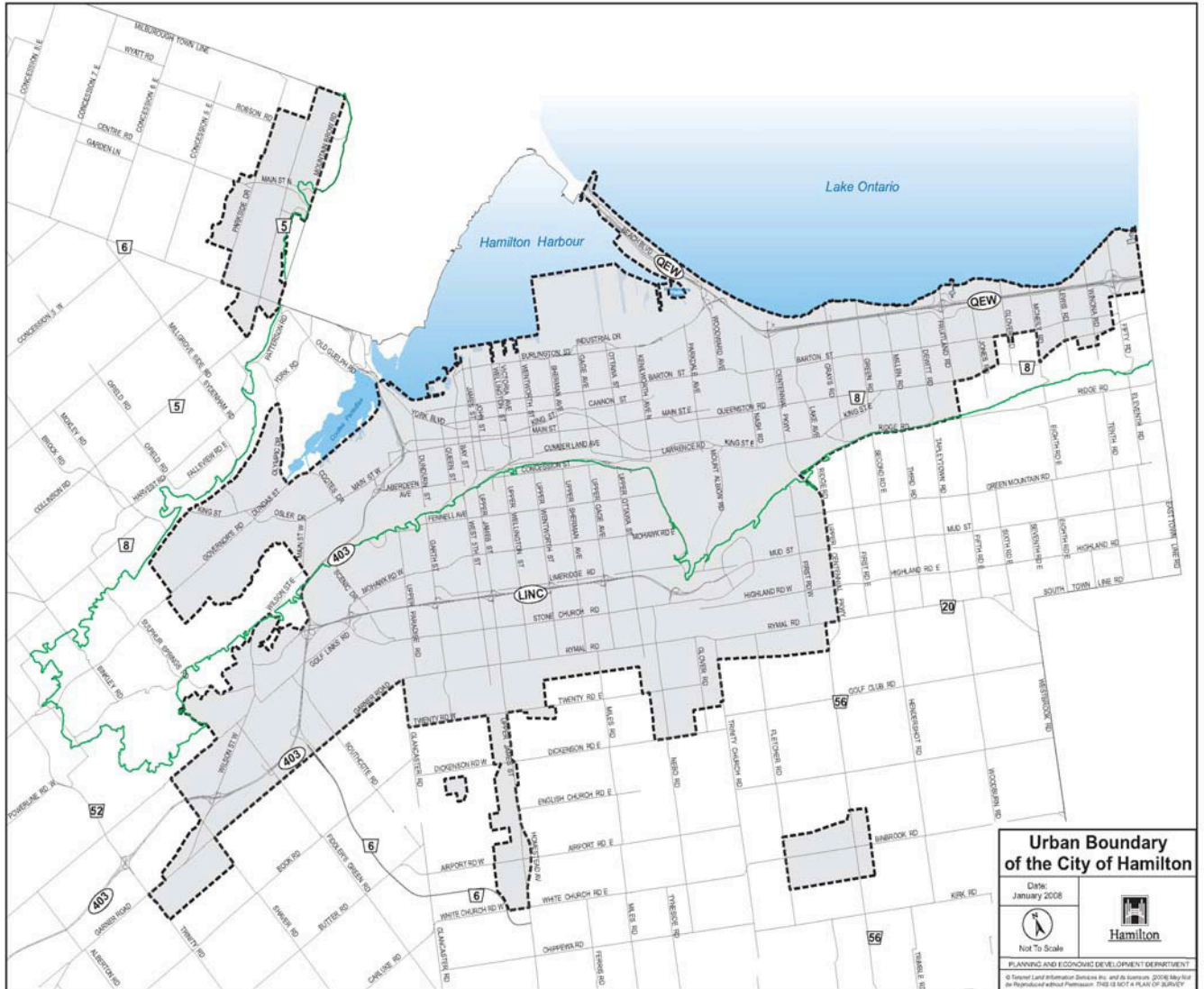
OMNR. 2000. A Silvicultural Guide to Managing Southern Ontario Forests. Version 1.1 Ont. Min. Nat. Resources. Queen's Printer for Ontario, Toronto, 648 pgs.

Matheny, Nelda and James R. Clark, Trees and Development, A Technical Guide to Preservation of Trees During Land Development, 1998, International Society of Arboriculture, ISBN 1-881956-20-2.

The Corporation of the City of Cambridge, Tree Management Policies and Guidelines for New Developments, (April 1999)

Town of Newmarket. Tree Preservation, Protection, Replacement, and Enhancement Policy. 8 pgs. Appendix "B" to Report PD02229(c) (Page 23 of 28)

Appendix 1: Map of Hamilton's Urban Boundary



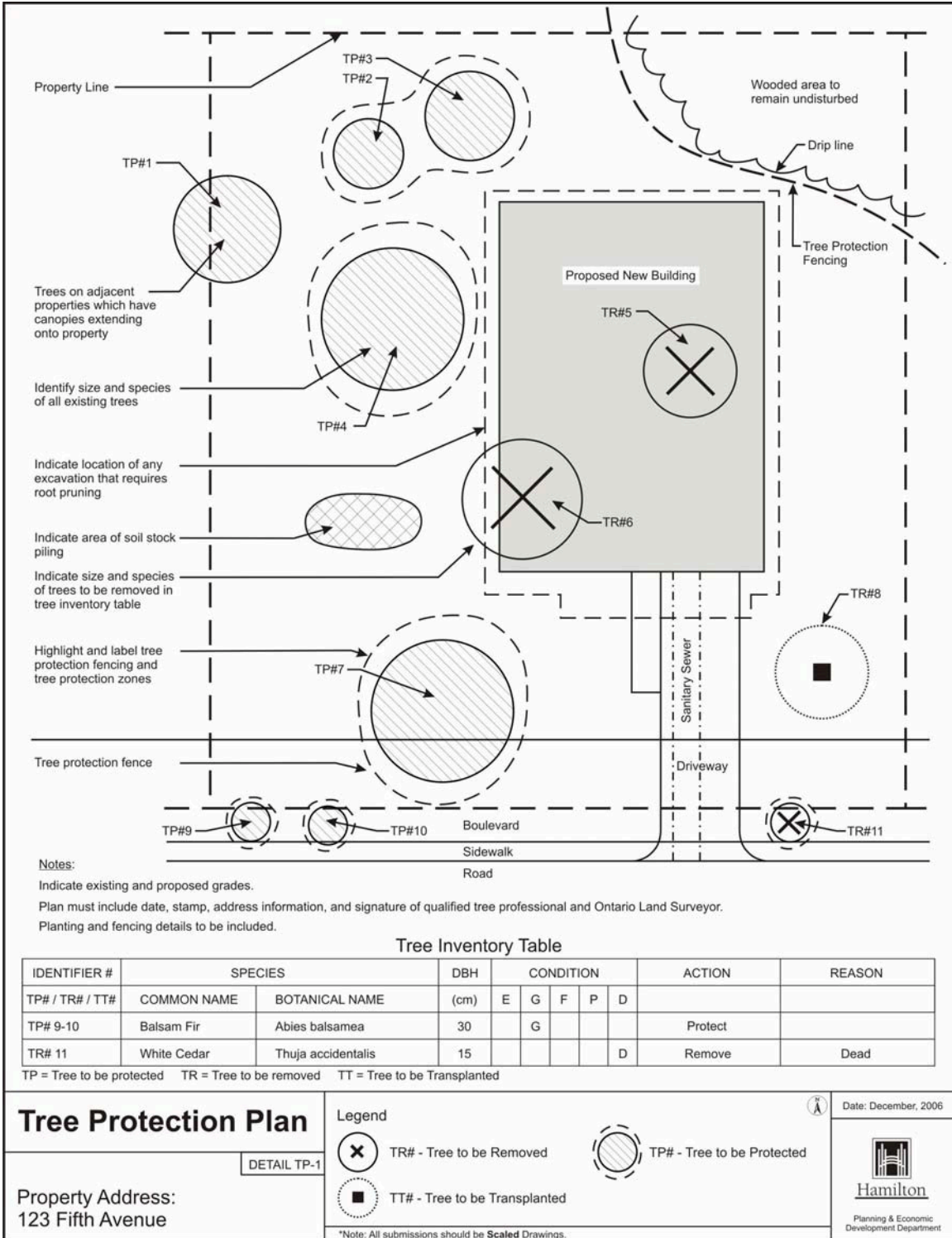
Appendix 2:

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

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

Consultant: _____
 Address: _____
 Telephone: _____
 Fax #: _____
 E-Mail: _____
 Date of Inventory: _____

Appendix 3: Sample Tree Protection Plan Map



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)
Hammamelis 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 (Continued):

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)

APPENDIX E - DUNDAS TREE PROTECTION BY-LAW 4513-99

THE CORPORATION OF THE TOWN OF DUNDAS

BY-LAW NO. 4513-99

**A BY-LAW OF THE CORPORATION OF THE
TOWN OF DUNDAS, BEING A BY-LAW TO
PROHIBIT OR REGULATE THE INJURY OR DESTRUCTION
OF TREES IN AREAS OF THE TOWN OF DUNDAS.**

WHEREAS Section 223.2 of the Municipal Act authorizes local Councils, having a population over 10,000, to pass by-laws affecting private land for prohibiting or regulating the injuring or destruction of trees or any class of trees specified in the by-law in any defined area or on any class of land; requiring that a permit be obtained for the injuring or destruction of trees specified in the by-law; prescribing fees for the permit; and prescribing circumstances under which a permit may be issued;

AND WHEREAS the Town of Dundas has a Tree By-law to regulate trees on public land;

AND WHEREAS the Town of Dundas recognizes the importance of trees in contributing to the attractive character and wellbeing of the community;

AND WHEREAS the Town of Dundas wishes to protect trees on sites (1) where there is development potential for new buildings, (2) in the Cross-Melville Heritage District, (3) on private lands zoned for open space purposes, and (4) on lands that are environmentally significant, these areas are considered the areas of most importance in retaining the attractive character and the wellbeing of the community;

NOW THEREFORE THE CORPORATION OF THE TOWN OF
DUNDAS ENACTS AS FOLLOWS:

1. TITLE

This By-law may be known as the “Tree Protection By-law”.

2. DEFINITIONS

“Corner Lot” means a lot abutting a street on more than one adjacent side.

“Council” means the Council of the Town of Dundas or successor authority.

“Front Yard” means a yard extending across the full width of a lot between the front lot line and the nearest wall of any principal building or structure on the lot.

Where there is no principal building, the front yard shall be the area between the front lot line and the front yard setback required in the comprehensive Zoning By-law No. 3581-86.

“Officer” means the Director of Planning and Building or delegate.

“Private Land” means any land which is not owned or leased by a public body or agency.

“Pruning” means trimming minor branches to encourage healthy tree growth either through removing deadwood or surplus branches, in order to assist the natural form of the tree in accordance with good arboricultural practice. Cutting to specifically create more space or light is not part of pruning.

“Rear Yard” means a yard extending the full width of a lot between the rear lot line and the principal building. Where there is no principal building the rear yard shall be the area between the rear lot line and the rear lot line setback required in the comprehensive Zoning By-law No. 3581-86.

“Side Yard” means a yard extending from the front yard to the rear yard between the lot line and the principal building. Where there is no principal building the side yard shall be the area between the side lot line and the side yard setback required in the comprehensive Zoning By-law No. 3581-86.

“Tree” means any species of woody plant which has reached or can reach 5 metres high at maturity. Tree refers to an individual tree or group of trees.

3. APPLICATION OF BY-LAW

- (a) The affected land is limited to private land (1) shown on Schedules A, B, C, D, F, G, H, I, J, L, M, N, P, Q, T corresponding to the schedules in the comprehensive Zoning By-law No. 3581-86; (2) in the front yard and side yard of any lot and also within 6 metres of the road right of way in a rear yard on a corner lot in the Cross-Melville Heritage District; (3) zoned open space in the comprehensive Zoning By-law No. 3581-86; and (4) designated environmentally significant area by the Region of Hamilton-Wentworth or successor authority except areas covered by the Niagara Escarpment Commission Development Control Area.

- (b) The By-law is limited to trees with a minimum diameter of 0.15 metres (except in the Cross-Melville Heritage District where the minimum diameter is 0.1 metres) at 0.3 metres above the ground with more than 50% of the trunk diameter on private land.
- (c) The By-law is limited to lands which are not subject of a site plan agreement under the Planning Act, not subject to a subdivision agreement under the Planning Act or not subject to other written agreement which covers tree preservation.
- (d) Pruning of trees in accordance with good arboricultural practice in order to maintain the health and safety of the tree is permitted without a permit.
- (e) Trees overhanging onto private land whether they be on public land or on an abutting private property area specifically included under the control of this By-law.
- (f) Public bodies are exempt from this by-law.

4. GENERAL REGULATIONS

- (a) Applications for a permit shall be made by the owner to the Department of Planning and Building stating the number of trees shown on a layout plan, how they are to be affected and the reason for the application.

- (b) No person or corporation shall injure or destroy a tree or cause the injury or destruction of a tree without a permit issued by the officer appointed under this By-law in areas affected by this By-law.
- (c) A permit shall be obtained from an officer following the submission of an application form and review by the officer. Council shall review the application if the Officer intends to refuse permission or if the Officer seeks a Council decision.
- (d) A permit shall be issued where a tree or part of a tree is dangerous, hazardous, dying or dead.
- (e) A permit may or may not be issued based on the following criteria:
 - the rarity of the tree species,
 - the health and safety of the tree,
 - the individual significance of the tree,
 - the contribution to the visual character of the area,
 - the contribution to flood and erosion control,
 - the general desirability of retaining the tree,
 - the replacement plans for the tree,
 - the reasons contained in the application.

- (f) A permit shall not be issued where a healthy, safe tree is proposed to be injured or destroyed to make way for development proposals prior to planning approvals or prior to the execution of site plan or subdivision agreements where applicable on sites in Schedules A, B, C, D, F, G, H, I, J, L, M, N, P, Q, and T attached and forming part of this By-law.

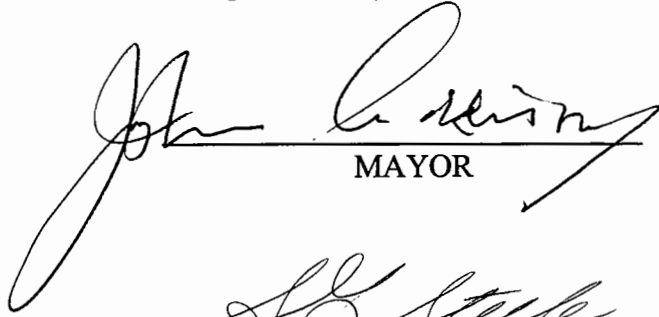
5. CONDITIONS


Conditions may be added to the permit including replacement of the tree or part of a tree based on the equivalent value of the proposed injury or destruction of the tree.

6. OFFENCE

Any person or corporation that contravenes or causes contravention of the provisions of this By-law is guilty of an offence and is liable upon conviction to fines up to the maximum specified in the Municipal Act, for the first offence a maximum of \$10,000 and for subsequent offences a maximum of \$20,000.

Read a First, Second and Third time and PASSED this Eighteenth day of October, 1999.

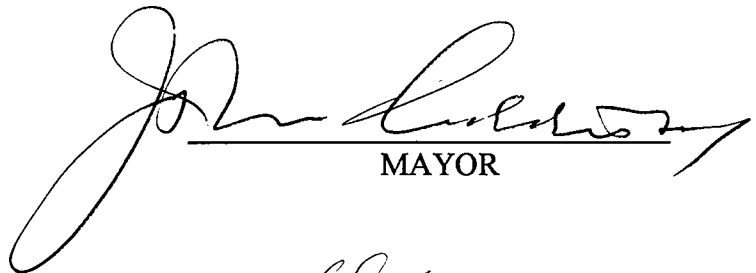

MAYOR


CLERK

**THESE ARE SCHEDULES A, B, C, D, F, G, H, I, J,
L, M, N, P, Q AND T OF BY-LAW NO. 4513-99**

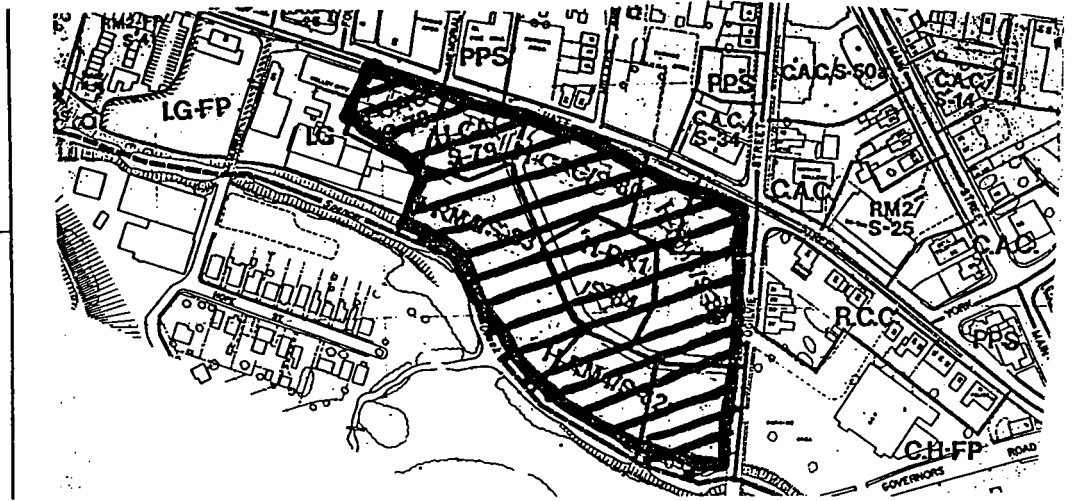
Cross hatching on the Schedules indicates potential development sites which are affected by this By-law.

Dated this Eighteenth day of October, 1999.

