

**THE CORPORATION OF THE CITY OF COURTENAY  
BYLAW NO. 2850**

**A bylaw to regulate injury and removal of protected trees and  
to require trees associated with private developments within  
the City of Courtenay**

WHEREAS the City Council may, by Bylaw, exercise certain powers within the City, to require planting of trees, to regulate cutting and removal of trees and to require their replacement;

AND WHEREAS trees provide a variety of individual and community wide benefits such as: stormwater and rainwater management, carbon absorption, air quality, heating and cooling benefits, aesthetic, quality of life and health benefits;

AND WHEREAS the City considers it in the public interest to provide for the protection, preservation, regulation and replacement of a target density of trees on all properties;

AND WHEREAS the City considers it in the public interest to provide for the protection of protected species;

NOW THEREFORE the Municipal Council of the City of Courtenay in open meeting assembled enacts as follows:

**1. CITATION**

This Bylaw may be cited for all purposes as “Tree Protection and Management Bylaw No. 2850, 2016”

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**3. DEFINITIONS**

“**Arborist**” means

- a) a person certified as an arborist by the International Society of Arboriculture (ISA); or
- b) a person certified as a Tree Care Specialist by the Tree Care Industry Association (TCIA);
- c) a person certified under subsections (a) and (b) and advising on a *hazard tree* that is a *protected species* or is growing within a *Riparian Assessment Area* or other *Environmentally Sensitive Area*, who holds the “Certified Tree Risk Assessor Qualification” as defined by the ISA;

"**Barrier**" means a device including a fence, guard, frame or any other conspicuous marker which is placed on, around, or near a tree to indicate that the tree trunk, roots or branches are not to be cut, removed or damaged;

"**City**" means, as the context requires, the Corporation of the City of Courtenay or the area within the boundaries of the City of Courtenay;

"**Council**" means the Council of the Corporation of the City of Courtenay;

“**Crown**” means the foliage bearing section of a *tree* formed by its branches but does not include the stem or trunk of a *tree*;

“**Damage**” means to take any action that may impact or result in damaging the health or structural integrity of a *tree*;

“**Decline**” means a tree that exhibits signs of a lack of vitality such as reduced leaf size, colour or density;

“**Development**” includes the following activities:

- a) Removal, alteration, disruption, or destruction of vegetation;
- b) Removal, deposit or disturbance of soils;
- c) Construction, erection, or alteration of buildings and structures;
- d) Creation of non-structural impervious or semi-pervious surfaces;
- e) Preparation for or construction of roads, trails, docks and bridges;
- f) Provision and maintenance of sewer and water services;
- g) Development of drainage systems;
- h) Development of utility corridors;
- i) Flood protection; and
- j) Subdivision.

**“Development application”** means an application to the City for approval to conduct any *development* including but not limited to applications for rezoning, development permit, development variance permit, demolition and building permits;

**“Diameter at Breast Height (D.B.H.)”** means:

- a) for a single-stemmed tree:
  - i. the diameter of a *tree* measured at 1.4 meters above the highest point of the natural *grade* of the ground from the base of a *tree*;
- b) for a multi-stemmed tree:
  - i. the *D.B.H.* is equal to the cumulative total of the *D.B.H.* of each stem;

**“Director”** means the City’s Director of Development Services or Manager of Planning;

**“Drip line”** means the small roots of a *tree* located within a circle on the ground around a *tree* directly under the tips of the outermost branches of the canopy of the *tree*;

**“Emergency tree removal”** means a tree that is dead, diseased, damaged or otherwise constitutes an imminent physical hazard to persons or property;

**“Environmentally Sensitive Area (ESA)”** includes:

- a) Watercourses including the sea, ponds, lakes, rivers, streams, natural drainage courses and wetlands;
- b) Riparian and wildlife habitat;
- c) Significant geographical features outlined in the Environmental Development Permit Areas Map #6 and ESA descriptions contained within the City of Courtenay’s Official Community Plan;

**“Fill”** means earth, sand, gravel, rubble, rubbish, garbage or any other material whether similar to or different from any of these materials, originating on the site or elsewhere, used or capable of being used to raise, lower, or in any way affect the contours of the ground;

**“Grade”** means a defined elevation of land that has been established as a result of geologic, hydrologic, or other natural processes or by human alteration;

**“Greenfield”** means undeveloped real property that is greater than 4000 meters in size (approximately 1 acre) and contains vegetation that has been left to evolve naturally;

**“Hazardous or hazard”** means a *tree* with a structural defect or changed stand conditions, which may result in property damage, personal injury or death;

**“Infill”** means real property that is less than 4000 square meters in size (approximately 1 acre);

**“Invasive species”** means non-native plants, animals and micro-organisms that colonize and take over the habitats of native species;

**“Maintenance”** means the care and maintenance of trees in accordance with *sound arboricultural practice* and includes planting, inspection, pruning, cabling and bracing, treatments for insect and disease problems, watering and fertilization including mulching;

**“Native”** means a *tree* species that occurs naturally in the *City*, and occurred prior to European contact;

**“Net developable hectare”** means the land area, measured in hectares, available for *development* but does not include public highways, utilities or structures and the allocation of lands for public parks, landscaping and *ESAs*, and other public works required to service lands;

“**Photo documentation**” means three photos of a *tree* including a picture of the whole *tree*, a picture of the defective part, and a picture of the area at a distance, including if possible, any nearby structures;

“**Protected species**” means:

- a) Garry Oak (*Quercus garryana*);
- b) Pacific Dogwood (*Cornus nuttallii*);
- c) Western White Pine (*Pinus monticola*);
- d) Pacific Yew (*Taxus brevifolia*);
- e) Trembling Aspen (*Populus tremuloides*);
- f) Arbutus (*Arbutus menziesii*).

