



TOWN OF CORTLANDT

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TO: Thomas Wood, Town Attorney
Michael Cunningham, Deputy Town Attorney
Chris Kehoe, Dep. Dir. DOTS/Planning
Loretta Taylor, Chairwoman Planning Board
David Douglas, Chairman CAC

FROM: Christine B. Cothren, Deputy Town Clerk

RE: Letter – Ch. 283, Tree Ordinance Revisions

DATE: June 24, 2020

At their regular meeting held on June 16, 2020 the Town Board referred to you the attached correspondence from DOTS regarding revisions to Ch. 283, Town of Cortlandt Code, Tree Ordinance.

Please forward any comments to the Town Clerk's Office. The Town Supervisor is expecting this to be placed on the agenda for the next Town Board meeting on July 21, 2020.

If this office can be of any assistance, please do not hesitate to contact me.

Enc.

Cc: Agenda

§ 283-1. Findings.

- A. The Town Board recognizes that healthy trees stabilize the soil and control water pollution by preventing soil erosion and flooding. Trees also absorb air pollution, provide oxygen, yield advantageous microclimatic effects, act as natural air conditioners and buffer the wind, have an intrinsic aesthetic quality, offer a natural barrier to noise and a natural habitat for wildlife and are integrally involved in fundamental ecological systems.
- B. The Town Board has reviewed the experience of past development and finds that excessive cutting of trees can create surface drainage problems, increase municipal costs to control drainage, adversely affect air quality, impair the stability and value of nearby properties, adversely affect fundamental ecological systems and result in unsightly and barren conditions
- C. The Town Board further finds that the natural topography of the Town of Cortlandt is a public asset which should be preserved and safeguarded and that the various features of its topography, including the topsoil and other natural materials that constitute the shape and contours of the land, the plant life and wildlife that is fostered on the land and the water or the flow thereof upon the land are of prime concern to the welfare of the people of the Town. Therefore, no changes should be permitted in such topography except those which are absolutely necessary in order to permit the proper and appropriate use of the land.
- D. The Town Board, furthermore, takes note of the findings of the New York State Environmental Quality Review Act, [1] among them being the obligation of the Town to serve as a steward of air, water, land and living resources, and the obligation to protect the environment for the use of this and future generations. It is the intent of the Town to recognize these responsibilities in part by providing these procedures, as well as to preserve the health and welfare and rural character of the community which is reflected in the trees and woodlands of the Town of Cortlandt.

[1] Editor's Note: See New York State Environmental Conservation Law § 8-0101 et seq.
- E. Based on these findings, the Town Board has determined that regulations are needed to prevent excessive cutting of trees and topographical alterations which may have adverse environmental impacts.
- F. Finding statements. Finding statements should be required for tree removal permits regarding subdivisions and all undeveloped single lots.

§ 283-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated. Words and phrases used in this chapter that are not specifically defined in this section shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

ADMINISTRATIVE PERMIT

A permit(s) issued by the Director of Technical Services or their designee.

APPLICANT

A property owner, person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including public agencies requesting a tree removal permit from the Town or a person to whom a tree removal permit has been given.

APPROVING AUTHORITY

The Zoning Board of Appeals, the Planning Board, the Town Board or the Director of Technical Services, as specified in § 283-5 of this chapter.

ARBORIST

A professional in the practice of arboriculture that focuses on the health and safety of individual plants and trees possessing the qualifications set forth by the International Society of Arboriculture American Society. The Town Board at the recommendation of the Director of Technical Services shall designate a Town approved arborist

CALIPER

The standard trunk measurement taken 6 inches above the ground.

CLEARING

The removal of 10 or more healthy trees per quarter acre on any lot in a calendar year not meeting the definition of protected or specimen tree

CANOPY

The cover formed by the leafy upper branches of a tree.

CONSERVATION ADVISORY COUNCIL (CAC)

The Conservation Advisory Council of the Town of Cortlandt.

CRITICAL ROOT ZONE

The minimum area of retained roots necessary for maintenance of tree health typically taken to be 1.5 times the trunk diameter taken at DBH.

DIAMETER AT BREAST HEIGHT (DBH)

The diameter of a tree measured at a point 4 1/2 feet above the ground on the uphill side.