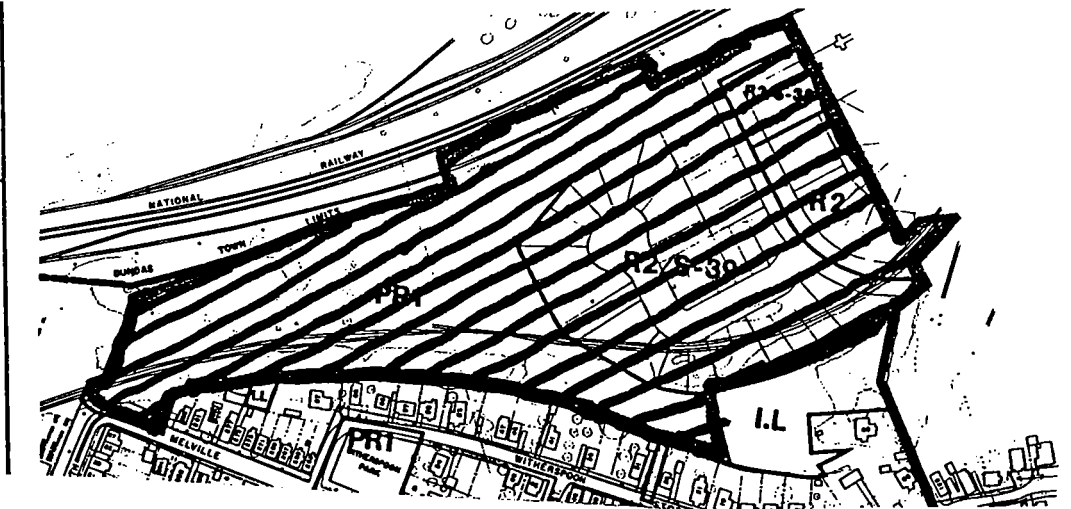

MAYOR


CLERK

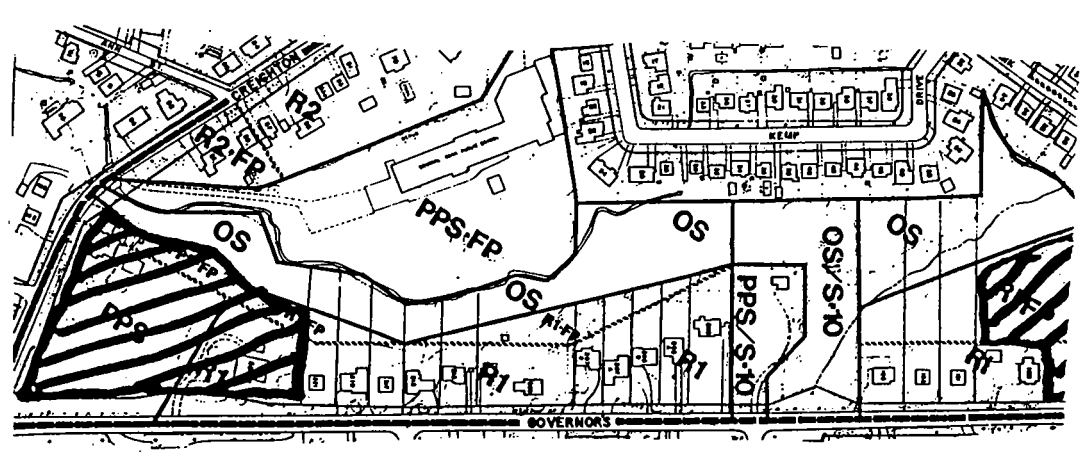
SCHEDULE A
TOWN OF DUNDAS
**CENTRAL BUSINESS
DISTRICT**



SCHEDULE B
TOWN OF DUNDAS
COLBORNE



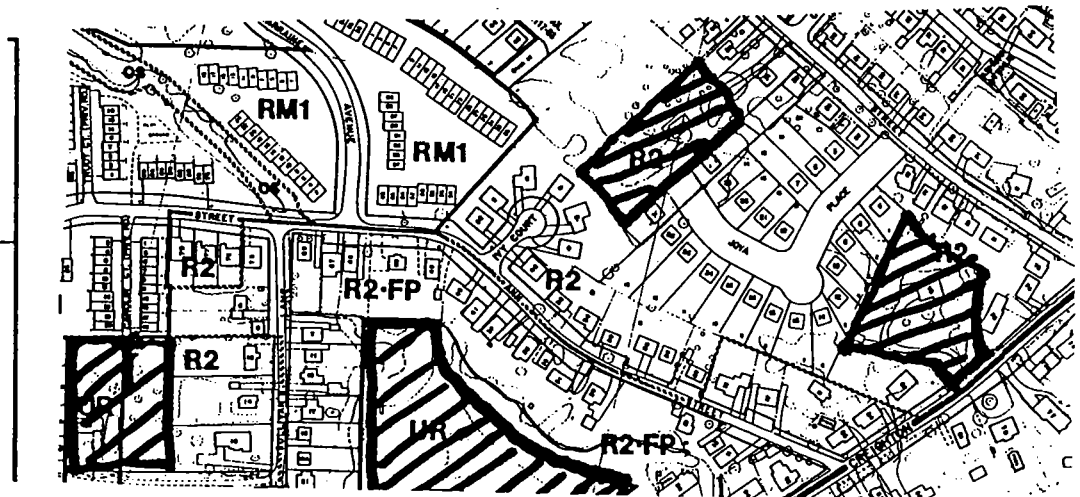
SCHEDULE C
TOWN OF DUNDAS
CREIGHTON EAST



SCHEDULE D

TOWN OF DUNDAS

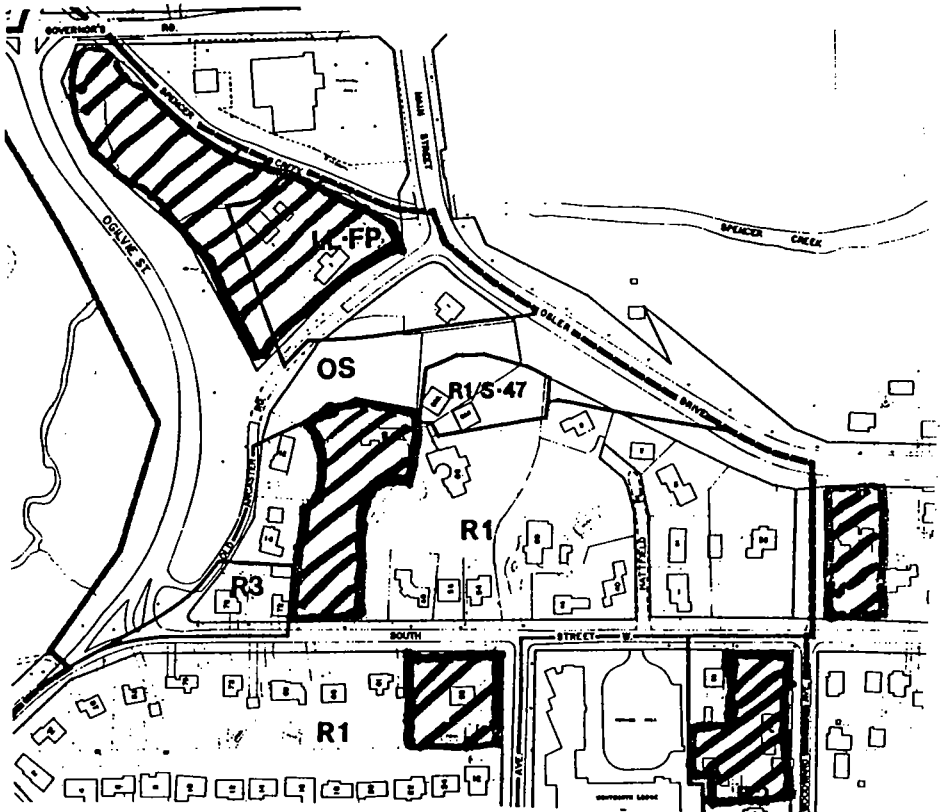
CREIGHTON WEST



SCHEDULE F

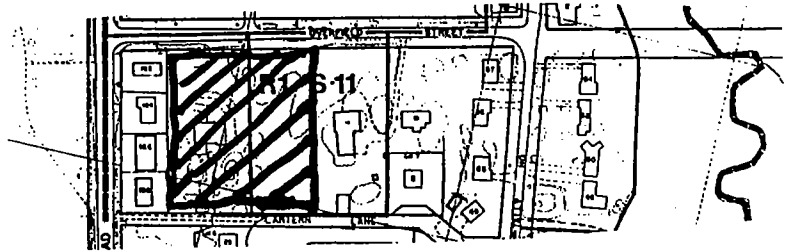
TOWN OF DUNDAS

DUNDANA WEST



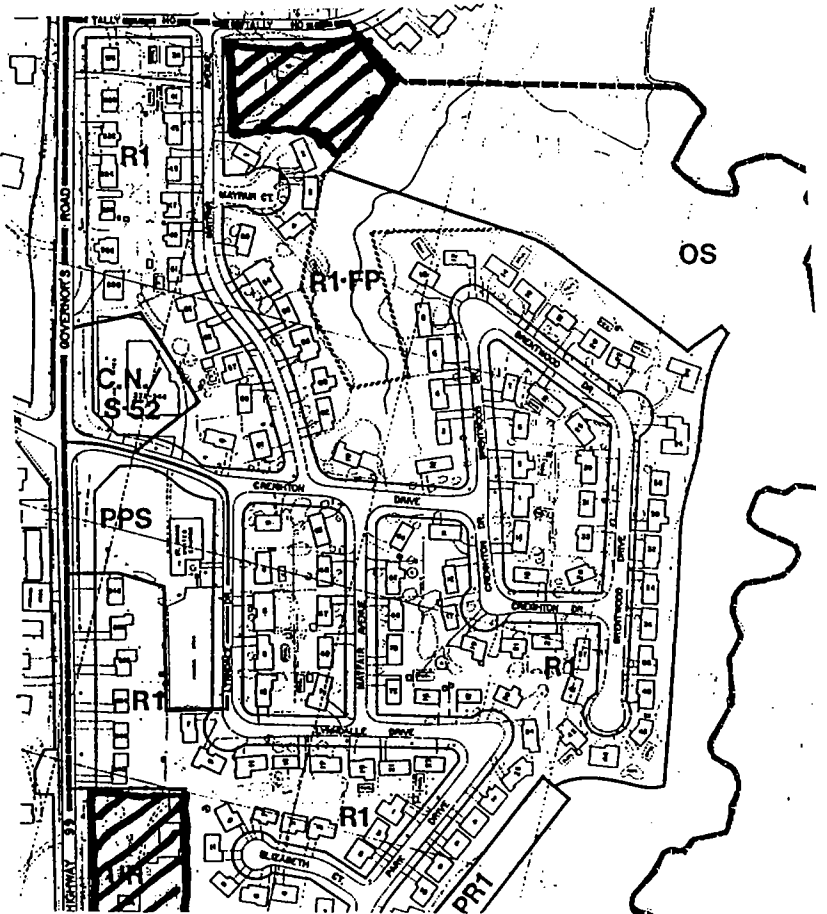
SCHEDULE G

TOWN OF DUNDAS
HIGHLAND HILLS
EAST



SCHEDULE H

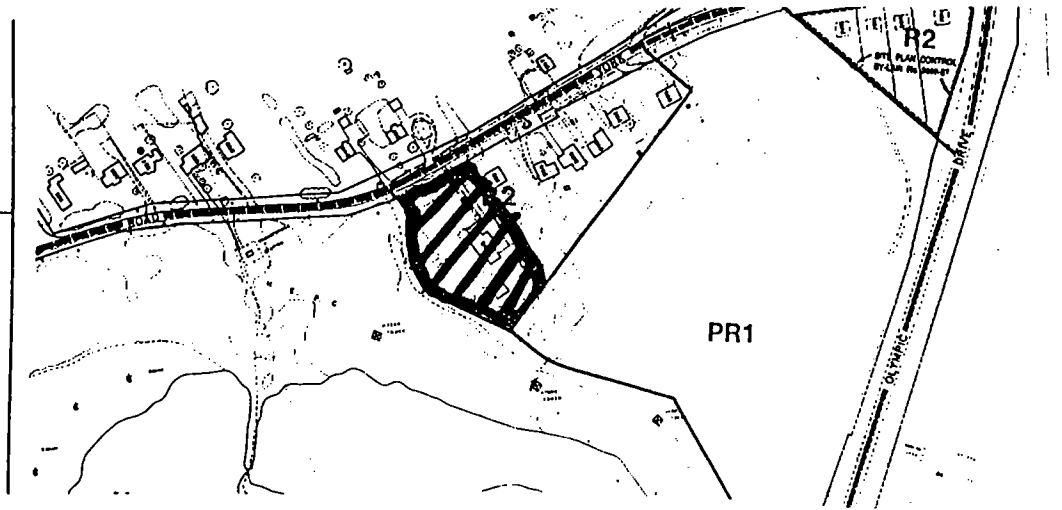
TOWN OF DUNDAS
HIGHLAND HILLS
WEST



SCHEDULE I

TOWN OF DUNDAS

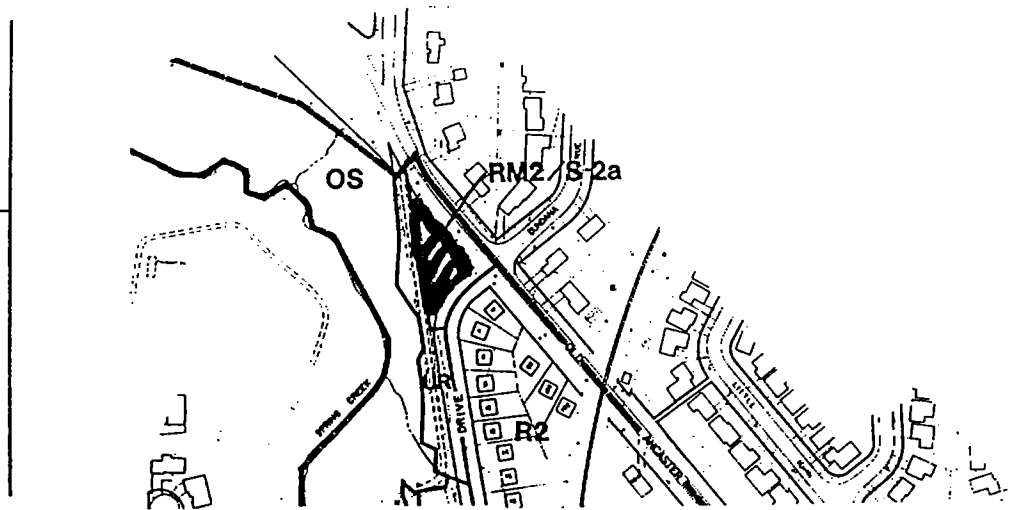
HUNTER



SCHEDULE J

TOWN OF DUNDAS

**PLEASANT VALLEY
EAST**



SCHEDULE L

TOWN OF DUNDAS

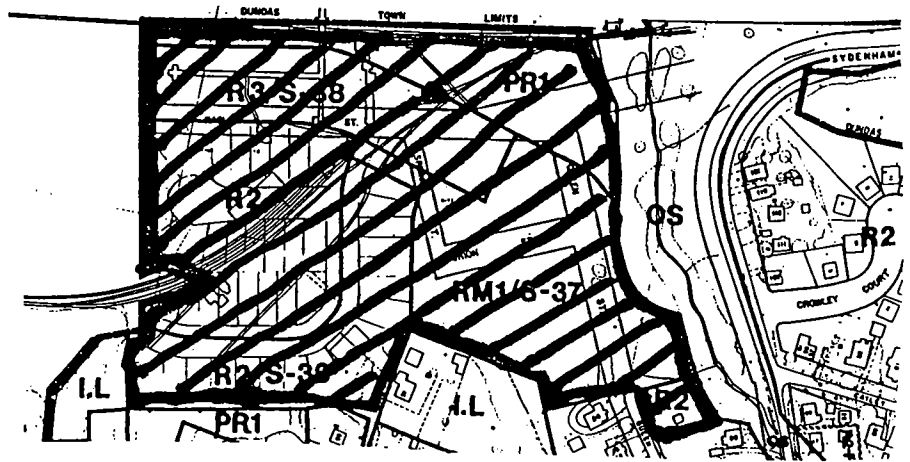
SPENCER CREEK



SCHEDULE M

TOWN OF DUNDAS

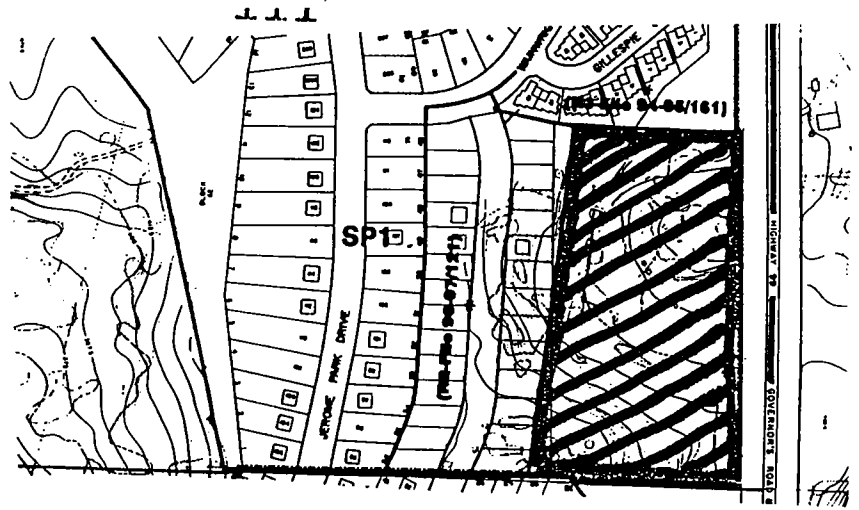
SYDENHAM



SCHEDULE N

TOWN OF DUNDAS

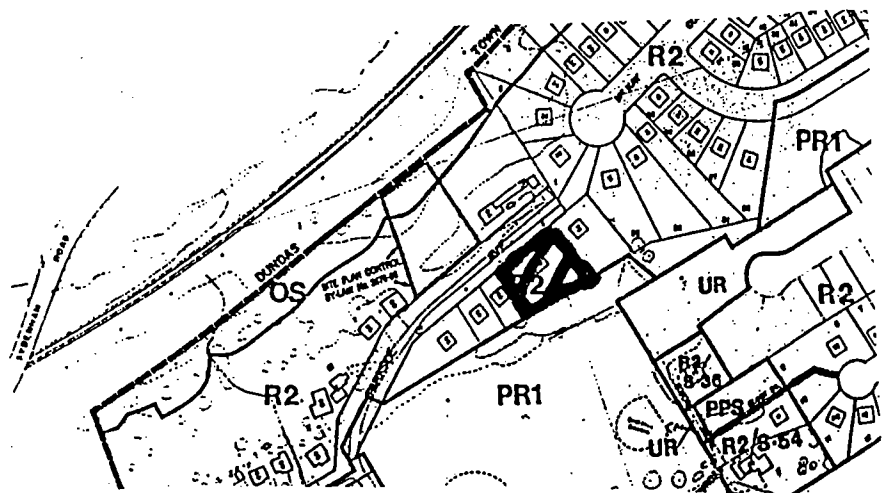
TURNBULL



SCHEDULE P

TOWN OF DUNDAS

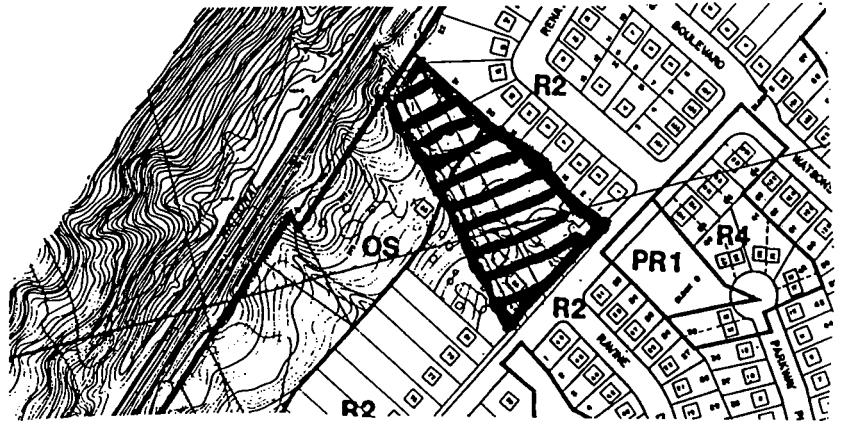
YORK HEIGHTS



SCHEDULE Q

TOWN OF DUNDAS

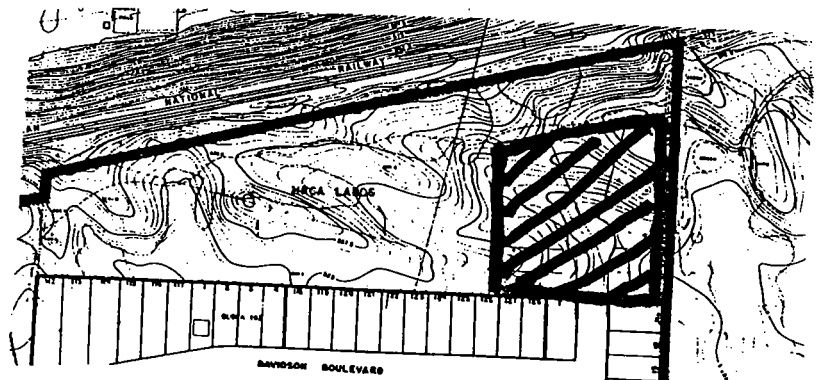
YORK ROAD



SCHEDULE T

TOWN OF DUNDAS

MORDEN



Explanatory Note

Trees and woodlands perform many valuable environmental functions:

- purify the air and counter the greenhouse effect
- moderate temperature by acting as air conditioners
- provide shade and windbreak
- provide noise buffering and visual screening
- stabilize the ground and control the water
- provide wildlife habitat and sustenance
- create aesthetic and recreational benefit
- provide wood, fruit, nuts, syrup and oils.