“**Protected tree**” means

- a) a *public tree*;
- b) a *tree* of any size within a:
  - i. *Riparian Assessment Area*; or
  - ii. *Environmentally Sensitive Area (ESA)*.
- c) a *tree* of any size on sloping terrain having a *grade* equal to or greater than 30%;
- d) a tree planted or *retained* as a requirement of a subdivision application, development permit, development variance permit, building permit demolition permit, or *Tree Cutting Permit*;
- e) a *protected species* over 0.5 meters in height;
- f) *trees* protected by a restrictive covenant registered on title pursuant to section 219 of the *Land Title Act*;

“**Prune**” means the removal of not more than one-third of the live branches or limbs of a tree or not more than one-third of the live branches or limbs on a tree as part of a consistent annual pruning program and in accordance with *sound arboricultural practice*;

“**Public tree**” means a *tree* of any size on land owned by or in the possession of the *City*, including, without limitation, a *tree* in a park or on a highway, boulevard, road or lane allowance;

“**Ravine**” means a narrow, steep-sided valley that is commonly eroded by running water and has a slope *grade* greater than 3:1;

“**Remove**” means to entirely sever the main stem of a *tree* or to fell a *tree*;

“**Replacement tree**” means a *tree* planted on a parcel in accordance with section 10 of this bylaw to replace *trees* cut, *removed* or *damaged* on the same parcel or to achieve the *tree density target* including in instances where there are no or few trees on a parcel

“**Retained tree**” means a tree not to be cut, *removed* or *damaged*;

“**Riparian Assessment Area**” means:

- a) for a *stream*, the 30 meter strip on both sides of the stream, measured from the riparian area high water mark;
- b) for a *ravine* less than 60 meters wide, a strip on both sides of the stream measured from the riparian area high water mark to a point that is 30 meters beyond the top of the *ravine* bank; and

- c) for a *ravine* 60 meters wide or greater, a strip on both sides of the stream measured from the riparian area high water mark to a point that is 10 meters beyond the top of the *ravine* bank;

**“Root protection area”** means the area of land surrounding the trunk of a *tree* that contains the bulk of the critical root system of the *tree*, as defined on a plan prepared by an *Arborist* approved by the *Director*;

**“Sound arboricultural practice”** means in accordance with American National Standards Institute (ANSI) Publication, A300-Tree Care Operations and the companion Best Management Practices Series of the International Society of Arboriculture (ISA);

**“Stream”** means any of the following that provides fish habitat:

- a) a watercourse, whether it contains water or not;
- b) a pond, lake, river, creek or brook; or
- c) a ditch, spring or wetland that is connected by surface flow to something referred to in subsection (a) or (b);

**“Top”** or **“Topping”** means the removal of large portions of the *crown* of a *tree*, including, but not limited to the making of horizontal cuts through the stems of a *tree*;

**“Tree”** means any species of woody perennial plant having one dominant trunk and a mature height greater than five (5) meters;

**“Tree Cutting Permit”** means the written authority granted by the *Director* pursuant to this Bylaw to cut or remove a *tree*;

**“Tree damaging activities”** means to take any action that may cause a *tree* to die or *decline*, including:

- a) cutting or damaging the roots of a *tree* growing inside the *root protection area*;
- b) placing *fill*, building materials, asphalt or a building or structure upon land inside the *root protection area* of a *tree*;
- c) operating or parking vehicles including trucks, backhoes, excavators or other heavy equipment over the roots of a *tree* growing inside the *root protection area*;
- d) denting, defacing, gouging or damaging the trunk of a *tree*;
- e) removing bark from a *tree*;
- f) depositing concrete washout or other toxins, liquid or chemical substances harmful to the health of a *tree* on land inside the *root protection area* of the *tree*;
- g) removing soil and/or native understory vegetation from land inside the *root protection area* of a *tree* or compacting soil within the *root protection area*;
- h) blasting inside the *root protection area* of a tree or outside the *root protection area* so as to *damage* roots or disturb soil inside the *root protection area*;
- i) undermining the roots of a *tree* growing inside the *root protection area*;
- j) altering the ground water or surface water level within the *root protection area* of a *tree*;
- k) *topping* a tree or *pruning* the *crown* in excess of one-third of the *tree*;
- l) affix or hang materials from a *tree* that may harm the *tree*; or
- m) girdling, ringing, poisoning, or burning a *tree*.

“**Tree density target**” means 50 *trees* per *net developable hectare*;

“**Tree Planting and Replacement Reserve Fund**” means the fund set aside for the purpose of planting *trees* in locations within the City of Courtenay other than where the lot where the tree has been injured or destroyed by *tree damaging activities*.