The purpose of the By-law is to protect trees on private land particularly where the wellbeing and the character of community is most threatened. The areas included are (1) proposed development sites without protection through an agreement with the Town, (2) Open Space Zones as defined in the Zoning By-law, (3) Environmentally Significant Areas as defined by the Region of Hamilton-Wentworth, and (4) the front, side and flankage rear yards in the Cross-Melville Heritage District.

The By-law requires a permit to injure or destroy trees in the affected areas although pruning for the health of the tree is exempt from requiring a permit. It requires an application for a permit and provides criteria for issuing permits.

Convictions under the current Municipal Act have a maximum fine of \$10,000 for the first offence and \$20,000 for a subsequent offence.

P.D. Report #99-66

Authority: Item 13, Public Works, Infrastructure
and Environment Committee
Report 06-010 (PW06034a)
CM: June 14, 2006

Bill No. 151

CITY OF HAMILTON

BY-LAW NO. 06-151

To Regulate the Planting, Maintenance, and Preservation of Trees on or Affecting Public Property

WHEREAS Council deems it in the public interest to protect Hamilton's tree assets on Public Property to preserve the quality of life and environment for the present and future inhabitants, and to ensure that any necessary tree removal is considered in advance and carried out under conditions as may be imposed;

AND WHEREAS *the Municipal Act S.O. 2001, Chapter 25* as amended, Sections 2 and 8 through 11, allows that Council may provide necessary and desirable services, manage and preserve public assets, foster environmental well-being, and exercise specific and general powers to act, and to regulate and prohibit the acts of others;

AND WHEREAS the City, pursuant to Section 135 of *the Municipal Act S.O. 2001, Chapter 25* may by by-law prohibit or regulate the injuring or destruction of trees;

AND WHEREAS the City, pursuant to Section 141 of *the Municipal Act* may provide trees to the owners of land adjacent to any highway;

AND WHEREAS the City, pursuant to Section 62(1) of *the Municipal Act* may, at any reasonable time, enter upon land lying along any of its highways to inspect trees and conduct tests on trees; and to remove decayed, damaged, or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the highway;

AND WHEREAS the City, pursuant to Section 62(2) of *the Municipal Act* may remove a decayed, damaged or dangerous tree or branch of a tree immediately without notice to the owner of the land upon which the tree is located, if in the opinion of the Employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the highway;

AND WHEREAS *the City of Hamilton Act, 1999, S.O. 1999, Chapter 14, Schedule C* did incorporate, as of January 1st 2001, the municipality known as the "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to the following former area municipalities, namely: The Corporation of the Town of Ancaster; The Corporation of the Town of Dundas; the Corporation of the Town of Flamborough; The Township of Glanbrook; The Corporation of the City of Hamilton; and the Corporation of the City of

Stoney Creek, and to the Regional Municipality of Hamilton-Wentworth, all hereinafter referred to as the "former municipalities";

AND WHEREAS *the City of Hamilton Act, 1999*, provides that the By-laws of the former municipalities continue in force and effect 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 and Application

1(1) In this By-law:

- (a) "City" as the context requires, means the municipal corporation "City of Hamilton" or the geographical limits of the municipality;
- (b) "Contractor" means a person engaged to perform a specific activity or service, on or at a particular land or premises;
- (c) "Council" means the Council for the City of Hamilton and includes its successor;
- (d) "Destroy" in relation to a tree includes any action which causes or results in the death of the tree, not limited to but including the acts of cutting, burning or knocking over the tree, and "destruction" shall have a corresponding meaning;
- (e) "Diameter at Breast Height or "DBH" means the diameter, including the bark, of the trunk of a tree measured at the lower of (a) a point 1.3 meters (4 feet and 3 inches) above the ground in an undisturbed state at the base of the tree, (b) in the case where the main trunk of the tree splits below the point in (a) the point of measurement shall be at the point on the tree trunk where the trunk separates, or (c) at the top of the stump of the tree where the tree has been cut down and all that remains of the stump is below the point in (a);
- (f) "Director" means the Director of Operations and Maintenance for the City and includes the Director's designate or successor;
- (g) "Drip Line" means the outer boundary of an area on the surface of the ground directly below and which corresponds with the outer edge of the crown of the tree;
- (h) "Emergency Work" means any work carried out by the City, a public utility service, or other authority and its contractors, whether above and below ground level, which is work necessary in an emergency situation for maintenance, or to restore or ensure service is maintained, and specifically includes the following whether as a repair, upgrade, or new installation, and without limiting the generality of the foregoing: utility

work, storm or accident damage repairs, road work, storm sewer and sanitary sewer work;

- (i) "Employee" means all employees, servants, and agents of the City of Hamilton or contractors hired by the City of Hamilton;
- (j) "Forestry and Horticulture Section" means the Forestry and Horticulture Section of the Operations and Maintenance Division within the Public Works Department of the City of Hamilton and includes its successor;
- (k) "Forestry Management Plan" refers to all City of Hamilton policies and procedures governing forest health, tree maintenance, planting requirements, activities affecting public trees, and includes the policies attached to this By-law as schedules;
- (l) "Good Arboricultural Practice" shall be a reference to the guidelines and practices relating to proper tree maintenance and care, as defined and published by the ISA (International Society of Arboriculture);
- (m) "Highway" means a common and public highway under the jurisdiction of the City of Hamilton, and includes any bridge, trestle, viaduct or other structure forming part of a highway, and includes any portion of a highway to the full width thereof;
- (n) "Improper Pruning" means trimming a tree so as to cause irreversible damage in a manner contrary to Good Arboricultural Practices;
- (o) "Injure" includes any act or treatment which causes irreversible damage to a tree and includes, but is not limited to the acts of changing grades around trees so as to affect further growth or health of the tree by exposing roots or burying the trunk or branches, compacting soil over root areas so as to prevent sufficient absorption by the tree of water, severing or damaging roots, the improper application of chemicals, improper pruning or the removal of bark and "injuring" and "injury" shall have corresponding meanings;
- (p) "Municipal Law Enforcement Officer" means a person appointed as such under this or any by-law of the City;
- (q) "Naturalized Area" means an area that has been set aside by the City of Hamilton for the undisturbed growth of any tree species where the desired effect is that of natural growth, and for the purposes of this By-law the term will include municipal woodlots and woodlands;
- (r) "Officer" means any person designated by the Director to carry out duties, issue orders or take actions under this By-law, and the term includes the Director;

- (s) "Operations and Maintenance Division" refers to the Operations and Maintenance Division of the Public Works Department of the City of Hamilton and includes its successor;
- (t) "Pest" means any organism, including but not limited to such things as insects or diseases whether viral, fungal, or bacterial, which directly or indirectly cause irreversible damage to the long-term health, vitality, longevity, and integrity of a tree;
- (u) "Planning and Economic Development Department" refers to the Planning and Economic Development Department for the City of Hamilton and includes its successor;
- (v) "Private Property" means land other than public property, and includes those public unassumed alleys which have been occupied or fenced by a person other than the City;
- (w) "Private Tree" means any tree which has greater than fifty (50) per cent of its trunk diameter measured at ground level on private property;
- (x) "Pruning" means the cutting away of parts of a tree for reasons including but not limited to: safety concerns; maintenance of legislated clearances; tree health and vitality; disease control; clearance for pedestrian and vehicular traffic; visibility clearance for stop signs, traffic signals, and bus stops; clearance for buildings; removal of deadwood; crown thinning for tree health or to improve sunlight penetration; crown balancing to correct storm damage; crown reduction when overall size is considered problematic; or clearance from hydro lines and other utilities;
- (y) "Public Property" includes a highway, park, public unassumed alley, or any other public place or land owned by, or leased to, or controlled by, or vested in, the City;
- (z) "Public Tree" means any tree which has greater than or equal to fifty (50) per cent of its trunk diameter measured at ground level on public property, and "public tree" shall be used interchangeably with "municipal tree", "municipally owned tree", "City tree" or "City owned tree";
- (aa) "Public Works Department" means the Public Works Department for the City of Hamilton and includes its successor;
- (bb) "Removal" means the elimination, in whole or in part, of a tree;
- (cc) "Tree" means a plant of any species of woody perennial including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity;

- (dd) "Tree Maintenance" includes all operations of watering, trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing, and any other like activity;
 - (ee) "Tree Protection Zone (TPZ)" means a restricted area, enclosed by fencing, around the base of a tree with a minimum radius equal to the drip line, which serves to protect a tree and its root zone;
 - (ff) "Work" means the labour, task, duty, function, or assignment often being a part or a phase of a larger activity or project, and shall include, but not be restricted to, excavation, construction, development, ditching, tunnelling, trenching, soil disturbances, or compaction.
- 1(2) In this By-law, the singular tense is deemed to be inclusive and interchangeable with the plural tense; the plural tense is deemed to be inclusive and interchangeable with the singular tense.
- 1(3) In this By-law, where both metric and imperial measurements are given for the same item, the imperial measurement is provided for convenience only and is approximate.
- 2(1) Subject to subsection 2(2), this By-law applies to:
- (a) Persons within the City of Hamilton;
 - (b) Public trees; and
 - (c) Private trees, which pose a threat or hazard to persons or property on public property.
- 2(2) This By-law does not apply to:
- (a) Trees in private woodlands, as woodlands are defined in By-law No. R00-054 of the former Regional Municipality of Hamilton-Wentworth, or such successor by-law enacted under the authority of Section 135 of *the Municipal Act*;
 - (b) Woodlots, as defined in By-law No. 4401-96, as amended of the former City of Stoney Creek; or
 - (c) The matters listed in sub-section 135(12) of the Municipal Act.
- 2(3) The requirements and prohibitions in this By-law are in addition to any applicable prohibitions or requirements in the City of Hamilton Parks By-law No. 01-219 as amended, and in the event of conflict, the provisions which are most protective of trees prevail.

Authority of the Director

- 3(1) The Director is hereby authorized to administer and enforce this By-law and has delegate authority granted by Council to execute the provisions of this By-law or to provide consent or approval where required, including the imposition of conditions as necessary to ensure compliance with this By-law and ensure minimal removal or other negative effects from removal of trees.
- 3(2) The Director may request municipal law enforcement 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.
- 4 The Director has the authority to develop and maintain a Forestry Management Plan including level of service standards and practices / guidelines.
- 5 Where consent of the Director is required under this By-law, and where permission or approval has been refused, or where permission or approval has been granted and subsequently withdrawn, written justification must be provided to the individual detailing the basis for not granting approval.
- 6 In addition to the authority otherwise provided in this By-law and subject to the Council authorized budget, the Director is authorized to perform or arrange the performance of the following duties:
 - (a) Supervision of the planting, care, and maintenance of public trees;
 - (b) Supervision of the pruning or removal of trees:
 - (i) Upon public property;
 - (ii) Upon private property where the branches extend over public property and the removal is performed by City employees or contractors; or
 - (iii) Upon a highway where the branches of any public or private tree extend over a highway and the removal is performed by City employees or contractors.
- 7 The Director, once designated as an inspector by the President of the Canadian Food Inspection Agency, for the purposes of the *Plant Protection Act*, S. C. 1990, c.22, has the authority to inspect for the presence of pests and to take action including the removal of trees on all public and private property, in accordance with that Act.

Prohibitions Against Injury or Destruction

- 8 No Person shall undertake to or cause or permit the undertaking of any of the following actions towards a public tree:

- (a) Injure, remove, disturb, damage, destroy, cut above or below ground, spray, prune, or alter in any way a public tree; without prior approval and compliance with terms provided in Section 10, or as provided for in the City of Hamilton Public Tree Removal Policy; or
- (b) Deposit, place, store, or maintain any stone, brick, sand, concrete, soil, or any material, equipment, or vehicles that may impede the free passage of water, air, or nutrients to the roots of a public tree, or perform any work within the dripline of a public tree which causes the destruction of, removal of, or injury to the tree, without prior approval and compliance with terms provided in Section 10; or
- (c) Fasten any sign, bill, notice, wire, rope, nail, or other object to, around, on, or through any public tree in any manner, or around, on or through the stakes or posts that protect such tree; or
- (d) Cause or permit any gaseous, liquid, or solid substances which are harmful or toxic to any public tree, to come in contact with any public tree, or apply to a public tree or an area used by said tree's root system; or
- (e) Set fire to or permit any fire to burn where such fire or the heat thereof will injure any portion of any public tree; or
- (f) Interfere with fences, structures, barriers delineating tree protection zones, or associated signage or other protective devices around any public tree; or
- (g) Alter or change any soil levels on public property within the drip line of any public tree in a manner likely to cause injury to said tree; without prior approval and compliance with terms provided in Section 10; or
- (h) Excavate any ditch, tunnel, trench, or lay any walkway or driveway, or disturb the soil on public property, within the drip line of a public tree; without prior approval and compliance with terms provided in Section 10; or
- (i) Climb, or permit any person under their care or control to climb any public tree.

9(1) A person who damages or injures a public tree on public property or who causes or permits a person to damage or injure such a tree, shall be subject to the regulations listed in the City of Hamilton Reforestation Policy – Municipally Owned Lands in addition to any necessary enforcement under this By-law.

9(2) Where a person reports having injured or damaged a public tree, or where a person is found to have injured or damaged a public tree, the Director shall issue an order requiring that the person arrange for the payment of restitution in accordance with the regulations of the City of Hamilton Reforestation Policy –

Municipally Owned Lands, in addition to any necessary enforcement of this By-law.

Protective Measures For Trees During Construction

- 10 Any person undertaking to perform any work within the drip line of a public tree, requires the consent of the Director, and shall follow the regulations and conditions listed in the City of Hamilton Tree Preservation and Protective Measures For Trees Affected by Construction Policy and otherwise shall comply with any conditions imposed through the Director's consent.

Planting of Trees

Prohibited Species

- 11(1) No person shall plant or place, or cause or permit the planting or placing of a tree of the type or species listed below upon public property:
- (a) *Acer negundo* - Manitoba Maple;
 - (b) *Acer saccharinum* - Silver Maple;
 - (c) *Populus* spp. - Poplar Species;
 - (d) *Salix* spp. - Willow Species;
 - (e) *Ulmus pumila* - Siberian Elm; or
 - (f) *Ginkgo biloba* - Female only.
- 11(2) Unless authorized by the Director in writing, no person shall plant or place, or cause or permit the planting or placing of any coniferous trees upon public property.

Planting Trees on Public Property

- 12(1) No person shall, without prior written consent of the Director, plant or cause to be planted any tree on public property.
- 12(2) The City reserves the right, at its sole discretion, to plant, or to have planted trees on any portion of public property.
- 12(3) All trees planted by the City of Hamilton, or by any contractor or person on public property, are subject to this By-law, the City of Hamilton Street Tree Planting Policy – New Developments; and the City of Hamilton Street Tree Planting Policy – Planning & Design.
- 12(4) Any Tree planted or located on a highway is deemed to be a public tree and is subject to all the provisions and regulations contained in this By-law as well as

to the City of Hamilton Street Tree Planting Policy – New Developments; City of Hamilton Street Tree Planting Policy - Planning & Design; and the City of Hamilton Street Tree Planting Policy – Rural Roadways.

13(1) Notwithstanding Section 12;

- (a) Any tree planted on public property with or without the consent of the Director, is the property of the City, is deemed to be a public tree, and is subject to all terms and conditions as set out in this By-law;
- (b) For greater certainty, a tree referred to in subsection (a) above may be treated as a public tree or removed as provided for in this By-law, and in particular, any tree removed by the City may be removed without compensation owing by the City, and if removed by someone other than the City without the required permission for removal by the City, may result in enforcement, claims for compensation, and replanting costs and orders, and if such tree planted is a prohibited species, may be removed by the City or its contractors at the expense of the person planting or causing such planting to occur.

Tree Planting on Private Property

- 14(1) Any tree planted on private property, whether planted by the City or by any other person, is the property of the land owner and as such is the owner's sole responsibility.
- 14(2) The owner of property on which a private tree is standing shall not permit or leave the tree or branches thereof projecting over the highway in such manner as to obstruct the reasonable and safe use of the highway.

Removal of Trees

- 15 All authorized public tree removals and all private tree removals or pruning carried out by or on behalf of the City shall be performed by the City or by a contractor approved by the Director.
- 16 Excluding those public tree removals performed as "necessary for the public interest", as that phrase is defined in Section 18:
 - (a) The removal of all live, healthy public trees shall be subject to the provisions of the City of Hamilton Reforestation Policy - Municipally Owned Lands; and the City of Hamilton Public Tree Removal Policy;
 - (b) A person removing, injuring or damaging a public tree, where the Director in his sole discretion, decides that the tree needs to be replaced, shall, in addition to any enforcement of this By-law, be subject to the requirements of the City of Hamilton Reforestation Policy.

Public Tree Removals

- 17 The Director is authorized to remove or cause to be removed a tree or part thereof on public property when it is considered "necessary for the public interest", as that phrase is defined in Section 18, or in accordance with the City of Hamilton Public Tree Removal Policy.

Necessary for the Public Interest

- 18 For the purpose of Section 17, "necessary for the public interest" means removal for one or more of the following reasons:
- (a) A tree is decayed in whole or in part;
 - (b) A tree that has failed, or in its current physiological condition has the potential to fail, and by its failure, or potential failure, poses a direct and immediate threat to public property or to individuals using public property;
 - (c) A tree that is a source, host, or infested with any pest which directly or indirectly causes irreversible damage to the long-term health, vitality, longevity, and integrity of a tree;
 - (d) A tree whose structural value, or integrity, as determined by the Director, has been seriously compromised by construction, weather related events, or by pruning;
 - (e) A tree planted along a highway which obstructs or impedes the safe use of the same;
 - (f) A tree whose root system has been proven to compromise the structural integrity of the foundation of any building; or
 - (g) A tree of poor quality, or undesirable species whose removal is required to facilitate new street tree plantings.

Naturalized Areas

- 19(1) No person shall remove, or cause, or permit the removal of any public tree that has fallen in a naturalized area from such area.
- 19(2) Any public tree that has fallen in a naturalized area and impedes on the use of public property may be cut back by the City of Hamilton so as to provide safe access and use of the public property, however, the tree will not be removed from the area.

Private Trees

- 20(1) Subsections (2) and (3) of this section do not apply where the City does not enter private property for its property or highway maintenance purposes, and in particular do not apply when the City, from its own property, removes the portions of private trees growing upon or over its property and highways for the purposes of property or highway maintenance so as to ensure reasonable or appropriate use of the property or highway as determined solely by the City and the elimination of dangers or obstructions for users of the City properties or highways; and further, any rights or permissions granted in this or any by-law to persons to maintain trees on private property or part of the road allowance, or other public property shall be subject to this provision for needs or maintenance purposes and so as to allow the City to meet the legal obligations to maintain its highways and carry out its intentions towards use of its properties for its own and the public benefit.
- 20(2) Pursuant to section 62 of the *Municipal Act, 2001* and in accordance with section 431 of that Act where required, a municipal employee or a contractor of the municipality, for the purpose of tree trimming in relation to highways or for the maintenance of highways, may where necessary, at any reasonable time, enter on lands adjacent to any of its highways to:
- (a) inspect or conduct tests on trees; or
 - (b) remove decayed, damaged or dangerous trees or their branches, where in the opinion of the employee or contractor, the tree or branch poses a danger to the health and safety of any person using the highway.
- 20(3) Pursuant to subsection 62(2) of *the Municipal Act, 2001* a municipal employee or a contractor, where such person is of the opinion that a tree or branch of land adjacent to the highway poses an immediate danger to the health and safety of any person using the highway, where necessary and in accordance with paragraphs (b), (c) or (d) of section 431 of that Act where required, may enter the land without notice to remove the tree or branch.
- 20(4) Subsections 20(2) and (3) do not permit entry into a building on the land excepting where proper notices have been given or permissions obtained.
- 20(5) The owner of private property shall ensure that all trees growing partially on public property are maintained in good condition and state of repair, free of decay or damage, such that the tree or branches thereof do not pose a danger to persons on City properties or its highways.
- 20(6) The obligations in subsection 20(5) shall be deemed to include the requirement of the owner to cause or carry out such inspections and testing as are reasonably necessary to determine the condition of the private tree and its branches.

Regulations and Enforcement

Exclusions and Exceptions

- 21 The provisions of this By-law shall not apply to:
- (a) The employees of the City of Hamilton while engaged in the performance of their duties;
 - (b) The operators, drivers and attendants of authorized emergency services vehicles, Police Officers, Officers of the Hamilton Fire Service, or Municipal Law Enforcement Officers appointed by the Council of the City of Hamilton, while engaged in the performance of their duties; or
 - (c) The operators, drivers and attendants of authorized public utility companies including, but not limited to, a natural gas utility, a hydro electric provider, and any other public utility, or telecommunication company, provided that their vehicles and crews are clearly identified by a crest or other marking and provided the operator, driver or attendant is actively engaged in the provision of any emergency services offered by the utility.

Enforcement

- 22 A Municipal Law Enforcement Officer, an employee of the City designated as an officer by the Director for the purpose of this Section or a police officer is authorized to inform any person of the provisions of this By-law, to issue warnings or notices, and to issue an order for discontinuance or for compliance therewith in the terms and content required by Section 137 of the *Municipal Act, S. O. 2001, c. 25*.
- 23(1) A Municipal Law Enforcement Officer or police officer may enforce the provisions of this By-law.
- 23(2) An officer appointed for the purposes of this By-law may be issued identification by the Director for purposes including the issuing of orders.

Penalty and Remedies for Breach or Contravention

- 24 Any Person contravening any provision of this By-law or contravening an order to discontinue issued under this By-law pursuant to section 137 of the *Municipal Act* is guilty of an offence, and upon conviction is liable to the fines and obligations for replanting and rehabilitation specified in Section 138 of the *Municipal Act, S.O. 2001, Chapter 25*.
- 25(1) In addition to any other remedy and to any penalty imposed by the By-law, a court in which a conviction has been entered under this By-law, and any court of competent jurisdiction thereafter may:
- (a) Make an Order prohibiting the continuation or repetition of the offence by the person convicted; and

- (b) Order the person to rehabilitate the land or to plant or replant trees in such a manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

25(2) Where under this By-law a person is required or directed that a matter or thing be done and the person defaults or otherwise fails to comply, the Director may, pursuant to section 427 of the *Municipal Act, 2001*, carry out the thing or cause the matter to be done at the person's expense, and recover the City's costs as defined in that section by action or by adding the costs to the tax roll for the person and collecting them in the same manner as taxes.

Severance

26 Should a court of competent jurisdiction declare a part or whole of any provision of this By-law to be invalid or of no force or effect, the provision or part is deemed severable from this By-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its remaining terms to the extent possible under law.

Short Title

27 The Short Title of this By-law shall be "The City of Hamilton Public Trees By-law".

Repeals and Enactment

28(1) The following By-laws of the former area municipalities, as may be amended, are hereby repealed: By-law No. 4156-95 (Stoney Creek), By-law No. 91-36-P (Flamborough), By-law No. 4502-99 (Dundas), By-law No. 4486-99 (Dundas), By-law No. 241-82 (Glanbrook), and By-law No. 92-155 (Hamilton).

28(2) By-law No. 86-077 (Hamilton Streets By-law), as may be amended, is hereby further amended in the following respects:

- (a) At the beginning of subsection 4(2), deleting the words "Subject to the provisions of this By-law respecting trees on highways, and";
- (b) Within subsection 4(2) repealing the words "grass, flowers and trees" and replacing them with the words "grass and flowers";
- (c) Section 5 of By-law No. 86-077 (Hamilton Streets By-law), as amended, is hereby repealed;
- (d) Sub-section 16(9) of By-law No. 86-077 (Hamilton Streets By-law), as may be amended, is hereby further amended by repealing the words "of trees" after the word "climbing"; and

- (e) In all other respects, By-law No. 86-77 (Hamilton) is confirmed without change.
- 28(3) By-law No. 328-86 (Glanbrook) as may be amended is hereby further amended by deleting “tree,” from clause 8(g), and in all other respects, By-law No. 328-86 (Glanbrook) is confirmed without change.
- 28(4) By-law No. 2000-118 (Ancaster) as may be amended, is hereby further amended in the following respects:
- (a) the title to By-law No. 2000-118 (Ancaster) is repealed and replaced with the following:

“Being a By-law to Prohibit the Injury or Destruction of Specified Classes of Trees on Private Property in the Geographic District of former Town of Ancaster in the City of Hamilton”;
 - (b) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing section 2.20 with the following:

“2.20 “Owner” means the owner as registered on title to the lands.”;
 - (c) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing section 2.31 with the following:

“2.31 “woodland” means any area of private land of 0.2 hectare (0.5 acres) or more with at least:

 - (i) 1000 trees per hectare (405 trees per acre) of any size;
 - (ii) 750 trees per hectare (303 trees per acre) measuring over 5 centimetres (2 inches) DBH;
 - (iii) 500 trees per hectare (202 trees per acre) measuring over 12 centimetres (5 inches) DBH; or
 - (iv) 250 trees per hectare (101 trees per acre) measuring over 20 centimetres (8 inches) DBH, not including orchards or plantations.

For the purposes of this By-law, the boundary of the woodland shall be defined by the ecological limit of the woodland and not by private property boundaries, and shall include the area up to the drip line of the woodland and any corridors measuring up to 30 metres in width. Where a potential woodlot is dissected by a corridor or natural feature such as a creek, the area of the woodlot shall be calculated exclusive of the area of the corridor or natural feature.”;

- (d) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing clause 3.1.2(i) with the following:
“(i) Heritage Trees on private lands located outside of Woodlands;”;
- (e) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing clause 5.1.1(ii) with the following:
“(ii) for the removal of Heritage Trees on private lands within 7.5 metres (25 feet) of the outer edge of an Occupied Building;”;
- (f) By-law No. 2000-118 (Ancaster) is further amended by repealing Sections 2.25, 5.1.2, 9.3.1, 9.3.2, 9.3.3, 9.3.4, 9.3.5 and 9.3.6 in their entirety; and
- (g) In all other respects By-law No. 2000-118 (Ancaster) is hereby confirmed without change.

28(5) By-law No. 4513-99 (Dundas) as may be amended, is hereby further amended by repealing and replacing subsection 3(e) with the following:

“(e) Trees overhanging onto private land from abutting private lands are specifically included under the Control of this By-law.”

29 Further to Section 28, any references to the aforementioned By-laws and schedules in other City policies, signage or By-laws, as amended, antedating the passing and enactment of this By-law, shall be deemed a reference to this By-law.

30 This By-law shall come into force and take effect on the date of its passing and enactment.

PASSED and ENACTED this 14th day of June, 2006.



MAYOR



CLERK

Authority: Item 15, Economic Development
and Planning Committee
Report 010-001 (PDO02229(d))
CM: January 27, 2010

Bill No. 013.

CITY OF HAMILTON

BY-LAW NO. 10-013

To Amend: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth

WHEREAS Council wishes to amend the appeal processes provided for in: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law No. 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law;

AND WHEREAS the *City of Hamilton Act, 1999* 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 the former Regional Municipality of Hamilton Wentworth;

AND WHEREAS the *City of Hamilton Act, 1999* provides that the by-laws of the former area municipalities and the former Regional Municipality of Hamilton Wentworth remain in force, in respect of the part of the municipal area to which they applied on

December 31, 2000, until they expire or are repealed or amended to provide otherwise;

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

By-law No. 2000-118, the Town of Ancaster Tree Protection By-law

1. Subsection 9.1 of By-law No. 2000-118 of the Town of Ancaster is deleted and replaced with following new subsection 9.1:

9.1 APPEALS REGARDING PERMITS

- 9.1.1 An appeal of the conditions imposed on a Permit or of a Permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.
2. By-law No. 2000-118 of the Town of Ancaster is amended by adding the Appeal Schedule, attached to this By-law as Schedule A.
3. Subsections 8.2 and 9.2 of By-law No. 2000-118 of the Town of Ancaster are deleted.
4. Sections 3 and 4 of Schedule "G" or By-law No. 2000-118 of the Town of Ancaster referring to an appeal are deleted.

By-law No. 4513-99, the Town of Dundas Tree Protection By-law

5. By-law No. 4513-99 of the Town of Dundas is amended by adding following new section 5a after section 5:

5a. APPEALS

An appeal of the conditions imposed on a permit or of a permit refusal shall be

conducted as set out in the Appeal Schedule attached to and forming part of this By-law.

6. By-law No. 4513-99 of the Town of Dundas is amended by adding the Appeal Schedule attached to this By-law as Schedule A.

By-law No. 4401-96, the City of Stoney Creek Tree By-law

7. Sections 22 and 23 of By-law No. 4401-96 of the City of Stoney Creek are deleted and replaced by the following new section:

APPEAL TO THE ECONOMIC DEVELOPMENT AND PLANNING COMMITTEE

22. An appeal of the conditions imposed on a Permit or of a Permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.
8. By-law No. 4401-96 of the City of Stoney Creek is amended by adding the Appeal Schedule attached to this By-law as Schedule A.
9. Subsections 29(h) and (i) and section 33 and 34 of By-law No. 4401-96 of the City of Stoney Creek are deleted.
10. The third and fourth recitals of Schedule "E" of By-law No. 4401-96 of the City of Stoney Creek referring to an appeal are deleted.

By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth

11. Subsections 5(h) to (m) inclusive of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth are deleted and replaced with the following new subsection:

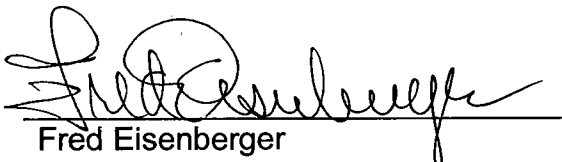
5(h) An appeal of a permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.

12. By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is amended by adding the Appeal Schedule attached to this By-law as Schedule A.

General

13. This By-law comes into force on the day it is passed.

PASSED this 27th day of January, 2010


Fred Eisenberger
Mayor


Kevin C. Christenson
City Clerk

Schedule A

APPEAL SCHEDULE

1. For the purposes of this Schedule:
“**applicant**” means an applicant for a permit under this By-law;
“**City**” means the City of Hamilton incorporated as of January 1, 2001 under the *City of Hamilton Act, 1999*;
“**Economic Development and Planning Committee**” means the City of Hamilton’s Economic Development and Planning Committee or any successor committee; and
“**permit**” means a permit under this By-law.

2. An applicant for a permit who does not agree with the conditions imposed in a permit or with the refusal of a permit may appeal by requesting a hearing before the Economic Development and Planning Committee which, in the place of City Council, shall hear the appeal.

3. A request for a hearing by an applicant under section 2 shall be in writing, accompanied by the applicable fee and delivered to the Clerk of Economic Development and Planning Committee within 20 days of the date the permit is refused. The applicant shall also include the grounds for their appeal.

4. Where a request for a hearing meeting the requirements of section 3 has been delivered to the Clerk of the Economic Development and Planning Committee, the hearing shall be scheduled before the Economic Development and Planning Committee and notice of the hearing date shall be given to the applicant who requested the hearing. The notice of hearing shall include:
 - (a) a statement of the time, date and purpose of the hearing; and
 - (b) a statement that if the applicant does not attend the hearing, the

Economic Development and Planning Committee may proceed in their absence without notice to them.

5. The notice of hearing under section 4 may be given by delivering it personally or by sending it by prepaid registered mail to the last known address of the applicant 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 appeal until a later date.
6. The Economic Development and Planning 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 Economic Development and Planning 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.
7. The Economic Development and Planning 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 applicant or be inconsistent with the general intent and purpose of this By-law.
8. The Economic Development and Planning Committee shall forward a report to City Council on its final decision arising from each hearing or opportunity for a hearing.
9. City Council, after considering a report of the Economic Development and Planning 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 Economic Development and Planning Committee,

this By-law and other applicable law.

10. After City Council has made a decision in respect of a report of the Economic Development and Planning Committee, notice of that decision shall be sent to the applicant by personal delivery or by registered mail to the last known address of the applicant on file with the City.

Authority: Item 11, Planning Committee
Report: 14-012 (PD02229(f))
CM: August 15, 2014

Bill No. 213

**CITY OF HAMILTON
BY-LAW NO. 14-213**

To Amend: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Conservation By-law

WHEREAS Council wishes to amend By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law No. 4401-96, the City of Stoney Creek Tree By-law; and By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law;

AND WHEREAS the City of Hamilton Act, 1999 did incorporate, as of January 1, 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 the former Regional Municipality of Hamilton Wentworth;

AND WHEREAS the City of Hamilton Act, 1999 provides that the By-laws of the former area municipalities and the former Regional Municipality of Hamilton-Wentworth remain in force, in respect of the part of the municipal area to which they applied on December 31, 2000, until they expire or are repealed or amended to provide otherwise.

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

By-law No. 2000-118, the Town of Ancaster Tree Protection By-law:

1. Section 3.3 of By-law No. 2000-118 of the Town of Ancaster Tree Protection By-law is deleted and replaced with the following new Section 3.3:

3.3 COMPLIANCE WITH OTHER STATUTES AND BY-LAWS

- 3.3.1 The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
- 3.3.2 In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
- (i) 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,
 - (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

By-law No. 4513-99, the Town of Dundas Tree Protection By-law:

2. Section 3 of By-law No. 4513-99 of the Town of Dundas is amended by adding the following new Sub-section 3(g):
- (g) (i) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
 - (ii) In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
 - 1. 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,
 - 2. where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

By-law No. 4401-96, the City of Stoney Creek Tree By-law:

3. The first Recital of By-law No. 4401-99 of the City of Stoney Creek is amended by deleting the words "and prescribing fees for the permit".
4. Section 4 of By-law No. 4401-99 of the City of Stoney Creek is deleted and replaced by the following new Section 4:

4. (a) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
- (b) In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
 - (i) 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,
 - (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.
5. Section 17 of By-law No. 4401-99 of the City of Stoney Creek is deleted and replaced with the following new section 17:
 17. Where the person injuring or destroying the trees is not the owner, the applicant for a permit under this by-law shall provide proof of public and general liability insurance to the satisfaction of the City Clerk upon submitting the application.
6. Section 36 of By-law No. 4401-99 of the City of Stoney Creek is deleted.
7. Schedule "A" of By-law No. 4401-99 of the City of Stoney Creek is deleted.
8. Schedule "C" of By-law No. 4401-99 of the City of Stoney Creek is amended by deleting the words "and shall pay the required fees as set out in Schedule "A" of this by-law" from the third paragraph.

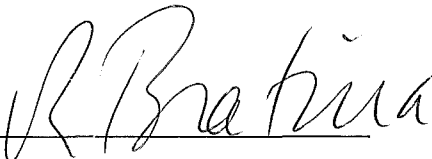
By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth:

9. Section 2 of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is amended by adding the following new Sub-section 2(3):
 - (3) (a) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
 - (b) In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
 - (i) 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,

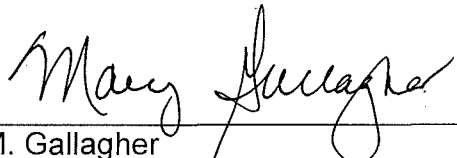
- (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

10. This By-law comes into force on the date of its passing.

PASSED this 15th day of August, 2014.



R. Bratina
Mayor



M. Gallagher
Acting City Clerk

Authority: Item 6, Planning Committee
Report 17-009 (PED17084)
CM: May 24, 2017
Ward: City Wide

Bill No. 094

CITY OF HAMILTON

BY-LAW NO. 17-094

To Amend By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law; By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law 4401-96, the City of Stoney Creek Tree By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law

WHEREAS Council wishes to amend By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law; By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4401-96, the City of Stoney Creek Tree By-law; and By-law No. 4513-99, the Town of Dundas Tree Protection By-law;

AND WHEREAS the *City of Hamilton Act, 1999* did incorporate, as of January 1, 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 to the former Regional Municipality of Hamilton Wentworth;

AND WHEREAS the *City of Hamilton Act, 1999* provides that the By-laws of the former area municipalities and the former Regional Municipality of Hamilton-Wentworth remain in force, in respect of the part of the municipal area to which they applied on December 31, 2000, until they expire or are repealed or amended to provide otherwise.

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

By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth:

1. Section 3 of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is deleted and replaced with the following:

TREE DESTRUCTION RESTRICTIONS

3. (1) Except as provided in Section 4, no person shall destroy or permit the destruction by cutting, burning, or other means one or more trees in a woodlands if:
 - (a) one or more of the trees destroyed is of a prescribed species listed in Schedule A and does not equal or exceed the measurements required for that tree species as set out in Schedule A at the point of measurement specified; or
 - (b) the destruction of one or more of the trees has the effect of reducing the number of trees in the woodlands below the number of trees necessary to constitute a woodlands.
- (2) When cutting or removing or permitting the cutting or removing of one or more tree in woodlands, no person shall:
 - (a) unnecessarily damage or injure any tree of a prescribed species that remains standing in the woodlands; or
 - (b) conduct their operations in such a manner that results in excessive damage to the soil, water bodies, wetlands, or other portions of the woodlands.
2. Section 8 of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is deleted and replaced with the following:

PENALTY

- 8.(1)(a) Every person who contravenes any provision of this By-law and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the provision is, upon conviction, guilty of an offence and is liable:
 - (i) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree injured or destroyed, whichever is greater; and
 - (ii) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree injured or destroyed, whichever is greater.
- (b) Despite paragraph 8(1)(a), where the person convicted is a corporation:

- (i) the maximum fines in subparagraph 8(1)(a)(i) are \$50,000 or \$5,000 per tree injured or destroyed; and
 - (ii) the maximum fines in subparagraph 8(1)(a)(ii) are \$100,000 or \$10,000 per tree injured or destroyed.
- (c) Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under paragraphs 8(1)(a) or 8(1)(b), to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
8. (2) 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 within the period that the court considers appropriate.

By-law No. 2000-118, the Town of Ancaster Tree Protection By-law:

3. Section 10 of By-law No. 2000-118 of the Town of Ancaster is deleted and replaced with the following:

SECTION 10: PENALTIES FOR NON-COMPLIANCE WITH BY-LAW

10.1.1 Every person who contravenes any provision of this By-law and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the provision is, upon conviction, guilty of an offence and is liable:

- (i) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree injured or destroyed, whichever is greater; and
- (ii) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree injured or destroyed, whichever is greater.

10.1.2 Despite paragraph 10.1.1, where the person convicted is a corporation:

- (i) the maximum fines in subparagraph 10.1.1(i) are \$50,000 or \$5,000 per tree injured or destroyed; and
 - (ii) the maximum fines in subparagraph 10.1.1(ii) are \$100,000 or \$10,000 per tree injured or destroyed.
- 10.1.3 Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under paragraphs 10.1.1 or 10.1.2, to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
- 10.2 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 within the period that the court considers appropriate.

By-law No. 4401-96, the City of Stoney Creek Tree By-law:

4. Section 37 of By-law No. 4401-96 of the City of Stoney Creek is deleted and replaced with the following:

PENALTY

- 37 (a) Every person who contravenes any provision of this By-law and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the provision is, upon conviction, guilty of an offence and is liable:
- (i) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree injured or destroyed, whichever is greater; and
 - (ii) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree injured or destroyed, whichever is greater.

- (b) Despite paragraph 37(a), where the person convicted is a corporation:
 - (i) the maximum fines in subparagraph 37(a)(i) are \$50,000 or \$5,000 per tree injured or destroyed; and
 - (ii) the maximum fines in subparagraph 37(a)(ii) are \$100,000 or \$10,000 per tree injured or destroyed.
- (c) Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under paragraphs 37(a) or 37(b), to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.