#### 4. BYLAW PURPOSE

4.1 This Bylaw is enacted for the purposes of:

- a. regulating the cutting and *removal* of *trees*;
- b. regulating the protection of *retained trees* during *development*;
- c. setting forth expectations regarding the treatment of *trees* that are regulated under this Bylaw;
- d. requiring that *tree* retention and/or planting targets (measured as a *tree density target*) be achieved.

4.2 The Bylaw is not contemplated nor intended, nor does the purpose of this Bylaw extend:

- a. to the protection of any person from injury or damage to property or economic loss as a result of the cutting or *removal* of *trees*;
- b. to the assumption by the *City* or any employee of any responsibility or duty of care for ensuring that the cutting of one or more *trees* will not result in injury to any person or danger to any property from erosion, flooding, landslip or other damage;
- c. to assuming liability of a property owner for any damage arising from nuisance or negligence arising from *tree* cutting carried out on the owner’s property.

#### 5. BYLAW APPLICATION

5.1 This Bylaw applies to all properties within the *City* and to all *protected trees*.

5.2 A *Tree Cutting Permit* is required to be obtained prior to any *tree* over 20cm *Diameter at Breast Height* or *protected tree* being *removed* in the following circumstances:

- a. on any *greenfield property*;
- b. on any *infill* property where the *removal* of said *trees* will result in the *tree density target* not being achieved for that property;

5.3 A *Tree Cutting Permit* is required to be obtained prior to any limb or branch that is equal to or greater than 10 centimeter diameter being cut from any *protected species*;

5.4 For *emergency tree removal* a person must submit an application for a *Tree Cutting Permit* within 24 hours of the date of removal, or in the case of a *removal* which takes place on a weekend or statutory holiday, on the next business day after *removal*, and provide *photo documentation* of the *tree* prior to its *removal* with the application.

5.5 When a *Tree Cutting Permit* application is submitted in relation to a *development application*, the *Tree Cutting Permit* shall not be issued until approval has been obtained from the City for the *development application*, unless the *Director* otherwise waives this requirement.

## 6. PROHIBITED ACTIVITIES

- 6.1 No person shall cut, *remove* or carry out any *tree damaging activities* on a *protected tree* or any *tree* required to be retained to achieve the *tree density target* prior to obtaining a *Tree Cutting Permit* or contrary to the terms and conditions of a *Tree Cutting Permit* issued under this Bylaw.
- 6.2 When the *City* is investigating a bylaw infraction under this Bylaw, no person shall remove the remains of a *tree* until after the investigation by the *City* is complete.

## 7. BYLAW EXEMPTIONS AND TREE CUTTING PERMIT EXEMPTIONS

- 7.1 This Bylaw does not apply to:
  - a. *pruning* of *trees* other than *protected species* in accordance with *good arboricultural practice*;
  - b. regular landscape maintenance such as lawn mowing providing such activities are not *tree damaging activities*;
  - c. where the *Director* or an *Arborist* certifies in writing to the *City* prior to removal that in his or her opinion a *tree* is impairing, interfering with, or presents a risk or hazard to the operation of sewers, drains, water lines, septic fields, electrical lines, poles or other similar equipment and appurtenances and that the impairment, interference or risk cannot be reduced or removed in any way other than the *removal* of the *tree*;
  - d. *trees* that are part of plantations for the purposes of an orchard, nursery, or tree farm;
  - e. the cutting and *removal* of *trees* by a British Columbia Land Surveyor when cutting survey lines of a width of less than 2 meters, unless the *tree* is a *protected tree*;
  - f. *tree* cutting or *removal* that is undertaken by a utility, on land owned or held by the utility, and done for the purpose of safety, maintenance or operation of the utility's infrastructure;
  - g. land and the *trees* on it if forestry practices on the land are governed by a tree farm licence, permit, or other authority or tenure under the *Forest Act*; or
  - h. land and *trees* on it if section 21 of the *Private Managed Forest Land Act* applies to the land.
- 7.2 A *Tree Cutting Permit* is not required on an *infill* property when *tree removal* will not result in the number of *trees* retained on the property falling below the required *tree density target* for that property, provided that the *trees* being *removed* are not:
  - a. a *protected tree*; and
  - b. the landowner ensures that *retained trees* are protected from *tree damaging activities*.