5. Section 38 of By-law No. 4401-96 of the City of Stoney Creek is deleted and replaced with the following:

PROHIBITION ORDER

38. 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 within the period that the court considers appropriate.

By-law No. 4513-99, the Town of Dundas Tree Protection By-law:

6. Section 6 of By-law No. 4513-99 of the Town of Dundas is deleted and replaced with the following:

OFFENCE

- 6.(1)(a) Every person who contravenes any provision of this By-law and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the provision is, upon conviction, guilty of an offence and is liable:

- (i) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree injured or destroyed, whichever is greater; and
 - (ii) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree injured or destroyed, whichever is greater.
 - (b) Despite paragraph 6(1)(a), where the person convicted is a corporation:
 - (i) the maximum fines in subparagraph 6(1)(a)(i) are \$50,000 or \$5,000 per tree injured or destroyed; and
 - (ii) the maximum fines in subparagraph 6(1)(a)(ii) are \$100,000 or \$10,000 per tree injured or destroyed.
 - (c) Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under paragraphs 6(1)(a) or 6(1)(b), to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
6. (2) 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 within the period that the court considers appropriate.
7. This By-law comes into force on the day it is passed.

PASSED this 24th day of May, 2017

F. Eisenberger
Mayor

R. Caterini
City Clerk

APPENDIX F - ANCASTER TREE PROTECTION BY-LAW 2000-118

THE CORPORATION OF THE TOWN OF ANCASTER

BY-LAW NO. 2000-118

Being a By-law to prohibit the injury or destruction of specified classes of trees on public and private property in the Town of Ancaster

WHEREAS the Council of the Corporation of the Town of Ancaster is empowered under section s.223.2 of the *Municipal Act, R.S.O. 1990 c.M.45*, as amended, to:

- (a) Pass by-laws for prohibiting or regulating the injury or destruction of trees or any class of trees specified in the by-law in any defined area or on any class of land;
- (b) Require that a permit be obtained for injury or destruction of trees specified in the by-law and prescribing fees for the permit;
- (c) Prescribe circumstances under which a permit may be issued; and

AND WHEREAS the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law (R00-054) protects specified tree species of specified sizes in all regional woodlands of 0.81 ha (2 acres) or greater; and

AND WHEREAS Council has determined that it is desirable to enact such a By-law for the purpose of protecting the unique diversity and character of the Town's tree resources because of their ecological, cultural and economic value.

NOW, THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF ANCASTER ENACTS AS FOLLOWS:

SECTION 1: BY-LAW TITLE

1.1 This By-law may be cited as the "Tree Protection By-law".

SECTION 2: DEFINITIONS

For the purpose of this By-law:

- 2.1 "building permit" means a building permit as issued under the *Building Code Act, R.S.O. 1992, c.23*, as amended, or any successor thereof;
- 2.2 "Clerk" means the Clerk of the Town of Ancaster or successor authority;
- 2.3 "coppice growth" means where more than one tree stem grows from a single tree stump below a point 1.4 metres (4.5 feet) above the ground in an undisturbed state at the base of the tree;
- 2.4 "Council" means the Council of the Town of Ancaster or successor authority;
- 2.5 "DBH" means "diameter at breast height" and refers to the diameter, including the bark, of the stem of a tree measured at a point 1.4 meters (4.5 feet) above the ground in an undisturbed state at the base of the tree, except in the case of coppice growth where the point of measurement shall be at the point on the tree trunk where the tree stems separate, provided that the point of separation occurs below a point 1.4 metres (4.5 feet) above the ground in an undisturbed state at the base of the tree;

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- 2.6 “destroy” means the removal, harm or ruin of trees by cutting, burning, uprooting, chemical application or other means including irreversible injury which may result from neglect, accident, or design;
- 2.7 “Director of Planning and Building” means the Director of the Planning and Building Department or his designate or an equivalent successor authority;
- 2.8 “Director of Operations” means the Director of the Operations Department or his designate or an equivalent successor authority;
- 2.9 “drip line” means a point on the ground equivalent to the outer limits of the branches of the tree;
- 2.10 “emergency work” means any work necessary to protect lives or property, and may include utility repairs and structural repairs to a building;
- 2.11 “Good Arboricultural Practice” means the proper implementation of removal, renewal and maintenance activities known to be appropriate for individual trees in and around dense human settlements (i.e. urban settings) that minimize detriments to urban forest values including: significant trees, associated wildlife habitats, urban forest diversity and health, and significant views or vistas; “good arboricultural practice” includes pruning trees to remove dead limbs, maintain structural stability and balance, or encourage their natural form but does not include pruning to specifically increase light or space;
- 2.12 “Good Forestry Practice” means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for a given Woodland and the environmental conditions under which it is being applied, and which minimizes detriments to significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity, diversity and health, aesthetics and recreational opportunities of the landscape; “good forestry practice” includes:
- (i) the retention of dead and snag trees in Woodlands for the provision of wildlife habitat or to contribute to forest sustainability;
 - (ii) the appropriate use of machinery, equipment, and timing of operations so as to minimize damage to the Woodland soil and ecosystem;
 - (iii) the destruction of trees that are:
 - diseased or insect-infested and should be cut or removed to prevent disease or insects from spreading to other trees;
 - damaged by natural causes (such as wind, ice or lightning) and should be cut because they are inhibiting the healthy development of the trees remaining in the Woodland;
 - approved for cutting by a certified tree marker or Registered Professional Forester in accordance with the guidelines laid out in this article (2.13);
 - of an invasive species not indigenous to the Region.
- 2.13 “harvesting” means the injury or destruction of trees and may be either a single cut or a series of cuts, and shall have the same meaning as logging;
- 2.14 “injure” includes any action or treatment which causes harm or irreversible damage to a tree and includes the injury of trees by changing grades around trees, compacting soil over root areas, severing roots, the improper application of chemicals, improper pruning or the removal of bark;

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- 2.15 "Heritage Tree" means any tree with a DBH of no less than 45 cm (18 in.) with the exception of:
- (i) all Willow species (*Salix* spp.)
 - (ii) all Poplar species (*Populus* spp.)
 - (iii) Siberian Elms (*Ulmus pumila*)
 - (iv) Manitoba Maples (*Acer negundo*), and
 - (v) Norway Maples (*Acer platanoides*).
- 2.16 "maintenance" includes all operations of trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing in accordance with Good Arboricultural Practice; pruning shall be limited to the appropriate removal of no more than one-third of the live branches or limbs of a tree;
- 2.17 "Occupied Building" means a permanent structure used or intended to be used for the shelter, accommodation or enclosure of persons for residential, business, institutional or recreational purposes. For the purposes of this By-law, an attached garage shall be deemed to be part of an Occupied Building.
- 2.18 "Officer" means a By-law Enforcement Officer employed by the Town or successor authority, as appointed by Council, for the administration and enforcement of this By-law;
- 2.19 "orchard" means an area of land of at least one-fifth hectare under current cultivation having a fruit or nut tree density of at least sixty-five trees per hectare;
- 2.20 "owner" means the person identified in the in the most recent municipal assessment roll as the property owner pursuant to subsection 14(1), paragraph 4 of the *Assessment Act, R.S.O. 1990, c.A. 31*;
- 2.21 "Permit" means the written authorization from the Officer, in the form of an approved permit application, in accordance with Schedule "E" of this By-law, to injure or destroy trees;
- 2.22 "Person" means any individual, public or private corporation, partnership, association, firm, trust, public agency, municipality, or other entity and includes any legal representative(s) acting on behalf of or under the authority of such an entity;
- 2.23 "plantation" includes lands where trees of selected species have been planted or seeded in a pre-determined pattern or arrangement for the purpose of cultivation and sale at a later time, such as for the sale of Christmas trees, but does not include former plantations that have been left untended and may have naturalized;
- 2.24 "private lands" means any land not owned or leased by a public body or agency;
- 2.25 "public lands" include Town road allowances and municipally owned lands within the Town, as well as lands owned by a public corporation or agency;
- 2.26 "Qualified Tree Expert" means someone who has graduated from an accredited college or university with a diploma or degree in urban forestry, arboriculture or the equivalent. Qualified individuals include an arborist certified by the Ontario Training and Adjustment Board or by the International Society of Arboriculture, a consulting arborist with the American Society of Consulting Arborists, a Registered Professional Forester (R.P.F.) as defined in the *Ontario Professional Foresters Act*, or an

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individual with comparable qualifications approved by the Director of Planning and Building;

- 2.27 Region" means the Regional Municipality of Hamilton-Wentworth;
- 2.28 "Town" means the Corporation of the Town of Ancaster;
- 2.29 "Tree" means any species of woody perennial plant which has reached or can reach a height of at least 4.5 meters (15 feet) at physiological maturity;
- 2.30 "Tree Preservation Area" means tree protection zones identified within specific development areas that have been approved by Council for inclusion in this By-law as shown in Schedule "B";
- 2.31 "Woodland" means any area of land 0.2 ha (0.5 acres) or more with at least:
- (i) 1000 trees per hectare (405 trees per acre) of any size;
 - (ii) 750 trees per hectare (303 trees per acre), measuring over 5 cm DBH (2 in);
 - (iii) 500 trees per hectare (202 trees per acre), measuring over 12 cm DBH (5 in);
 - (iv) 250 trees per hectare (101 trees per acre), measuring over 20 cm DBH (8 in);
- not including orchards or plantations. For the purposes of this By-law, the boundary of the Woodland shall be defined by the ecological limit of the Woodland and not by private property boundaries, and shall include the area up to the drip line of the Woodland and any corridors (i.e. breaks in the Woodland canopy including but not limited to highways, roads, railway right-of-ways, lanes, paths, golf course fairways, utility lines or natural open spaces) measuring up to and including 30 m in width. Where a potential woodlot is dissected by a corridor or natural feature such as a creek, the area of the woodlot shall be calculated exclusive of the area of the corridor or natural feature;
- 2.32 "Woodland Management Plan" means a plan prepared by a Qualified Tree Expert according to guidelines set by the Ontario Ministry of Natural Resources or other recognized guidelines, which sets out short and long-term management strategies for a given Woodland in accordance with Good Forestry Practice;
- 2.33 "Zoning By-law" means the by-law regulating land use as provided for under the *Planning Act, R.S.O. 1990, c.P.13*, as amended, within the Town.

SECTION 3: SCOPE OF BY-LAW

3.1 APPLICATION OF BY-LAW

- 3.1.1 The provisions of this By-law shall apply to specified classes of trees (as listed in Section 3.1.2) located within the Urban Area boundaries within the Town as shown on Schedule "A" to this By-law, and within lands owned and managed by the Hamilton Region Conservation Authority pursuant to the *Conservation Authorities Act, R.S.O. 1990, c. 27*.
- 3.1.2 The provisions of this by-law shall apply to:
- (i) Heritage Trees on public and private lands located outside of Woodlands;
 - (ii) Woodlands of 0.2 ha (0.5 acres) or more; and

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- (iii) Tree Protection Areas as designated in Schedule "B" to this By-law.

3.2 NON-APPLICATION

The provisions of this By-law do not apply to:

- (i) trees located within waste disposal sites as defined in Part V of *the Environmental Protection Act, R.S.O. 1990 c.E.19*;
- (ii) activities or matters undertaken by the provincial or federal government or their agents;
- (iii) the exercise of any rights or powers of Ontario Hydro Financial Corporation, pursuant to section 54(1) of the *Electricity Act 1998*, or any public utility board or commission that is performing its function for or on behalf of the Crown, given that the activities are conducted in accordance with Good Forestry Practice or Good Arboricultural Practice;
- (iv) activities or matters authorized under the *Crown Forest Sustainability Act, R.S.O. 1994 c.25*;
- (v) activities carried out pursuant to a Certificate issued under the *Abandoned Orchard Act, R.S.O. 1990 c. A.1*;
- (vi) activities or matters prescribed by regulation by the Lieutenant Governor in Council;
- (vii) drainage works under the *Drainage Act, R.S.O. 1990 c.D.17* or the *Tile Drainage Act, R.S.O c.T. 8*;
- (viii) works authorized under a development permit issued under Section 24 of the *Niagara Escarpment Planning and Development Act, R.S.O. 1990 c.N 2*;
- (ix) activities of any municipality or local board as defined in the *Municipal Affairs Act, R.S.O. 1990, c.C.51*, as amended or any successor thereof;
- (x) works carried out under Section 26 of the *Public Transportation and Highway Improvement Act, R.S.O.1990 c.P.50*;
- (xi) trees cut by a person licensed under the *Surveyors Act R.S.O. 1990 c. S.29*;
- (xii) trees injured or destroyed in compliance with a tree saving or tree management plan imposed as a condition of a consent, plan of subdivision, plan of condominium or site plan approved by the Town or Region pursuant to the *Planning Act, R.S.O. 1990, c.P.13*, as amended, or any successor thereof;
- (xiii) trees necessarily injured or destroyed while conducting emergency work authorized by the Director of Operations or the Director of Planning;
- (xiv) the removal of damaged or destroyed trees in the interests of public safety, health and general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfall, freezes.

3.3 COMPLIANCE WITH OTHER STATUTES AND BY-LAWS

In the event of any conflict between this By-law and a by-law passed under the *Forestry Act, R.S.O. 1990 c.F.26*, or any other statute or by-law, the provision that is the most restrictive of the injury or destruction of trees prevails.

3.4 INTERPRETATION

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

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SECTION 4: GENERAL PROVISIONS

Except for the areas of non-application (Section 3.2) and permit exceptions (Section 5.1) provided in this By-law, no person or owner shall:

- (i) remove, injure, or destroy a tree as prescribed in Section 3.1 of this By-law without a Permit;
- (ii) cause through an agent the removal, injury, or destruction of a tree as prescribed in Section 3.1 of this By-law without a Permit;
- (iii) contravene the terms of a Permit issued under this By-law or the conditions attached thereto;
- (iv) cause or allow the unnecessary injury or destruction of trees during harvesting or while conducting renewal or maintenance activities required under Good Forestry Practices or Good Arboricultural Practices;
- (v) fail to comply with an Order issued under this By-law;
- (vi) remove, pull down, or deface any Order issued under this By-law without the consent of the Officer; and
- (vii) obstruct or attempt to obstruct an Officer or a person acting under the Officer's instructions in the exercise of a power under this By-law.

SECTION 5: PERMITS

5.1 PERMIT NOT REQUIRED

- 5.1.1 A Permit for the injury or destruction of trees shall not be required:
- (i) for the maintenance of Heritage Trees in accordance with Good Arboricultural Practice;
 - (ii) for the removal of Heritage Trees on public or private lands within 7.5 m (25 ft) of the outer edge of an Occupied Building;
 - (iii) for maintenance and harvesting activities in Woodlands conducted by designated staff or a Certified Tree Expert, on:
 - (a) Hamilton Golf Course & Country Club lands;
 - (b) lands owned and managed by the Hamilton Region Conservation Authority pursuant to the *Conservation Authorities Act, R.S.O. 1990, c. 27.*; and
 - (c) municipally owned lands;provided that such activities are conducted in accordance with Good Forestry Practice;
 - (iv) where the removal or destruction of a tree is required because significant portions of the tree is considered dead, diseased or hazardous as certified by the Officer, a Qualified Tree Expert or the Director of Operations;
 - (v) for harvesting trees in a Woodland in accordance with an approved Woodland Management Plan provided that such work is undertaken in accordance with Good Forestry Practice and that a copy of such a Plan is submitted to the Clerk;
 - (vi) where trees are injured or destroyed in order to construct a building authorized by a municipal building permit applied for on or before the date that this by-law was enacted and passed;
 - (vii) where trees are injured or destroyed in order to install a domestic well or sewage disposal system authorized under Section 76 of the *Environmental Protection Act, R.S.O. 1990*, provided that no tree protected under this By-law is destroyed more than 7.5 m (25 ft) from the outer edge of the well or sewage system.
- 5.1.2 For proposed tree cutting activities undertaken by the Town for purposes outside the scope of Good Forestry Practices, the Town shall:

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- (i) post a notice of intent on the affected property in a visible location;
- (ii) bring this activity to the attention of Council; and
- (iii) delay their proposed activity until Council has reached a decision.

5.1.3 For proposed tree cutting activities undertaken by the Conservation Authority or Hamilton Golf Course & Country Club for purposes outside the scope of Good Forestry Practices, the responsible person(s) shall obtain a Permit.

5.2 CONDITIONS FOR ISSUANCE OF A PERMIT

5.2.1 The Officer may issue a Permit to injure or destroy tree(s) where the Officer is satisfied that:

- (i) the injury or destruction of the tree(s) is in accordance with Good Forestry Practice or Good Arboricultural Practice; or
- (ii) the destruction of tree(s) is required to permit the establishment or extension of a use permitted by the Zoning By-law and there is no reasonable alternative to the destruction or injury of the tree(s).

5.2.2 The issuance of a Permit shall not be authorized where:

- (i) the Permit Application form has not been submitted in full (i.e. without the application fee and/or without applicable Authorization Forms), or is considered incomplete by the Officer;
- (ii) applications for rezoning, subdivisions or site plans related to lands on which the tree is located have been submitted to the Town or the Region but have not received final approval;
- (iii) the tree is an endangered species as defined in the *Endangered Species Act, R.S.O. 1990, c.E.15*, or successor legislation;
- (iv) for Woodlands, the proposed activity will reduce the number of trees below the minimum number of trees necessary to constitute a Woodland as defined in this By-law;
- (v) the ecological integrity of a Woodland will not be adequately protected and preserved as determined by a Qualified Tree Expert or the relevant Conservation Authority;
- (vi) flood or erosion control will be negatively impacted as determined by the relevant Conservation Authority;
- (vii) the Officer is not satisfied that the applicant has undertaken to implement adequate replanting plans and/or a Woodlot Management Plan consistent with the principles of Good Forestry Practices.

SECTION 6: PERMIT APPLICATIONS

6.1 Every owner who intends on injuring or destroying a tree where a Permit to do so is required shall first complete a Permit Application form as set out in Schedule "C" to this By-law.

6.2 Where there is more than one owner of the land subject of the Permit Application, only one owner shall be considered the applicant. The other owners shall complete the Authorization Form as set out in Schedule "D" to this By-law.

6.3 The Permit Application shall be submitted personally or forwarded by pre-paid first class mail to to the Clerk at least thirty (30) days prior to the planned destruction of any trees.

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- 6.4 All Permit Applications shall be accompanied by the prescribed, non-refundable fee as set out in Schedule "F" of this By-law.
- 6.5 The person responsible for injuring or destroying the trees shall provide proof of public and general liability insurance to the satisfaction of the Clerk.
- 6.6 The Officer may require the applicant to submit a report prepared by a Qualified Tree Expert regarding the reasons for the proposed destruction of trees.
- 6.7 Following receipt of a Permit Application an Officer or any person acting under the Officer's instructions may inspect the lands to help determine whether or not a Permit, as set out in Schedule "E" to this By-law, should be issued.
- 6.8 Any Permit issued pursuant to this By-law shall be issued in the name of the owner and shall expire sixty (60) days after issuance unless a written request for an extension is received by the Clerk on or before the Permit expiration date.
- 6.9 Any request for a Permit extension which is received after the permit expiration date will require the submission of a new Permit Application.
- 6.10 A copy of the approved Permit should be posted on the property where the tree cutting is to take place for at least fourteen (14) days prior to and after the cutting takes place so that it is legible and visible to passers-by.
- 6.11 The Director of Planning and Building or the Officer shall, so far as is practicable, notify the Ward Councillor and abutting property owners of the Permit Application and whether or not it has been approved.

SECTION 7: ADMINISTRATION AND ENFORCEMENT

- 7.1 The Officer is responsible for administration of this By-law and is hereby delegated the authority to review Permit Applications, issue Permits and attach conditions hereto, issue Orders as set out in Schedule "G" to this By-law, and to designate or approve Qualified Tree Experts for the purposes of enforcing this By-law.
- 7.2 Each Officer shall be issued a Certificate of Designation by Town Council as in the form prescribed in Schedule "H" to this By-law .
- 7.3 The Director of Planning and Building shall ensure that the Officer is properly trained to perform her or his duties and shall supervise the Officer.
- 7.4 The provisions of this By-law may be enforced by:
(i) An Officer appointed for the purposes of this By-law by Council;
(ii) An assisting person designated by the Officer and acting under their instructions.
- 7.5 For the purposes of conducting an inspection to determine compliance with this By-law, designated Officers may, during daylight hours and upon producing a Certificate of Designation, enter and inspect any lands (but not buildings) to which this By-law applies.

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SECTION 8: ORDERS

- 8.1 Where an Officer is satisfied that a person has contravened any provision(s) of this By-law, the Officer has the authority to make an Order as per Schedule "G" to this By-law requiring the person to stop the injury or destruction of trees and to set out the particulars of the contravention.
- 8.2 A person to whom an Order under this section has been directed may appeal the Order by filing a notice of appeal with the Clerk within thirty (30) days after the date of the Order (refer to Section 9).
- 8.3 An Order issued may be served to the owner of the subject land(s) and/or to the person responsible for injury or damage to the tree(s).
- 8.4 An Order issued may be served personally or, by pre-paid registered mail to the last known address of the owner of the subject land(s) and/or to the person responsible for injury or damage to the tree(s).
- 8.5 The Officer shall also place a sign containing the terms of the Order in a conspicuous place on the subject lands. Where service cannot be effected under Sections 8.3 and 8.4, placing the placard on subject lands will be deemed sufficient service of the Order on the person and/or owner to whom the Order is directed.

SECTION 9: APPEALS

9.1 APPEALS REGARDING PERMITS

- 9.1.1 An applicant for a Permit under this By-law may appeal to the Ontario Municipal Board:
- (i) where the Officer refuses to issue a permit, within thirty (30) days after the refusal, or
 - (ii) where the Officer fails to make a decision on a Permit Application, within forty-five (45) days after the Permit Application is received by the Clerk, or
 - (iii) where the applicant objects to a condition in the Permit, within thirty (30) days after the issuance of Permit.
- 9.1.2 The Ontario Municipal Board may make any decision that the Officer who received the Permit Application for a permit could have made.
- 9.1.3 The decision of the Ontario Municipal Board is final and binding.

9.2 APPEALS REGARDING ORDERS

- 9.2.1 Where the person to whom the Order is directed has been served in accordance with this By-law is not satisfied with the terms of the Order, the person may appeal to Council by filing notice of appeal by personal service or pre-paid registered mail to the Clerk within thirty (30) days after the date of the Order.
- 9.2.2 Where an appeal has been filed, Council shall hear the appeal as soon as is practicable.
- 9.2.3 Before conducting a hearing under Section 9.2, the Clerk shall give appropriate notice.

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- 9.2.4 After hearing an appeal, Council may confirm, modify or revoke any Order issued under this By-law or may extend the time for complying with the Order, provided that, in the opinion of Council, the general intent and purpose of this By-law and of the Official Plan have been maintained.
- 9.2.5 The decision of Council is final and binding.
- 9.2.6 The terms and conditions of an Order issued under Section 8.1 shall be final and binding:
- (i) upon the there being no appeal and the time for an appeal expiring;
 - (ii) in the event that there is an appeal confirming the Order.

9.3 APPEALS REGARDING OFFENSES ON PUBLIC LANDS

- 9.3.1 If a person wishes to object to a proposed tree removal on public lands, they may appeal to Council by filing notice of appeal by personal service or pre-paid registered mail to the Clerk within thirty (14) days of the proposed activity date.
- 9.3.2 If the cutting has already taken place, the person may still appeal to Council to request appropriate replanting and site restoration.
- 9.3.3 Where an appeal has been filed, Council shall hear the appeal as soon as is practicable.
- 9.3.4 Before conducting a hearing under Section 9.3, the Clerk shall give notice in accordance with the *Planning Act, R.S.O. 1990, c.P.13*, as amended, or any successor thereof.
- 9.3.5 If Council supports the appeal, they may stop the proposed activity or require appropriate replanting and/or site restoration activities to be conducted within a specified time.
- 9.3.6 The decision of Council is final and binding.

9.4 APPEAL FEES

All appeal applications must be accompanied by the prescribed fee set out in Schedule "F" to this By-law.

SECTION 10: PENALTIES FOR NON-COMPLIANCE WITH BY-LAW

- 10.1 A person who contravenes any provision of this By-law, the terms or conditions of a Permit, or an Order is guilty of an offence and on conviction is liable;
- (i) on a first conviction, to a fine of not more than \$10,000.00, and
 - (ii) on any subsequent conviction, to a fine of not more than \$20,000.00.
- 10.2 In addition to any other remedy and to any penalty imposed by the By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may:
- (i) make an Order prohibiting the continuation or repetition of the offence by the person convicted;
 - (ii) may Order the person to replant or have replanted trees in such manner and within such a period of time as the court considers appropriate.

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10.3 In addition to any other remedy and to any penalty imposed by the By-law, any such further contraventions may be restrained by action by the Town or a ratepayer thereof.

SECTION 11: VALIDITY OF THE BY-LAW

Where a court of competent jurisdiction declares any section or part of a section of this By-law invalid, the remainder of this By-law shall continue in force unless the court makes an Order to the contrary.

SECTION 12: SCHEDULES

Summary of Schedules attached hereto that shall form part of this By-law.

- Schedule "A": Area of Application of the Tree Protection By-law
- Schedule "B": Designated Tree Preservation Areas within the Urban Area – *none designated to date*
- Schedule "B-1": *none designated to date*
- Schedule "C" – Permit Application Form
- Schedule "D" – Multiple Landowner Authorization Form
- Schedule "E" – Permit Form
- Schedule "F" – Permit and Appeal Fees
- Schedule "G" – Order Form
- Schedule "H" - Certificate of Designation Form

This by-law shall come into force and take effect on the date of its passing and enactment by Council.

ENACTED AND PASSED THIS 6th DAY OF NOVEMBER, 2000



MAYOR



CLERK-TREASURER

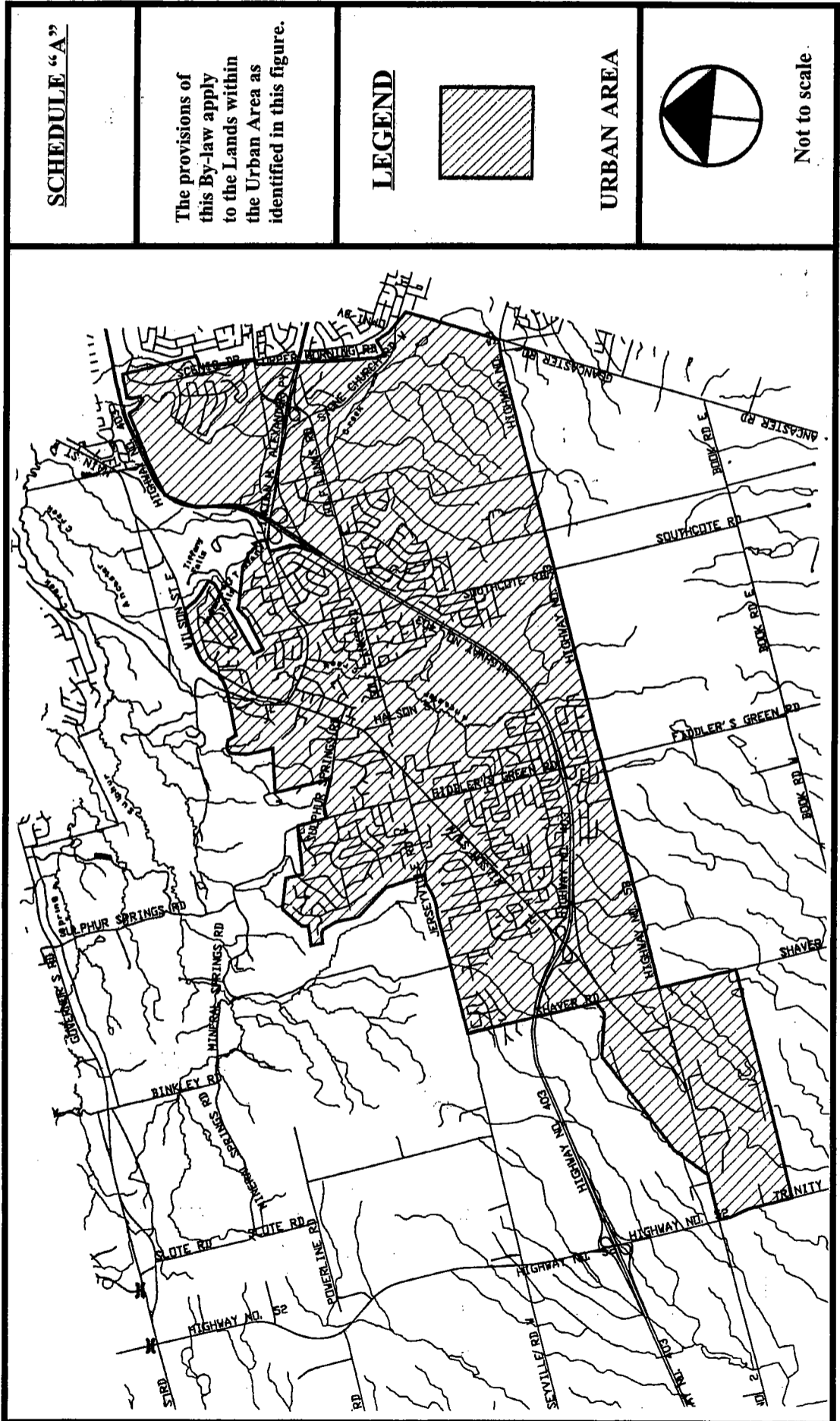
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SCHEDULE "A"

AREA OF APPLICATION OF TREE PROTECTION BY-LAW



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SCHEDULE "B"

DESIGNATED TREE PRESERVATION AREAS

No Tree Preservation Areas have been designated to date, however Schedule "B" is designed to allow for the insertion of these areas into the By-law in the future. Schedule "B" should be an "overview" map while the associated inserts ("B-1", "B-2", etc.) should show the boundaries of the specific Tree Preservation Areas. The requirements for these Schedules is outlined in the report Section 4.2.7.

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SCHEDULE "C"

TOWN OF ANCASTER
300 Wilson Street East, Ancaster, Ontario L9G 2B9
Phone (905) 648-4447, Fax (905) 648-9457
INSERT TOWN
CREST

PERMIT APPLICATION

Please remember to:

1. Include Land Owner Authorization Form(s) (see Schedule "D" to this By-law) in cases where more than one landowner is involved.
2. Fill out the application form in full and include the required fees, if applicable (see Schedule "F" to this By-law).
3. Deliver the completed form personally or send it by pre-paid first class mail to the Town Clerk at least thirty (30) days prior to any injury or destruction of any trees protected by this By-law.

Under no circumstances shall the injury or destruction of trees commence until the permit application has been approved and a permit (as per Schedule "E" in this By-law) issued. Failure to comply with the provisions of this By-law may result in legal action.

1. Land Owner*

Name: _____

Address: _____

Postal Code: _____ Fax No.: _____

Telephone No - Home: _____ Business: _____

***In cases of multiple landowners, list the primary Land Owner here and attach Land Owner Authorization Forms as required.**

2. Tree Cutting Contractor (if different from Land Owner above)

Name: _____

3. Contact Person for Contractor/Owner

Name: _____

Address: _____

Postal Code: _____ Fax No.: _____

Telephone No - Home: _____ Business: _____

Name of Public and General Liability Insurance Carrier _____

Insurance Minimum \$ _____

4. Land Description

Lot: _____ Concession: _____ Township: _____

Municipal Street Address: _____

5. Time Period

THE CORPORATION OF THE TOWN OF ANCASTER

BY-LAW NO. 2000-118

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Expected Starting Date: _____

Expected Completion Date: _____

6. Information on Property and Tree(s)/Woodland

Attach a sketch and/or survey showing:

- limits of land owner's property and adjacent roads
- artificial features such as fence lines, buildings and structures, rail lines, and internal road
- natural features such as streams and wetlands

Describe the trees to be destroyed by providing:

- number, species, and size (dbh)
- type of Woodland, if applicable (ie. Sugar Maple-Beech forest)
- location on property and/or portion of Woodland where trees are to be destroyed
- any other relevant information about the tree(s) or stand

7. Has the Ministry of Natural Resources or a Qualified Tree Expert, marked this tree/woodlot for cutting?

NO _____ YES _____ Name: _____
Telephone: _____

8. Is the tree/woodlot within an area controlled and/or regulated by the Niagara Escarpment Commission?

NO _____ YES _____

9. Describe the reason for the tree destruction and the method of removal i.e. (cutting, burning etc.)

I agree that the tree cutting operations will be conducted in accordance with the Town of Ancaster Tree Protection By-law No. _____ and that I am familiar with the contents and requirements of that By-law and acknowledge having received a copy thereof, and in signing this application, I am acting with the full authority and permission of the land owner and on his/her behalf.

DATED AT _____ **THIS** _____

DAY OF _____

Signature of Land Owner _____

Deliver personally or forward by first class mail to:

The Clerk of the _____ of _____

Address for Delivery: _____

Address for Mailing: _____

Permit Application for Tree Protection By-law

THE CORPORATION OF THE TOWN OF ANCASTER

BY-LAW NO. 2000-118

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SCHEDULE "D"

TOWN OF ANCASTER
300 Wilson Street East, Ancaster, Ontario L9G 2B9
Phone (905) 648-4447, Fax (905) 648-9457

INSERT TOWN
CREST

LAND OWNER'S AUTHORIZATION FORM

I, _____
Name of Land Owner (Please Print or Type)

being one of the registered owners of the subject lands, hereby authorize

Name of Applicant (Please Print or Type)

to prepare and submit an application on my behalf.

Signature

Date (Day/Month/Year)

THE CORPORATION OF THE TOWN OF ANCASTER

BY-LAW NO. 2000-118

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SCHEDULE "E"

TOWN OF ANCASTER
300 Wilson Street East, Ancaster, Ontario L9G 2B9
Phone (905) 648-4447, Fax (905) 648-9457
INSERT TOWN
CREST

PERMIT NO.

1. Land Owner

Name:
Address:
Postal Code:
Telephone No.:

2. Land Description

Lot: Concession:
Area
Municipality

3. Expected Starting Date
Permit Expiration Date

4. Tree Cutting Contractor:
(if different from Land Owner above)

5. Contact Person for Operation/Owner

Name:
Address:
Postal Code:
Telephone No:

6. CONDITIONS

- The unnecessary injury or destruction of any tree not authorized by this permit during removal and/or harvesting or while conducting harvesting renewal and maintenance activities is hereby prohibited.
Upon completion of the removal and/or harvesting of destroyed trees, specified trees shall be replanted in accordance with replanting plans approved by the By-law Officer.
Upon completion of removal and/or harvesting of destroyed trees, all crowns, branches, and other woody debris shall be removed leaving the site in a clear and clean condition.
All requirements of a Woodlot Management Plan, approved by a Registered Professional Forester, and as approved by the City Clerk shall be complied with.
The injury or destruction of trees and any required clean up or re-planting plans

THE CORPORATION OF THE TOWN OF ANCASTER

BY-LAW NO. 2000-118

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authorized or required by this permit shall be complied with on or before the expiration of this permit.

- A copy of the approved Permit should be posted on the property where the tree cutting is to take place for at least fourteen (14) days prior to and after the cutting takes place so that it is legible and visible to passers-by.
- A report by a Qualified Tree Expert (i.e. a Certified Arborist or Registered Professional Forester) is required before the requested activity can take place

Other:

THE CORPORATION OF THE TOWN OF ANCASTER

BY-LAW NO. 2000-118

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SCHEDULE "F"

PERMIT AND APPEAL APPLICATION FEES

The following fees shall be payable for permit applications and appeal applications submitted pursuant to Sections 6 and 9 of the Town of Ancaster's Tree Protection By-law No. :

- | | |
|--|------------------|
| 1. One Tree (in calendar year): | NO CHARGE |
| 2. Two to Ten Trees: | NIL |
| 3. Eleven to Twenty Trees: | NIL |
| 4. Over Twenty Trees: | NIL |
| 5. Appeal to Council | NIL |

THE CORPORATION OF THE TOWN OF ANCASTER

BY-LAW NO. 2000-118

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SCHEDULE "G"

INSERT TOWN
CREST

TOWN OF ANCASTER
300 Wilson Street East, Ancaster, Ontario L9G 2B9
Phone (905) 648-4447, Fax (905) 648-9457

ORDER

PURSUANT TO SECTION 8 OF THE TOWN OF ANCASTER TREE
PROTECTION BY-LAW NO.

Issued to:		Permit No.	
Municipal Address			
Legal Address			
Location of Lands			

An inspection of the lands named herein on _____ has disclosed that the conditions of a permit issued on _____ by the Town Clerk have not been complied with and/or Section _____ of By-law No. _____ has been violated.

THEREFORE TAKE NOTICE THAT:

1. The injury and destruction of trees on these lands is hereby Ordered Stopped Forthwith
2. The injury or destruction of trees shall not resume without the approval of the Town's By-law Officer and unless the provisions of this By-law or the conditions attached to Permit no. _____ are complied with on or before _____
3. If you are not satisfied with the terms of this Order, you may appeal to Town Council by sending notice of appeal by personal service or by certified mail to the City Clerk within thirty (30) days of the date on this Order.
4. In the event that no appeal is taken, the Order shall deemed to have been confirmed.

Section 4 of By-law No. _____ states: *No person shall remove, pull down, or deface any Order issued under this By-law without the consent of the Officer*

Every person who contravenes any provision of this by-law or an Order issued pursuant to this by-law is guilty of an offence and on conviction pursuant to the provisions of subsection 223.2 (15) of the Municipal Act R.S.O. 1990, c.M. 45 is liable;

(a) on a first conviction, to a fine of not more than \$10,000.00, and

(b) on any subsequent conviction, to a fine of not more than \$20,000.00.

_____ Date

_____ By-Law Enforcement Officer

THE CORPORATION OF THE TOWN OF ANCASTER

BY-LAW NO. 2000-118

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SCHEDULE "H"

TOWN OF ANCASTER
 300 Wilson Street East, Ancaster, Ontario L9G 2B9
 Phone (905) 648-4447, Fax (905) 648-9457
INSERT TOWN
CREST

Certificate of Designation

(Issued pursuant to Section 223.2 (8)
The Municipal Act R.S.O. 1990, c.M.45)

THIS CERTIFIES
THAT:

IS DESIGNATED AN OFFICER UNDER THE TOWN OF ANCASTER TREE
PROTECTION BY-LAW NO. _____ TO INSPECT ANY LAND IN THE TOWN
OF ANCASTER TO ENFORCE THE AFORESAID BY-LAW AND ITS
REGULATIONS RESPECTING THE INJURY OR DESTRUCTION OF TREES
IN THE TOWN.