## 8. TREE REMOVAL, PROTECTION AND MANAGEMENT CONDITIONS

- 8.1 A person performing *development* on lands containing one or more *retained trees*, where a *Tree Cutting Permit* is required, shall:
  - a. ensure that no *development* occurs within the *root protection area*;
  - b. place and maintain a temporary tree protection *barrier* around any *retained tree* or group of *retained trees* in accordance with Schedule B;

- c. provide the *City* with proof of the *barrier* prior to disturbance occurring around the *retained tree* in the form of a photo, *Arborist* statement, or as otherwise stated in a *Tree Cutting Permit*;
  - d. ensure that no *development* occurs within the *root protection area* except in accordance with the terms and conditions of a *Tree Cutting Permit*;
  - e. display the *Tree Cutting Permit* in an accessible, visible location on the parcel to which it pertains;
  - f. comply with all other local, provincial and federal laws.
- 8.2 In connection with the issuance of a *Tree Cutting Permit*, the *Director* may impose additional conditions to those listed in Section 8.1, including, without limitation, any or all of the following:
- a. identify with a flag, paint, survey tape or other adequate means each *tree* to be *removed or retained*;
  - b. retain an *Arborist* to supervise, monitor or report on any *development*, including site visit requirements:
    - i at critical phases of construction and/or at regular intervals in the construction schedule;
    - ii at the time of *tree replacement*;
    - iii to monitor tree adaptations to changes in their environment caused by the *development*;
    - iv to advise on the creation of *hazardous* conditions;
    - v to advise on *maintenance* requirements where such a condition is stipulated; and
    - vi to confirm the successful establishment of a replanted *tree* prior to release of securities held for that *tree*;
  - c. provide monitoring securities for an *Arborist* or Registered Professional Biologist as determined by the *Director*, in the amount of 125% of an estimate or quote of the cost of monitoring works required to ensure that the mitigation conditions of the *Tree Cutting Permit* are completed;
  - d. ensure that no sediments migrate off site or into watercourses or drainage ditches;
  - e. confirmation that the proposed *development* is consistent with *City* bylaws, and provincial and federal laws;
  - f. treat diseased *trees* and those in *decline*, in accordance with *good arboricultural practice*;
  - g. salvage and use small *trees* as part of a replanting plan, or to achieve the *tree density target*;
  - h. remove and dispose of *invasive species* growing on the tree or within the *dripline* in a responsible manner;
  - i. plant *replacement trees* in accordance with Schedule A, maintain *replacement trees*, for a stipulated length of time, and implement *maintenance* measures such as watering, fertilization, or mulching in accordance with the specified frequency;



- j. remit a protection security of \$1000 per *protected species* when constructing works that may cause *tree damaging activities* to a *protected species*;
- k. notify adjacent properties of a *tree* removal;
- l. provide a written statement from an *Arborist* stating that the scheduled *tree* removal is unlikely to create *hazardous* conditions to adjacent *trees*, including on adjacent properties;
- m. submit a post-construction *Arborist* report following construction activities;
- n. submit a communication plan to ensure that all parties working on the site are aware of the *Tree Cutting Permit* requirements;
- o. restrictions on timing of removal given sensitivities to bird nesting, fish or sediment and erosion control;
- p. keep stumps and roots of cut *trees* in place to ensure slope stability or mitigation against erosion where recommended by a geotechnical engineer;
- q. cut or modify a *tree* so as to retain wildlife habitat, subject to written confirmation from the *Arborist* that doing so will not create a *hazard*;
- r. where recommended by the *Arborist*, require that *crown* clearing occur prior to construction to reduce risk of branch failures and risk to workers.

8.3 The authorization to cut or *remove trees* shall expire within one year after the date of issuance of a *Tree Cutting Permit*, after which time a new application must be submitted.

## 9. TREE DENSITY TARGET

9.1 The *tree density target* may be achieved:

- a. for an *infill* property,
  - i. by counting any *tree* that is larger than 2 centimeters *D.B.H.* and 2 meters in height, that is already growing on the *infill property* and is not an *invasive species*;
  - ii. by planting a *replacement tree*; or
  - iii. by paying \$300 into the *Tree Planting and Replacement Reserve Fund* for each *tree* that is to contribute towards the *tree density target*;
- b. for a *greenfield* property,
  - i. by retaining *native trees* that are each a minimum of 20 centimeters *D.B.H.*; or
  - ii. by replanting *replacement trees* at a ratio of 3:1 for each *tree* removed below the *tree density target* of 50 trees per *net developable hectare*;
    - a. where this subsection applies, up to a maximum of half of the number of *trees* required to achieve the *tree density target* may be achieved with *replacement trees* which may also include retaining naturally growing *trees* smaller than 20 centimeters *D.B.H.* provided said *trees* are not an *invasive* species, red alder or cottonwood trees;
    - b. where this subsection applies, up to a maximum of half of the *replacement trees* may be achieved by paying \$300 into the *Tree*

*Planting and Replacement Reserve Fund* for each *tree* that is to contribute to the *tree density target*;

c. under extenuating circumstances where retention of *trees* required under this section prevents development to permitted densities, the *Director* shall have discretion in determining the number of *retained* and *replacement trees*.

iii. where *trees* described in subsection (b)(i) do not exist, the *tree density target* may be achieved by planting *replacement trees* or retaining naturally growing trees smaller than 20 centimeters *D.B.H.* provided said *trees* are not an *invasive species*, red alder or cottonwood trees;

c. *retained trees* shall be achieved in clusters and/or corridor configurations where practical with consideration given to adjacency to publically owned lands;

9.2 A *tree* must be in good health and must not be dead, *hazardous* or in *decline* in order to be counted towards the *tree density target*. Red alder and cottonwood *trees* shall not be counted towards the *tree density target*.