CERTIFICATE ISSUED THIS _____ DAY OF _____

Clerk-Treasurer

Authority: Item 13, Public Works, Infrastructure
and Environment Committee
Report 06-010 (PW06034a)
CM: June 14, 2006

Bill No. 151

CITY OF HAMILTON

BY-LAW NO. 06-151

To Regulate the Planting, Maintenance, and Preservation of Trees on or Affecting Public Property

WHEREAS Council deems it in the public interest to protect Hamilton's tree assets on Public Property to preserve the quality of life and environment for the present and future inhabitants, and to ensure that any necessary tree removal is considered in advance and carried out under conditions as may be imposed;

AND WHEREAS *the Municipal Act S.O. 2001, Chapter 25* as amended, Sections 2 and 8 through 11, allows that Council may provide necessary and desirable services, manage and preserve public assets, foster environmental well-being, and exercise specific and general powers to act, and to regulate and prohibit the acts of others;

AND WHEREAS the City, pursuant to Section 135 of *the Municipal Act S.O. 2001, Chapter 25* may by by-law prohibit or regulate the injuring or destruction of trees;

AND WHEREAS the City, pursuant to Section 141 of *the Municipal Act* may provide trees to the owners of land adjacent to any highway;

AND WHEREAS the City, pursuant to Section 62(1) of *the Municipal Act* may, at any reasonable time, enter upon land lying along any of its highways to inspect trees and conduct tests on trees; and to remove decayed, damaged, or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the highway;

AND WHEREAS the City, pursuant to Section 62(2) of *the Municipal Act* may remove a decayed, damaged or dangerous tree or branch of a tree immediately without notice to the owner of the land upon which the tree is located, if in the opinion of the Employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the highway;

AND WHEREAS *the City of Hamilton Act, 1999, S.O. 1999, Chapter 14, Schedule C* did incorporate, as of January 1st 2001, the municipality known as the "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to the following former area municipalities, namely: The Corporation of the Town of Ancaster; The Corporation of the Town of Dundas; the Corporation of the Town of Flamborough; The Township of Glanbrook; The Corporation of the City of Hamilton; and the Corporation of the City of

Stoney Creek, and to the Regional Municipality of Hamilton-Wentworth, all hereinafter referred to as the "former municipalities";

AND WHEREAS *the City of Hamilton Act, 1999*, provides that the By-laws of the former municipalities continue in force and effect 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 and Application

1(1) In this By-law:

- (a) "City" as the context requires, means the municipal corporation "City of Hamilton" or the geographical limits of the municipality;
- (b) "Contractor" means a person engaged to perform a specific activity or service, on or at a particular land or premises;
- (c) "Council" means the Council for the City of Hamilton and includes its successor;
- (d) "Destroy" in relation to a tree includes any action which causes or results in the death of the tree, not limited to but including the acts of cutting, burning or knocking over the tree, and "destruction" shall have a corresponding meaning;
- (e) "Diameter at Breast Height or "DBH" means the diameter, including the bark, of the trunk of a tree measured at the lower of (a) a point 1.3 meters (4 feet and 3 inches) above the ground in an undisturbed state at the base of the tree, (b) in the case where the main trunk of the tree splits below the point in (a) the point of measurement shall be at the point on the tree trunk where the trunk separates, or (c) at the top of the stump of the tree where the tree has been cut down and all that remains of the stump is below the point in (a);
- (f) "Director" means the Director of Operations and Maintenance for the City and includes the Director's designate or successor;
- (g) "Drip Line" means the outer boundary of an area on the surface of the ground directly below and which corresponds with the outer edge of the crown of the tree;
- (h) "Emergency Work" means any work carried out by the City, a public utility service, or other authority and its contractors, whether above and below ground level, which is work necessary in an emergency situation for maintenance, or to restore or ensure service is maintained, and specifically includes the following whether as a repair, upgrade, or new installation, and without limiting the generality of the foregoing: utility

work, storm or accident damage repairs, road work, storm sewer and sanitary sewer work;

- (i) "Employee" means all employees, servants, and agents of the City of Hamilton or contractors hired by the City of Hamilton;
- (j) "Forestry and Horticulture Section" means the Forestry and Horticulture Section of the Operations and Maintenance Division within the Public Works Department of the City of Hamilton and includes its successor;
- (k) "Forestry Management Plan" refers to all City of Hamilton policies and procedures governing forest health, tree maintenance, planting requirements, activities affecting public trees, and includes the policies attached to this By-law as schedules;
- (l) "Good Arboricultural Practice" shall be a reference to the guidelines and practices relating to proper tree maintenance and care, as defined and published by the ISA (International Society of Arboriculture);
- (m) "Highway" means a common and public highway under the jurisdiction of the City of Hamilton, and includes any bridge, trestle, viaduct or other structure forming part of a highway, and includes any portion of a highway to the full width thereof;
- (n) "Improper Pruning" means trimming a tree so as to cause irreversible damage in a manner contrary to Good Arboricultural Practices;
- (o) "Injure" includes any act or treatment which causes irreversible damage to a tree and includes, but is not limited to the acts of changing grades around trees so as to affect further growth or health of the tree by exposing roots or burying the trunk or branches, compacting soil over root areas so as to prevent sufficient absorption by the tree of water, severing or damaging roots, the improper application of chemicals, improper pruning or the removal of bark and "injuring" and "injury" shall have corresponding meanings;
- (p) "Municipal Law Enforcement Officer" means a person appointed as such under this or any by-law of the City;
- (q) "Naturalized Area" means an area that has been set aside by the City of Hamilton for the undisturbed growth of any tree species where the desired effect is that of natural growth, and for the purposes of this By-law the term will include municipal woodlots and woodlands;
- (r) "Officer" means any person designated by the Director to carry out duties, issue orders or take actions under this By-law, and the term includes the Director;

- (s) "Operations and Maintenance Division" refers to the Operations and Maintenance Division of the Public Works Department of the City of Hamilton and includes its successor;
- (t) "Pest" means any organism, including but not limited to such things as insects or diseases whether viral, fungal, or bacterial, which directly or indirectly cause irreversible damage to the long-term health, vitality, longevity, and integrity of a tree;
- (u) "Planning and Economic Development Department" refers to the Planning and Economic Development Department for the City of Hamilton and includes its successor;
- (v) "Private Property" means land other than public property, and includes those public unassumed alleys which have been occupied or fenced by a person other than the City;
- (w) "Private Tree" means any tree which has greater than fifty (50) per cent of its trunk diameter measured at ground level on private property;
- (x) "Pruning" means the cutting away of parts of a tree for reasons including but not limited to: safety concerns; maintenance of legislated clearances; tree health and vitality; disease control; clearance for pedestrian and vehicular traffic; visibility clearance for stop signs, traffic signals, and bus stops; clearance for buildings; removal of deadwood; crown thinning for tree health or to improve sunlight penetration; crown balancing to correct storm damage; crown reduction when overall size is considered problematic; or clearance from hydro lines and other utilities;
- (y) "Public Property" includes a highway, park, public unassumed alley, or any other public place or land owned by, or leased to, or controlled by, or vested in, the City;
- (z) "Public Tree" means any tree which has greater than or equal to fifty (50) per cent of its trunk diameter measured at ground level on public property, and "public tree" shall be used interchangeably with "municipal tree", "municipally owned tree", "City tree" or "City owned tree";
- (aa) "Public Works Department" means the Public Works Department for the City of Hamilton and includes its successor;
- (bb) "Removal" means the elimination, in whole or in part, of a tree;
- (cc) "Tree" means a plant of any species of woody perennial including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity;

- (dd) "Tree Maintenance" includes all operations of watering, trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing, and any other like activity;
 - (ee) "Tree Protection Zone (TPZ)" means a restricted area, enclosed by fencing, around the base of a tree with a minimum radius equal to the drip line, which serves to protect a tree and its root zone;
 - (ff) "Work" means the labour, task, duty, function, or assignment often being a part or a phase of a larger activity or project, and shall include, but not be restricted to, excavation, construction, development, ditching, tunnelling, trenching, soil disturbances, or compaction.
- 1(2) In this By-law, the singular tense is deemed to be inclusive and interchangeable with the plural tense; the plural tense is deemed to be inclusive and interchangeable with the singular tense.
- 1(3) In this By-law, where both metric and imperial measurements are given for the same item, the imperial measurement is provided for convenience only and is approximate.
- 2(1) Subject to subsection 2(2), this By-law applies to:
- (a) Persons within the City of Hamilton;
 - (b) Public trees; and
 - (c) Private trees, which pose a threat or hazard to persons or property on public property.
- 2(2) This By-law does not apply to:
- (a) Trees in private woodlands, as woodlands are defined in By-law No. R00-054 of the former Regional Municipality of Hamilton-Wentworth, or such successor by-law enacted under the authority of Section 135 of *the Municipal Act*;
 - (b) Woodlots, as defined in By-law No. 4401-96, as amended of the former City of Stoney Creek; or
 - (c) The matters listed in sub-section 135(12) of the Municipal Act.
- 2(3) The requirements and prohibitions in this By-law are in addition to any applicable prohibitions or requirements in the City of Hamilton Parks By-law No. 01-219 as amended, and in the event of conflict, the provisions which are most protective of trees prevail.

Authority of the Director

- 3(1) The Director is hereby authorized to administer and enforce this By-law and has delegate authority granted by Council to execute the provisions of this By-law or to provide consent or approval where required, including the imposition of conditions as necessary to ensure compliance with this By-law and ensure minimal removal or other negative effects from removal of trees.
- 3(2) The Director may request municipal law enforcement 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.
- 4 The Director has the authority to develop and maintain a Forestry Management Plan including level of service standards and practices / guidelines.
- 5 Where consent of the Director is required under this By-law, and where permission or approval has been refused, or where permission or approval has been granted and subsequently withdrawn, written justification must be provided to the individual detailing the basis for not granting approval.
- 6 In addition to the authority otherwise provided in this By-law and subject to the Council authorized budget, the Director is authorized to perform or arrange the performance of the following duties:
 - (a) Supervision of the planting, care, and maintenance of public trees;
 - (b) Supervision of the pruning or removal of trees:
 - (i) Upon public property;
 - (ii) Upon private property where the branches extend over public property and the removal is performed by City employees or contractors; or
 - (iii) Upon a highway where the branches of any public or private tree extend over a highway and the removal is performed by City employees or contractors.
- 7 The Director, once designated as an inspector by the President of the Canadian Food Inspection Agency, for the purposes of the *Plant Protection Act*, S. C. 1990, c.22, has the authority to inspect for the presence of pests and to take action including the removal of trees on all public and private property, in accordance with that Act.

Prohibitions Against Injury or Destruction

- 8 No Person shall undertake to or cause or permit the undertaking of any of the following actions towards a public tree:

- (a) Injure, remove, disturb, damage, destroy, cut above or below ground, spray, prune, or alter in any way a public tree; without prior approval and compliance with terms provided in Section 10, or as provided for in the City of Hamilton Public Tree Removal Policy; or
- (b) Deposit, place, store, or maintain any stone, brick, sand, concrete, soil, or any material, equipment, or vehicles that may impede the free passage of water, air, or nutrients to the roots of a public tree, or perform any work within the dripline of a public tree which causes the destruction of, removal of, or injury to the tree, without prior approval and compliance with terms provided in Section 10; or
- (c) Fasten any sign, bill, notice, wire, rope, nail, or other object to, around, on, or through any public tree in any manner, or around, on or through the stakes or posts that protect such tree; or
- (d) Cause or permit any gaseous, liquid, or solid substances which are harmful or toxic to any public tree, to come in contact with any public tree, or apply to a public tree or an area used by said tree's root system; or
- (e) Set fire to or permit any fire to burn where such fire or the heat thereof will injure any portion of any public tree; or
- (f) Interfere with fences, structures, barriers delineating tree protection zones, or associated signage or other protective devices around any public tree; or
- (g) Alter or change any soil levels on public property within the drip line of any public tree in a manner likely to cause injury to said tree; without prior approval and compliance with terms provided in Section 10; or
- (h) Excavate any ditch, tunnel, trench, or lay any walkway or driveway, or disturb the soil on public property, within the drip line of a public tree; without prior approval and compliance with terms provided in Section 10; or
- (i) Climb, or permit any person under their care or control to climb any public tree.

9(1) A person who damages or injures a public tree on public property or who causes or permits a person to damage or injure such a tree, shall be subject to the regulations listed in the City of Hamilton Reforestation Policy – Municipally Owned Lands in addition to any necessary enforcement under this By-law.

9(2) Where a person reports having injured or damaged a public tree, or where a person is found to have injured or damaged a public tree, the Director shall issue an order requiring that the person arrange for the payment of restitution in accordance with the regulations of the City of Hamilton Reforestation Policy –

Municipally Owned Lands, in addition to any necessary enforcement of this By-law.

Protective Measures For Trees During Construction

- 10 Any person undertaking to perform any work within the drip line of a public tree, requires the consent of the Director, and shall follow the regulations and conditions listed in the City of Hamilton Tree Preservation and Protective Measures For Trees Affected by Construction Policy and otherwise shall comply with any conditions imposed through the Director's consent.

Planting of Trees

Prohibited Species

- 11(1) No person shall plant or place, or cause or permit the planting or placing of a tree of the type or species listed below upon public property:
- (a) *Acer negundo* - Manitoba Maple;
 - (b) *Acer saccharinum* - Silver Maple;
 - (c) *Populus* spp. - Poplar Species;
 - (d) *Salix* spp. - Willow Species;
 - (e) *Ulmus pumila* - Siberian Elm; or
 - (f) *Ginkgo biloba* - Female only.
- 11(2) Unless authorized by the Director in writing, no person shall plant or place, or cause or permit the planting or placing of any coniferous trees upon public property.

Planting Trees on Public Property

- 12(1) No person shall, without prior written consent of the Director, plant or cause to be planted any tree on public property.
- 12(2) The City reserves the right, at its sole discretion, to plant, or to have planted trees on any portion of public property.
- 12(3) All trees planted by the City of Hamilton, or by any contractor or person on public property, are subject to this By-law, the City of Hamilton Street Tree Planting Policy – New Developments; and the City of Hamilton Street Tree Planting Policy – Planning & Design.
- 12(4) Any Tree planted or located on a highway is deemed to be a public tree and is subject to all the provisions and regulations contained in this By-law as well as

to the City of Hamilton Street Tree Planting Policy – New Developments; City of Hamilton Street Tree Planting Policy - Planning & Design; and the City of Hamilton Street Tree Planting Policy – Rural Roadways.

13(1) Notwithstanding Section 12;

- (a) Any tree planted on public property with or without the consent of the Director, is the property of the City, is deemed to be a public tree, and is subject to all terms and conditions as set out in this By-law;
- (b) For greater certainty, a tree referred to in subsection (a) above may be treated as a public tree or removed as provided for in this By-law, and in particular, any tree removed by the City may be removed without compensation owing by the City, and if removed by someone other than the City without the required permission for removal by the City, may result in enforcement, claims for compensation, and replanting costs and orders, and if such tree planted is a prohibited species, may be removed by the City or its contractors at the expense of the person planting or causing such planting to occur.

Tree Planting on Private Property

- 14(1) Any tree planted on private property, whether planted by the City or by any other person, is the property of the land owner and as such is the owner's sole responsibility.
- 14(2) The owner of property on which a private tree is standing shall not permit or leave the tree or branches thereof projecting over the highway in such manner as to obstruct the reasonable and safe use of the highway.

Removal of Trees

- 15 All authorized public tree removals and all private tree removals or pruning carried out by or on behalf of the City shall be performed by the City or by a contractor approved by the Director.
- 16 Excluding those public tree removals performed as "necessary for the public interest", as that phrase is defined in Section 18:
 - (a) The removal of all live, healthy public trees shall be subject to the provisions of the City of Hamilton Reforestation Policy - Municipally Owned Lands; and the City of Hamilton Public Tree Removal Policy;
 - (b) A person removing, injuring or damaging a public tree, where the Director in his sole discretion, decides that the tree needs to be replaced, shall, in addition to any enforcement of this By-law, be subject to the requirements of the City of Hamilton Reforestation Policy.

Public Tree Removals

- 17 The Director is authorized to remove or cause to be removed a tree or part thereof on public property when it is considered "necessary for the public interest", as that phrase is defined in Section 18, or in accordance with the City of Hamilton Public Tree Removal Policy.

Necessary for the Public Interest

- 18 For the purpose of Section 17, "necessary for the public interest" means removal for one or more of the following reasons:
- (a) A tree is decayed in whole or in part;
 - (b) A tree that has failed, or in its current physiological condition has the potential to fail, and by its failure, or potential failure, poses a direct and immediate threat to public property or to individuals using public property;
 - (c) A tree that is a source, host, or infested with any pest which directly or indirectly causes irreversible damage to the long-term health, vitality, longevity, and integrity of a tree;
 - (d) A tree whose structural value, or integrity, as determined by the Director, has been seriously compromised by construction, weather related events, or by pruning;
 - (e) A tree planted along a highway which obstructs or impedes the safe use of the same;
 - (f) A tree whose root system has been proven to compromise the structural integrity of the foundation of any building; or
 - (g) A tree of poor quality, or undesirable species whose removal is required to facilitate new street tree plantings.

Naturalized Areas

- 19(1) No person shall remove, or cause, or permit the removal of any public tree that has fallen in a naturalized area from such area.
- 19(2) Any public tree that has fallen in a naturalized area and impedes on the use of public property may be cut back by the City of Hamilton so as to provide safe access and use of the public property, however, the tree will not be removed from the area.

Private Trees

- 20(1) Subsections (2) and (3) of this section do not apply where the City does not enter private property for its property or highway maintenance purposes, and in particular do not apply when the City, from its own property, removes the portions of private trees growing upon or over its property and highways for the purposes of property or highway maintenance so as to ensure reasonable or appropriate use of the property or highway as determined solely by the City and the elimination of dangers or obstructions for users of the City properties or highways; and further, any rights or permissions granted in this or any by-law to persons to maintain trees on private property or part of the road allowance, or other public property shall be subject to this provision for needs or maintenance purposes and so as to allow the City to meet the legal obligations to maintain its highways and carry out its intentions towards use of its properties for its own and the public benefit.
- 20(2) Pursuant to section 62 of the *Municipal Act, 2001* and in accordance with section 431 of that Act where required, a municipal employee or a contractor of the municipality, for the purpose of tree trimming in relation to highways or for the maintenance of highways, may where necessary, at any reasonable time, enter on lands adjacent to any of its highways to:
- (a) inspect or conduct tests on trees; or
 - (b) remove decayed, damaged or dangerous trees or their branches, where in the opinion of the employee or contractor, the tree or branch poses a danger to the health and safety of any person using the highway.
- 20(3) Pursuant to subsection 62(2) of *the Municipal Act, 2001* a municipal employee or a contractor, where such person is of the opinion that a tree or branch of land adjacent to the highway poses an immediate danger to the health and safety of any person using the highway, where necessary and in accordance with paragraphs (b), (c) or (d) of section 431 of that Act where required, may enter the land without notice to remove the tree or branch.
- 20(4) Subsections 20(2) and (3) do not permit entry into a building on the land excepting where proper notices have been given or permissions obtained.
- 20(5) The owner of private property shall ensure that all trees growing partially on public property are maintained in good condition and state of repair, free of decay or damage, such that the tree or branches thereof do not pose a danger to persons on City properties or its highways.
- 20(6) The obligations in subsection 20(5) shall be deemed to include the requirement of the owner to cause or carry out such inspections and testing as are reasonably necessary to determine the condition of the private tree and its branches.

Regulations and Enforcement

Exclusions and Exceptions

- 21 The provisions of this By-law shall not apply to:
- (a) The employees of the City of Hamilton while engaged in the performance of their duties;
 - (b) The operators, drivers and attendants of authorized emergency services vehicles, Police Officers, Officers of the Hamilton Fire Service, or Municipal Law Enforcement Officers appointed by the Council of the City of Hamilton, while engaged in the performance of their duties; or
 - (c) The operators, drivers and attendants of authorized public utility companies including, but not limited to, a natural gas utility, a hydro electric provider, and any other public utility, or telecommunication company, provided that their vehicles and crews are clearly identified by a crest or other marking and provided the operator, driver or attendant is actively engaged in the provision of any emergency services offered by the utility.

Enforcement

- 22 A Municipal Law Enforcement Officer, an employee of the City designated as an officer by the Director for the purpose of this Section or a police officer is authorized to inform any person of the provisions of this By-law, to issue warnings or notices, and to issue an order for discontinuance or for compliance therewith in the terms and content required by Section 137 of the *Municipal Act, S. O. 2001, c. 25*.
- 23(1) A Municipal Law Enforcement Officer or police officer may enforce the provisions of this By-law.
- 23(2) An officer appointed for the purposes of this By-law may be issued identification by the Director for purposes including the issuing of orders.