## 10. REPLACEMENT TREES, SECURITY BONDS AND TREE PLANTING AND REPLACEMENT RESERVE FUNDS

10.1 Where the *Director* has issued a *Tree Cutting Permit*, the following replacement formulas shall be followed, subject to subsections (b) through (d):

a. the *net developable area* shall achieve the *tree density target*;

b. if the *tree removed* is *hazardous*, one *replacement tree* shall be required for every *tree removed*;

c. notwithstanding section 10.1.b, if the *tree removed* is *hazardous* and is growing within *Environmentally Sensitive Areas*, three replacements of *native* species shall be required for every *tree removed*;

d. for the removal of a *protected species* three replacements of the same species shall be required for every *tree removed*, including *hazardous trees*.

10.2 Subject to section 10.1, where the planting and *maintenance* of a *replacement tree* is required pursuant to this Bylaw, the owner shall provide to the *City* security in the amount of \$300 for each *tree* to be planted and maintained.

10.3 Where the *replacement trees* are part of the overall private landscaping program required under a development permit, development variance permit, subdivision, or other development agreement, the security is to be in the amount specified in the approved landscape cost estimate associated with said permit, and only that amount.

10.4 The security in section 10.2 may be submitted in the form of cash, cheque or irrevocable letter of credit, bank draft or in a form satisfactory to the *Director*.

10.5 *Replacement trees* must be planted in accordance with the condition and planting criteria set out in Schedule A.

10.6 Where a person is required by this Bylaw to plant a *replacement tree* on a parcel and the parcel has been subdivided since the act giving rise to the requirement was committed or the *Tree Cutting Permit* was issued, as the case may be, the *replacement tree* may be planted on either parcel.

- 10.7 Full security for each *replacement tree* held by the *City* will, upon application by the owner, be returned to the permit holder one year from the date of planting, upon approval by the *Director* that each *replacement tree* remains in a healthy condition and subject to a written report by an *Arborist* statement to confirm the health of the *tree* as may be reasonably required from the *Director*.
- 10.8 If the owner fails to or refuses to plant the required number, size and type of *replacement trees* in the specified locations within one year after receiving written direction from the *Director* to do so or after a planting date as otherwise agreed upon, the *City* may deposit the securities in the *Tree Planting and Replacement Reserve Fund*.
- 10.9 *Tree replacement* fees paid into the *Tree Planting and Replacement Reserve Fund* are to be held and used by the *City* for replanting on other lands to be determined in accordance with City policies.
- 10.10 Where a protection security is required, the protection security shall not be released until all works that may cause *tree damaging activities* have ceased and an *Arborist* confirms in writing that the *tree* has not experienced any *tree damaging activities*.

## 11. TREE PERMIT APPLICATION AND FEES

- 11.1 An application for a *Tree Cutting Permit* shall include the following information:
  - a. completed application for *Tree Cutting Permit* on the form approved by the *Director*, signed by the registered owner(s) or by the owner's agent who is authorized in writing to act on behalf of the owner in relation to the application;
  - b. written consent from the adjacent property owner where the stem of a *tree* at ground level is growing over the applicant's property line;
  - c. title search dated no more than five business days prior to the date of the application;
  - d. site plan showing all of the following, where applicable:
    - i. *Environmentally Sensitive Areas* (ESAs);
    - ii. property lines;
    - iii. location of the *tree(s)* on site to be *removed* and *retained*, including the *root protection areas* for *retained trees*;
    - iv. existing and proposed buildings, structures, septic fields, servicing including power poles;
    - v. topographic and hydrological features including drainage patterns;
    - vi. on-site access points for vehicles, including sufficient access for tree removal equipment;
    - vii. vehicle parking area and washout areas for concrete trucks;
    - viii. existing and proposed landscaped areas;
    - ix. existing and proposed utility corridors;
  - e. description of the proposed *development* and rationale for *development*, including steps taken to preserve existing *trees* as part of the overall *development* plan of the site;
  - f. an *Arborist* report including the following information:

- i. statement of number of **protected trees** and **trees** over 20 centimeters **D.B.H.** on the property to be described by outlining the:
- ii. inventoried number of stems, species and size where there are fewer than 100 **trees** on the property; or
- iii. approximate number of stems per hectare and species composition based on ISA accepted standards.
- iv. statement of number of **retained trees** on the property following the requested removal;
- v. narrative describing why the proposed **retained trees** are selected, and if management actions are required to promote their long term health;
- vi. confirmation that the **retained trees** are not **hazardous**;
- vii. description of the cutting and/or removal methods to be used, how the site will be accessed and the tree protection measures that shall be used to protect any retained **trees**;
- g. statement that topographic, grading and/or hydrological changes will not negatively impact the retained **trees** with input provided by an appropriate qualified professional;
- h. a detailed tree survey prepared by a registered BC Land Surveyor to indicate proposed **tree retention** and **replacement** areas that require restrictive covenants; and
- i. application fee as determined by the *City of Courtenay Fees and Charges Bylaw No. 1673, 1992*.