Penalty and Remedies for Breach or Contravention

- 24 Any Person contravening any provision of this By-law or contravening an order to discontinue issued under this By-law pursuant to section 137 of the *Municipal Act* is guilty of an offence, and upon conviction is liable to the fines and obligations for replanting and rehabilitation specified in Section 138 of the *Municipal Act, S.O. 2001, Chapter 25*.
- 25(1) In addition to any other remedy and to any penalty imposed by the By-law, a court in which a conviction has been entered under this By-law, and any court of competent jurisdiction thereafter may:
- (a) Make an Order prohibiting the continuation or repetition of the offence by the person convicted; and

- (b) Order the person to rehabilitate the land or to plant or replant trees in such a manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

25(2) Where under this By-law a person is required or directed that a matter or thing be done and the person defaults or otherwise fails to comply, the Director may, pursuant to section 427 of the *Municipal Act, 2001*, carry out the thing or cause the matter to be done at the person's expense, and recover the City's costs as defined in that section by action or by adding the costs to the tax roll for the person and collecting them in the same manner as taxes.

Severance

26 Should a court of competent jurisdiction declare a part or whole of any provision of this By-law to be invalid or of no force or effect, the provision or part is deemed severable from this By-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its remaining terms to the extent possible under law.

Short Title

27 The Short Title of this By-law shall be "The City of Hamilton Public Trees By-law".

Repeals and Enactment

28(1) The following By-laws of the former area municipalities, as may be amended, are hereby repealed: By-law No. 4156-95 (Stoney Creek), By-law No. 91-36-P (Flamborough), By-law No. 4502-99 (Dundas), By-law No. 4486-99 (Dundas), By-law No. 241-82 (Glanbrook), and By-law No. 92-155 (Hamilton).

28(2) By-law No. 86-077 (Hamilton Streets By-law), as may be amended, is hereby further amended in the following respects:

- (a) At the beginning of subsection 4(2), deleting the words "Subject to the provisions of this By-law respecting trees on highways, and";
- (b) Within subsection 4(2) repealing the words "grass, flowers and trees" and replacing them with the words "grass and flowers";
- (c) Section 5 of By-law No. 86-077 (Hamilton Streets By-law), as amended, is hereby repealed;
- (d) Sub-section 16(9) of By-law No. 86-077 (Hamilton Streets By-law), as may be amended, is hereby further amended by repealing the words "of trees" after the word "climbing"; and

- (e) In all other respects, By-law No. 86-77 (Hamilton) is confirmed without change.
- 28(3) By-law No. 328-86 (Glanbrook) as may be amended is hereby further amended by deleting “tree,” from clause 8(g), and in all other respects, By-law No. 328-86 (Glanbrook) is confirmed without change.
- 28(4) By-law No. 2000-118 (Ancaster) as may be amended, is hereby further amended in the following respects:
- (a) the title to By-law No. 2000-118 (Ancaster) is repealed and replaced with the following:

“Being a By-law to Prohibit the Injury or Destruction of Specified Classes of Trees on Private Property in the Geographic District of former Town of Ancaster in the City of Hamilton”;
 - (b) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing section 2.20 with the following:

“2.20 “Owner” means the owner as registered on title to the lands.”;
 - (c) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing section 2.31 with the following:

“2.31 “woodland” means any area of private land of 0.2 hectare (0.5 acres) or more with at least:

 - (i) 1000 trees per hectare (405 trees per acre) of any size;
 - (ii) 750 trees per hectare (303 trees per acre) measuring over 5 centimetres (2 inches) DBH;
 - (iii) 500 trees per hectare (202 trees per acre) measuring over 12 centimetres (5 inches) DBH; or
 - (iv) 250 trees per hectare (101 trees per acre) measuring over 20 centimetres (8 inches) DBH, not including orchards or plantations.

For the purposes of this By-law, the boundary of the woodland shall be defined by the ecological limit of the woodland and not by private property boundaries, and shall include the area up to the drip line of the woodland and any corridors measuring up to 30 metres in width. Where a potential woodlot is dissected by a corridor or natural feature such as a creek, the area of the woodlot shall be calculated exclusive of the area of the corridor or natural feature.”;

- (d) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing clause 3.1.2(i) with the following:
“(i) Heritage Trees on private lands located outside of Woodlands;”;
- (e) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing clause 5.1.1(ii) with the following:
“(ii) for the removal of Heritage Trees on private lands within 7.5 metres (25 feet) of the outer edge of an Occupied Building;”;
- (f) By-law No. 2000-118 (Ancaster) is further amended by repealing Sections 2.25, 5.1.2, 9.3.1, 9.3.2, 9.3.3, 9.3.4, 9.3.5 and 9.3.6 in their entirety; and
- (g) In all other respects By-law No. 2000-118 (Ancaster) is hereby confirmed without change.

28(5) By-law No. 4513-99 (Dundas) as may be amended, is hereby further amended by repealing and replacing subsection 3(e) with the following:

“(e) Trees overhanging onto private land from abutting private lands are specifically included under the Control of this By-law.”

29 Further to Section 28, any references to the aforementioned By-laws and schedules in other City policies, signage or By-laws, as amended, antedating the passing and enactment of this By-law, shall be deemed a reference to this By-law.

30 This By-law shall come into force and take effect on the date of its passing and enactment.

PASSED and ENACTED this 14th day of June, 2006.



MAYOR



CLERK

Authority: Item 15, Economic Development
and Planning Committee
Report 010-001 (PDO02229(d))
CM: January 27, 2010

Bill No. 013.

CITY OF HAMILTON

BY-LAW NO. 10-013

To Amend: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth

WHEREAS Council wishes to amend the appeal processes provided for in: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law No. 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law;

AND WHEREAS the *City of Hamilton Act, 1999* 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 the former Regional Municipality of Hamilton Wentworth;

AND WHEREAS the *City of Hamilton Act, 1999* provides that the by-laws of the former area municipalities and the former Regional Municipality of Hamilton Wentworth remain in force, in respect of the part of the municipal area to which they applied on

December 31, 2000, until they expire or are repealed or amended to provide otherwise;

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

By-law No. 2000-118, the Town of Ancaster Tree Protection By-law

1. Subsection 9.1 of By-law No. 2000-118 of the Town of Ancaster is deleted and replaced with following new subsection 9.1:

9.1 APPEALS REGARDING PERMITS

- 9.1.1 An appeal of the conditions imposed on a Permit or of a Permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.
2. By-law No. 2000-118 of the Town of Ancaster is amended by adding the Appeal Schedule, attached to this By-law as Schedule A.
3. Subsections 8.2 and 9.2 of By-law No. 2000-118 of the Town of Ancaster are deleted.
4. Sections 3 and 4 of Schedule "G" or By-law No. 2000-118 of the Town of Ancaster referring to an appeal are deleted.

By-law No. 4513-99, the Town of Dundas Tree Protection By-law

5. By-law No. 4513-99 of the Town of Dundas is amended by adding following new section 5a after section 5:

5a. APPEALS

An appeal of the conditions imposed on a permit or of a permit refusal shall be

conducted as set out in the Appeal Schedule attached to and forming part of this By-law.

6. By-law No. 4513-99 of the Town of Dundas is amended by adding the Appeal Schedule attached to this By-law as Schedule A.

By-law No. 4401-96, the City of Stoney Creek Tree By-law

7. Sections 22 and 23 of By-law No. 4401-96 of the City of Stoney Creek are deleted and replaced by the following new section:

APPEAL TO THE ECONOMIC DEVELOPMENT AND PLANNING COMMITTEE

22. An appeal of the conditions imposed on a Permit or of a Permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.
8. By-law No. 4401-96 of the City of Stoney Creek is amended by adding the Appeal Schedule attached to this By-law as Schedule A.
9. Subsections 29(h) and (i) and section 33 and 34 of By-law No. 4401-96 of the City of Stoney Creek are deleted.
10. The third and fourth recitals of Schedule "E" of By-law No. 4401-96 of the City of Stoney Creek referring to an appeal are deleted.

By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth

11. Subsections 5(h) to (m) inclusive of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth are deleted and replaced with the following new subsection:

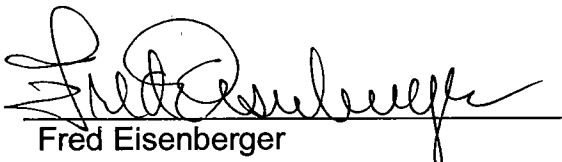
5(h) An appeal of a permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.

12. By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is amended by adding the Appeal Schedule attached to this By-law as Schedule A.

General

13. This By-law comes into force on the day it is passed.

PASSED this 27th day of January, 2010


Fred Eisenberger
Mayor


Kevin C. Christenson
City Clerk

Schedule A

APPEAL SCHEDULE

1. For the purposes of this Schedule:
“**applicant**” means an applicant for a permit under this By-law;
“**City**” means the City of Hamilton incorporated as of January 1, 2001 under the *City of Hamilton Act, 1999*;
“**Economic Development and Planning Committee**” means the City of Hamilton’s Economic Development and Planning Committee or any successor committee; and
“**permit**” means a permit under this By-law.

2. An applicant for a permit who does not agree with the conditions imposed in a permit or with the refusal of a permit may appeal by requesting a hearing before the Economic Development and Planning Committee which, in the place of City Council, shall hear the appeal.

3. A request for a hearing by an applicant under section 2 shall be in writing, accompanied by the applicable fee and delivered to the Clerk of Economic Development and Planning Committee within 20 days of the date the permit is refused. The applicant shall also include the grounds for their appeal.

4. Where a request for a hearing meeting the requirements of section 3 has been delivered to the Clerk of the Economic Development and Planning Committee, the hearing shall be scheduled before the Economic Development and Planning Committee and notice of the hearing date shall be given to the applicant who requested the hearing. The notice of hearing shall include:
 - (a) a statement of the time, date and purpose of the hearing; and
 - (b) a statement that if the applicant does not attend the hearing, the

Economic Development and Planning Committee may proceed in their absence without notice to them.

5. The notice of hearing under section 4 may be given by delivering it personally or by sending it by prepaid registered mail to the last known address of the applicant 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 appeal until a later date.
6. The Economic Development and Planning 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 Economic Development and Planning 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.
7. The Economic Development and Planning 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 applicant or be inconsistent with the general intent and purpose of this By-law.
8. The Economic Development and Planning Committee shall forward a report to City Council on its final decision arising from each hearing or opportunity for a hearing.
9. City Council, after considering a report of the Economic Development and Planning 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 Economic Development and Planning Committee,

this By-law and other applicable law.

10. After City Council has made a decision in respect of a report of the Economic Development and Planning Committee, notice of that decision shall be sent to the applicant by personal delivery or by registered mail to the last known address of the applicant on file with the City.

Authority: Item 11, Planning Committee
Report: 14-012 (PD02229(f))
CM: August 15, 2014

Bill No. 213

**CITY OF HAMILTON
BY-LAW NO. 14-213**

To Amend: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Conservation By-law

WHEREAS Council wishes to amend By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law No. 4401-96, the City of Stoney Creek Tree By-law; and By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law;

AND WHEREAS the City of Hamilton Act, 1999 did incorporate, as of January 1, 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 the former Regional Municipality of Hamilton Wentworth;

AND WHEREAS the City of Hamilton Act, 1999 provides that the By-laws of the former area municipalities and the former Regional Municipality of Hamilton-Wentworth remain in force, in respect of the part of the municipal area to which they applied on December 31, 2000, until they expire or are repealed or amended to provide otherwise.

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

By-law No. 2000-118, the Town of Ancaster Tree Protection By-law:

1. Section 3.3 of By-law No. 2000-118 of the Town of Ancaster Tree Protection By-law is deleted and replaced with the following new Section 3.3:

3.3 COMPLIANCE WITH OTHER STATUTES AND BY-LAWS

- 3.3.1 The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
- 3.3.2 In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
- (i) 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,
 - (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

By-law No. 4513-99, the Town of Dundas Tree Protection By-law:

2. Section 3 of By-law No. 4513-99 of the Town of Dundas is amended by adding the following new Sub-section 3(g):
- (g) (i) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
 - (ii) In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
 - 1. 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,
 - 2. where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

By-law No. 4401-96, the City of Stoney Creek Tree By-law:

3. The first Recital of By-law No. 4401-99 of the City of Stoney Creek is amended by deleting the words "and prescribing fees for the permit".
4. Section 4 of By-law No. 4401-99 of the City of Stoney Creek is deleted and replaced by the following new Section 4:

4. (a) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
- (b) In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
 - (i) 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,
 - (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.
5. Section 17 of By-law No. 4401-99 of the City of Stoney Creek is deleted and replaced with the following new section 17:
 17. Where the person injuring or destroying the trees is not the owner, the applicant for a permit under this by-law shall provide proof of public and general liability insurance to the satisfaction of the City Clerk upon submitting the application.
6. Section 36 of By-law No. 4401-99 of the City of Stoney Creek is deleted.
7. Schedule "A" of By-law No. 4401-99 of the City of Stoney Creek is deleted.
8. Schedule "C" of By-law No. 4401-99 of the City of Stoney Creek is amended by deleting the words "and shall pay the required fees as set out in Schedule "A" of this by-law" from the third paragraph.

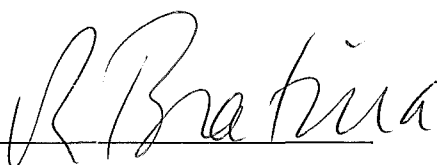
By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth:

9. Section 2 of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is amended by adding the following new Sub-section 2(3):
 - (3) (a) The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City of Hamilton or applicable provincial or federal statutes or regulations.
 - (b) In the event of a conflict between this By-law and any other applicable By-law of the City of Hamilton:
 - (i) 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,

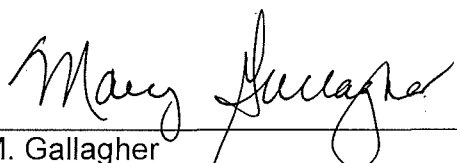
- (ii) where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of trees prevails.

10. This By-law comes into force on the date of its passing.

PASSED this 15th day of August, 2014.



R. Bratina
Mayor



M. Gallagher
Acting City Clerk

Authority: Item 6, Planning Committee
Report 17-009 (PED17084)
CM: May 24, 2017
Ward: City Wide

Bill No. 094

CITY OF HAMILTON

BY-LAW NO. 17-094

To Amend By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law; By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law 4401-96, the City of Stoney Creek Tree By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law

WHEREAS Council wishes to amend By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law; By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4401-96, the City of Stoney Creek Tree By-law; and By-law No. 4513-99, the Town of Dundas Tree Protection By-law;

AND WHEREAS the *City of Hamilton Act, 1999* did incorporate, as of January 1, 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 to the former Regional Municipality of Hamilton Wentworth;

AND WHEREAS the *City of Hamilton Act, 1999* provides that the By-laws of the former area municipalities and the former Regional Municipality of Hamilton-Wentworth remain in force, in respect of the part of the municipal area to which they applied on December 31, 2000, until they expire or are repealed or amended to provide otherwise.

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

By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth:

1. Section 3 of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is deleted and replaced with the following:

TREE DESTRUCTION RESTRICTIONS

3. (1) Except as provided in Section 4, no person shall destroy or permit the destruction by cutting, burning, or other means one or more trees in a woodlands if:
 - (a) one or more of the trees destroyed is of a prescribed species listed in Schedule A and does not equal or exceed the measurements required for that tree species as set out in Schedule A at the point of measurement specified; or
 - (b) the destruction of one or more of the trees has the effect of reducing the number of trees in the woodlands below the number of trees necessary to constitute a woodlands.
- (2) When cutting or removing or permitting the cutting or removing of one or more tree in woodlands, no person shall:
 - (a) unnecessarily damage or injure any tree of a prescribed species that remains standing in the woodlands; or
 - (b) conduct their operations in such a manner that results in excessive damage to the soil, water bodies, wetlands, or other portions of the woodlands.
2. Section 8 of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is deleted and replaced with the following:

PENALTY

- 8.(1)(a) Every person who contravenes any provision of this By-law and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the provision is, upon conviction, guilty of an offence and is liable:
 - (i) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree injured or destroyed, whichever is greater; and
 - (ii) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree injured or destroyed, whichever is greater.
- (b) Despite paragraph 8(1)(a), where the person convicted is a corporation:

- (i) the maximum fines in subparagraph 8(1)(a)(i) are \$50,000 or \$5,000 per tree injured or destroyed; and
 - (ii) the maximum fines in subparagraph 8(1)(a)(ii) are \$100,000 or \$10,000 per tree injured or destroyed.
- (c) Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under paragraphs 8(1)(a) or 8(1)(b), to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
8. (2) 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 within the period that the court considers appropriate.

By-law No. 2000-118, the Town of Ancaster Tree Protection By-law:

3. Section 10 of By-law No. 2000-118 of the Town of Ancaster is deleted and replaced with the following:

SECTION 10: PENALTIES FOR NON-COMPLIANCE WITH BY-LAW

10.1.1 Every person who contravenes any provision of this By-law and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the provision is, upon conviction, guilty of an offence and is liable:

- (i) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree injured or destroyed, whichever is greater; and
- (ii) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree injured or destroyed, whichever is greater.

10.1.2 Despite paragraph 10.1.1, where the person convicted is a corporation:

- (i) the maximum fines in subparagraph 10.1.1(i) are \$50,000 or \$5,000 per tree injured or destroyed; and
 - (ii) the maximum fines in subparagraph 10.1.1(ii) are \$100,000 or \$10,000 per tree injured or destroyed.
- 10.1.3 Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under paragraphs 10.1.1 or 10.1.2, to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
- 10.2 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 within the period that the court considers appropriate.

By-law No. 4401-96, the City of Stoney Creek Tree By-law:

4. Section 37 of By-law No. 4401-96 of the City of Stoney Creek is deleted and replaced with the following:

PENALTY

- 37 (a) Every person who contravenes any provision of this By-law and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the provision is, upon conviction, guilty of an offence and is liable:
- (i) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree injured or destroyed, whichever is greater; and
 - (ii) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree injured or destroyed, whichever is greater.

- (b) Despite paragraph 37(a), where the person convicted is a corporation:
 - (i) the maximum fines in subparagraph 37(a)(i) are \$50,000 or \$5,000 per tree injured or destroyed; and
 - (ii) the maximum fines in subparagraph 37(a)(ii) are \$100,000 or \$10,000 per tree injured or destroyed.
- (c) Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under paragraphs 37(a) or 37(b), to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.

5. Section 38 of By-law No. 4401-96 of the City of Stoney Creek is deleted and replaced with the following:

PROHIBITION ORDER

38. 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 within the period that the court considers appropriate.

By-law No. 4513-99, the Town of Dundas Tree Protection By-law:

6. Section 6 of By-law No. 4513-99 of the Town of Dundas is deleted and replaced with the following:

OFFENCE

- 6.(1)(a) Every person who contravenes any provision of this By-law and every Director or Officer of a corporation who knowingly concurs in the corporation's contravention of the provision is, upon conviction, guilty of an offence and is liable:

- (i) on a first conviction, to a fine of not more \$10,000 or a fine of \$1,000 per tree injured or destroyed, whichever is greater; and
 - (ii) on any subsequent conviction, to a fine of not more than \$25,000 or a fine of \$2,500 per tree injured or destroyed, whichever is greater.
 - (b) Despite paragraph 6(1)(a), where the person convicted is a corporation:
 - (i) the maximum fines in subparagraph 6(1)(a)(i) are \$50,000 or \$5,000 per tree injured or destroyed; and
 - (ii) the maximum fines in subparagraph 6(1)(a)(ii) are \$100,000 or \$10,000 per tree injured or destroyed.
 - (c) Every person who is convicted of an offence under this By-law may be liable, in addition to the fines established under paragraphs 6(1)(a) or 6(1)(b), to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an order made under this By-law.
6. (2) 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 within the period that the court considers appropriate.
7. This By-law comes into force on the day it is passed.

PASSED this 24th day of May, 2017

F. Eisenberger
Mayor

R. Caterini
City Clerk