11.2 In addition to section 11.1, the following information may also be required by the **Director**:

- a. for **greenfield** sites, a statement of the number of **retained trees** for **trees** greater than 20 cm **DBH** following the proposed **development**;
- b. for **development applications** and **greenfield sites**:
  - i. grading changes including existing topographic elevations and proposed conceptual elevations for major **development** components;
  - ii. proposed final site grading within 10 meters of all proposed **retained trees**.
- c. a proposed replanting plan prepared by a landscape architect or **Arborist** indicating the location, species, size, and class of **trees(s)** or vegetation to be planted including any pertinent establishment requirements such as watering, fertilizing, and soil preparation;
- d. a copy of applicable federal or provincial approval, if required;
- e. a report by a geotechnical engineer or hydrologist to certify that the proposed cutting or removal will not create an adverse impact on slope stability or the drainage network;
- f. when removing trees in **Environmentally Sensitive Areas**, a report from a Registered Professional Biologist may be required to confirm that **tree** removal activities will not negatively impact the **Environmentally Sensitive Area**, including wildlife.

11.3 The following conditions apply to the **Arborist** report provided pursuant to section 11.1(f):

- a. the report shall be valid for a maximum of one year from the date of authorship;

- b. a report older than one year will require a covering letter from the original author stating that the conditions and recommendations contained in the original report remain valid;
- c. in the reasonable discretion of the **Director**, an existing **Arborist** report that is less than one year may be required to be reviewed and re-submitted in instances where changes to the **trees** are deemed significant, including any changes to adjacent land uses, adjacent **tree removal**, changes in grading or hydrological changes, or any other changes to or around the **tree**;
- d. where the original **Arborist** report submitted to the **City** is incomplete or inaccurate, the **Director** may retain the services of an independent **Arborist**, or other professional to review an **Arborist** report, or other professional report, and the cost of the independent **Arborist** report shall be paid by the owner prior to the adoption of the related rezoning, subdivision approval, development permit, development variance permit, demolition or building permit approval or the issuance of the related **Tree Cutting Permit**, whichever comes first.

## 12. REFUSAL TO ISSUE A TREE CUTTING PERMIT

12.1 A **Tree Cutting Permit** shall not be issued by the **Director** where:

- a. an application required under this Bylaw has not been submitted in full or the required fee has not been paid;
- b. information as required by section 11 (Tree Permit Application and Fees) has not been submitted or in the opinion of the **Director** is not satisfactory;
- c. the proposed work would adversely affect slope stability;
- d. the **tree density target** is not achieved; or
- e. the proposed **tree** work would contravene other terms and conditions of a restrictive covenant.

## 13. INSPECTIONS, ASSESSMENTS AND ORDERS TO COMPLY

13.1 The **Director** or person authorized by the **Director** may assess, inspect or cause an inspection to be made of any **tree** to which this Bylaw applies.

13.2 For the purposes of any inspection or assessment herein the **Director** may enter onto any land at all reasonable times in accordance with the **Community Charter**.

13.3 Where the **Director** is satisfied that a person has contravened any provision of this Bylaw, the **Director** may serve an Order to Comply requiring the person to stop the **tree damaging activities** or removal of **trees** and shall set out the particulars of the contravention including requiring the person to remedy the non-compliance within 30 days or by such other date as deemed reasonable in the circumstances by the **Director**.

13.4 The **Director** may revoke a **Tree Cutting Permit** if the terms and conditions of the **Tree Cutting Permit** have been breached or the information supplied by the applicant in support of the **Tree Cutting Permit** is determined to have been inaccurate, incomplete, misleading or erroneous.

## 14. POST CONSTRUCTION ARBORIST REPORT

- 14.1 The *Director* may require a post-construction *Arborist* report following all construction activities in which the following information may be required:
- a. assessment of *damage* to *retained trees* caused by initial site grading and clearing;
  - b. identify and provide a dollar value of the *retained trees* that have been *damaged* or *removed* using an industry standard tree appraisal method;
  - c. propose a replacement plan indicating the proposed number and type of *replacement trees* of equal or greater dollar value and tree planting locations for the rehabilitation of the disturbed areas. Payment into the *Tree Planting and Replacement Reserve Fund* may be accepted by the *City*. No fewer than four replacement trees for every tree *removed* without a *Tree Cutting Permit* will be accepted; and
  - d. recommend management methods to care for an injured *tree*.
- 14.2 Securities to implement the replacement plan in section 14.1 (c) will be required at 125% of the cost of each *replacement tree*.

## 15. AUTHORITY

- 15.1 The *Director* may:
- a. issue, revoke, place conditions upon, and refuse to issue a *Tree Cutting Permit* in accordance with this Bylaw;
  - b. retain the services of an independent *Arborist*, or other professional, to review an *Arborist* report, or other professional report, submitted to the *City* under the provisions of this Bylaw, in support of an application for a *Tree Cutting Permit*, in instances where the completeness or accuracy of the report are brought into question through review of the report and field inspection by the *Director*.
  - c. require security under section 8 of this Bylaw prior to issuing a *Tree Cutting Permit*;
  - d. exempt an applicant for the *Tree Cutting Permit* from any the requirements of section 11 (Tree Permit Application and Fees) if the information to be submitted has been otherwise provided to the *City*;
  - e. require the provision of *replacement trees* as set forth in section 10 of this Bylaw, and the *maintenance* of said *trees*;
  - f. charge and collect those fees prescribed in the *City of Courtenay Fees and Charges Bylaw, 1673, 1992* or this Bylaw;
  - g. serve on any person who has not complied with a *Tree Cutting Permit* or a provision of this Bylaw an Order to Comply;
  - h. enforce this Bylaw and issue penalties in accordance with sections 18 and 19 of this Bylaw; and

- i. authorize another member of staff to act on their behalf.

## 16. APPLICATION FOR RECONSIDERATION

- 16.1 Within 30 days of being notified in writing of the decision of the *Director* under this Bylaw, the applicant may, at no charge, request *Council* to reconsider the decision.
- 16.2 The applicant must give written notice to the Director of Legislative Services and include the following information:
  - a. the applicant's address for receiving correspondence related to the request for reconsideration;
  - b. a copy of the written decision or direction from the *Director*;
  - c. reasons to explain why the decision should be amended or set aside; and
  - d. a copy of any documents which support the applicant's request for reconsideration by *Council*.
- 16.3 The Director of Legislative Services will notify the *Director* of the request(s) for reconsideration and staff shall, prior to the date of the meeting at which the reconsideration will occur, provide a written report to *Council* setting out the rationale for the decision.
- 16.4 The Director of Legislative Services will place the request(s) for reconsideration on the agenda of a meeting of Council to be held as soon as reasonably possible.
- 16.5 The Director of Legislative Services will notify the applicant of the date of the meeting at which reconsideration will occur.
- 16.6 *Council* will review the information provided by the applicant and staff, and either confirm the decision made by staff, vary, or substitute its own decision including terms and conditions as set forth by this Bylaw.
- 16.7 The decision of *Council* on reconsideration is final.

## 17. DESIGNATION OF BYLAW

- 17.1 This Bylaw is designated under Section 264 of the Community Charter as a bylaw that may be enforced by means of a Municipal Ticket Information in the form prescribed.

## 18. OFFENCE

- 18.1 Every person who violates any of the provisions of this Bylaw or who suffers or permits any act or thing to be done or omits to do anything required to be done in contravention or in violation of any of the provisions of this Bylaw, is guilty of an offence against this Bylaw and is liable to the penalties hereby imposed, and each day that a violation is permitted to exist or continues shall constitute a separate offence.
- 18.2 When more than one *tree* is cut, *removed* or *damaged* by *tree damaging activities*, or more than one *tree* is not replaced or maintained in accordance with a *Tree Cutting Permit* issued pursuant to this Bylaw, a separate offence is committed in respect of each such *tree*.

**19. PENALTY**

19.1 A person who commits an offence under this Bylaw is liable to pay a fine of:

- a. up to \$1,000 as established per the City’s *Municipal Ticket Information Bylaw 2435, 2006*;
- b. up to \$10,000 as determined by the court pursuant to an *Offence Act* proceeding.

**20. GENERAL PROVISIONS**

20.1 All Schedules referred to herein form part of this Bylaw:

- a. Replacement Tree Stock and Planting Requirements
- b. Tree Protection Barrier and Signage Specifications
- c. Erosion and Sediment Control Guidelines

**21. SEVERANCE**

21.1 If a portion of this Bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this Bylaw is deemed to have been adopted without the severed portion.

**22. EFFECTIVE DATE**

22.1 This Bylaw will come into force on the date of its adoption.

**23. REPEAL**

23.1 “City of Courtenay Tree Management and Protection Bylaw No. 2461, 2006” and all amendments thereto are hereby repealed.

Read a first time this 19<sup>th</sup> day of September, 2016

Read a second time this 19<sup>th</sup> day of September, 2016

Read a third time this 1<sup>st</sup> day of May, 2017

Finally passed and adopted this 15<sup>th</sup> day of May, 2017

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Mayor

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Director of Legislative Services



## SCHEDULE A

### TREE PROTECTION AND MANAGEMENT BYLAW NO. 2850, 2016

#### REPLACEMENT TREE STOCK AND PLANTING REQUIREMENTS

The *City* maintains a list of acceptable *replacement tree* species. Where *replacement trees* are required to be provided pursuant to section 10 of this Bylaw, such *replacement trees* shall be provided and planted as follows:

- (a) *Replacement trees* may be the same or different species, with the exception of *protected tree species*.
- (b) At least half of the total number of *trees* on the property, including existing *retained* and *replacement trees*, must be *native* species, unless the *trees* being replaced are located within an *Environmentally Sensitive Area*, in which case all of the *replacement trees* shall be *native*.
- (c) *Replacement trees* must be of a five gallon pot size with the following exceptions:
  - a. Arbutus (*Arbutus menziesii*) may be one gallon pot size;
  - b. Garry Oak (*Quercus garryana*) may be three gallon pot size.
- (d) *Replacement trees* shall not be planted:
  - a. within 3 metres of a building foundation wall and within 1 metre of any property line of a lot;
  - b. within 5 metres of an overhead utility line for trees that are a maximum of 5 metres in height, and within 10 metres of an overhead utility line for trees that are a maximum of 12 metres in height;
  - c. within an easement or statutory right of way.
- (e) Every *replacement tree* shall be spaced from existing trees and other *replacement trees* in accordance with *good arboriculture practices* so as to best ensure survival of the replacement and existing trees.
- (f) *Replacement trees* must meet the plant condition and structure requirements set out in the latest edition of the BCSLA/BCLNA “B.C. Landscape Standard” and the CNTA “Canadian Standards for Nursery Stock” to be considered acceptable by the *Director*.
- (g) *Replacement trees* shall be planted and maintained in accordance with the requirements set out in the latest edition of the BCSLA/BCLNA “B.C. Landscape Standard”.
- (h) Tree caging will be required in areas prone to deer browsing until the *tree* is 6 feet in height.
- (i) *Replacement trees* shall be planted during the suitable local planting seasons generally defined as fall (September – November) and spring (February - April). Where planting must occur outside of these time periods, then a strategy for ensuring the *trees* are watered (in the summer) or protected from cold weather (in the winter) must be included as part of the *Tree Cutting Permit* application.

- (j) The following minimum specifications for topsoil or amended organic soil are required for replanting on a property unless otherwise advised against by the *Arborist*:
- i. organic matter content of 15% dry weight in planting beds and 8% in turf areas;
  - ii. depth of 300 mm for turf;
  - iii. depth of 450 mm for shrubs/trees;
  - iv. depth of 300 mm around and below the root ball of all trees;
  - v. pH from 6.0 to 8.0 or matching that of the original undisturbed soil;
  - vi. subsoils scarified to a depth of minimum 100 mm with some topsoil being incorporated into the subsoil; and
  - vii. planting beds mulched with a minimum of 50 mm of organic materials.

## **SCHEDULE B**

### **TREE PROTECTION AND MANAGEMENT BYLAW NO. 2850, 2016**

#### **TREE PROTECTION BARRIER AND SIGNAGE SPECIFICATIONS**

##### **Barrier structure and material:**

Tree protection *barriers* should generally be a minimum of 1.2 meters high, and consist of snow fencing or an equivalent, supported by poles at sufficiently close intervals to ensure the integrity of the fence, or supported by wooden frames.

In instances where *development* is not expected to occur near the *root protection area*, poles strung with multiple bands of flagging tape may be sufficient, subject to approval by an *Arborist* and/or the *Director*.

##### **Barrier distance from tree(s):**

Tree protection *barriers* must be of a sufficient size to protect the *root protection area* of the tree. The *root protection area* refers to the area of land surrounding the trunk of the tree that contains the bulk of the critical root system of the tree, as defined on a plan prepared by an *Arborist*, that the *Director* reasonably approves.

##### **Barrier protection sign:**

Where *retained trees* require protection barriers, a tree protection informational sign in the format provided in this Schedule, must be affixed to the *barrier* at intervals of every 30 metres unless waived as a requirement by the *Director*. The sign must be able to withstand weather conditions for prolonged periods of time.

##### **Barrier duration:**

The *barrier* must be in place throughout the entire duration of the *development* activities that are taking place around the *tree* and until written approval of its removal is obtained from the *City*.



## Tree Protection Zone (TPZ)

No grade changes, trenching, storage of materials or equipment, liquid disposal, hard surfacing or vehicular traffic are permitted within this area.

The tree protection barrier and sign must not be removed, without authorization of City of Courtenay, Development Services Department. Failure to comply may result in fines.

If you see this sign or protection barriers being tampered with, please report to the number listed below.

For more information call the Development Services Department at 250 334 4441

## SCHEDULE C

### TREE PROTECTION AND MANAGEMENT BYLAW NO. 2850, 2016

#### EROSION AND SEDIMENT CONTROL GUIDELINES

*Tree Cutting Permit* holders are expected to adhere to best management practices (BMPs) including but not limited to the ones outlined below:

- (a) Retain existing vegetation and ground cover where possible;
- (b) Construct *development site* access pads 4.5 meters wide at all accesses to site;
- (c) Restrict vehicle access and utilize wheel wash pads at access points;
- (d) Install silt fencing around stockpiles and at the toe of disturbed slopes;
- (e) Completely cover temporary stockpiles or spoiled material with polyethylene or tarps and surround with silt fence;
- (f) Install and maintain filter fabric bags around any catch basins, lawn basins, exposed manholes or any other open storm sewer access points collecting runoff from the *development site*;
- (g) Divert runoff away from cleared areas by use of low berms;
- (h) Convey surface runoff through swales designed to minimize flow velocity and erosion while maximizing settling;
- (i) As a priority, collect runoff into suitable sediment settling facility or facilities prior to discharge off-site;
- (j) Unless deemed unnecessary by the *Director*, a sediment pond should be designed, installed and maintained according to the *Land Development Guidelines for the Protection of Aquatic Habitat*;
- (k) Keep all sand, gravel, spoiled material and concrete mix off of all hard and paved surfaces;
- (l) During excavation, holes requiring dewatering should be pumped to a vegetated area or suitable settling facility which will prevent sediment-laden water from accessing the drainage system;
- (m) Regularly sweep roads; and
- (n) Re-vegetate, cover or mulch disturbed areas as soon as practically possible.