DISEASED OR DEAD TREE

A tree that is dead or determined to be hazardous, in a state of decline (insufficient to sustain life), or damaged beyond salvaging as determined by a ISA certified arborist or NYS registered landscape architect.

ENVIRONMENTAL FUND

A fund established and administered by the Town Board for the payment of fees as mitigation in lieu of onsite planting, where in such instances, all mitigation requirements cannot be met onsite.

FILL

Any act by which earth, sand, gravel, rock or any other material is deposited, placed, replaced, compacted, dumped, transported or moved by man to a new location and shall include the conditions resulting therefrom. All imported fill must be certified as clean, with no construction debris, and structurally adequate for the intended purpose.

HAZARDOUS TREE

A tree that possesses a structural defect or one whose location and/or position poses a foreseeable danger to persons or property, as determined by the Town Arborist, or certified arborist in consultation with the Town Arborist.

LAND DEVELOPMENT

Construction activities including grading, excavating, soil disturbance, or placement of fill disturbing more than 25% of the total lot area and any activity which disturbs more than 1 acre of land.

For properties located in a regulated watershed, land development is defined as any activity disturbing more than 5,000 square feet of land.

LANDSCAPE BUFFER ZONE

Natural vegetation and/or existing landscaped area which screens adjoining properties measured from the property line towards the interior of the lot.

All residentially zoned properties up to an acre, 10-ft from the property line and 25-ft for residential lots in excess of 1-acre.

For all non-residential properties, the buffer zone shall be as defined in Article VII Landscaping, Screening and Buffering Regulations § 307-20, 21, 22 and 23.

MITIGATION

Tree mitigation is the act of compensating for healthy tree removal by planting a proportionate number of replacement trees on a site based upon the species and size of each existing tree that is lost or taking other actions to restore, mitigate and/or biologically enhance existing green-space as per the Mitigation Requirements described in below §283-6.

PROTECTED TREE

Specimen trees, trees of important historical value as identified by the approving authority and trees as set forth in Appendix A. [1]

PROTECTED TREE ZONE

Those trees to be protected as depicted on the approved site plan for a single lot building permit or as part of a subdivision approval.

REMOVAL

The clearing, cutting, uprooting or any other similar activity on any tree or trees, except normal maintenance such as trimming, pruning, bracing and selective removal of dead or diseased trees as determined by the Town approved Arborist

REGULATED TREE

A tree subject to regulation in this chapter, greater than 4 inches at DBH, protected and/or specimen.

SITE PLAN

A map showing relevant, existing site features and vegetation, inventorying all trees as defined within this chapter on a site proposed for development or within 50-ft of the proposed limits of disturbance or to a distance established by the Director of Technical Services sufficient for review.

STREET TREE A "street tree" is any tree including decorative landscaping planted by or on behalf of the Town of Cortlandt in the street Right-of-Way.

SPECIMEN TREE

All trees greater than 30 inches in diameter or a tree or group of trees considered to be an important community asset due to its unique or noteworthy characteristics or values. A tree may be considered a specimen tree based on its age, rarity or special historical or ecological significance as determined by the Planning Board as part of a subdivision approval process or by the Town Arborist, Director of Technical Services for a single lot building permit.

TOPPING

The indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for topping include "heading," "tipping," "hat-racking," and "rounding over."

TREE

A woody, perennial, either deciduous or coniferous, having a DBH of four or more inches.

[1] Editor's Note: Appendix A, List of Protected Trees, is included at the end of this chapter.

§ 283-3. Regulated Activities, removal/destruction of trees, permit required.

Except as otherwise described below, no property owner shall permit and no person, firm or corporation or individual connected with such firm or corporation shall, either purposely or negligently, cut down, kill, clear cut, top or otherwise destroy, or commit any act which will lead to the eventual destruction of, any tree in violation of this chapter unless he is in the possession of a permit to do so issued by the approving authority or as otherwise authorized pursuant to this chapter.

A. Activities permitted as of right.

A permit is required to be filed even for as of right activities. The Town will review and issue a permit expeditiously. Documentation listing the trees to be removed is required to be submitted with the permit application. When tree removal occurs pursuant to a storm event or other emergency condition or danger, work may commence immediately upon prior notification to the Town and within 10 days after such removal the person on whose property the tree is located shall submit to the Director of Technical Services a completed permit application and letter stating that all work has been completed.

No permit fee shall be assessed for activities permitted as of right nor mitigation required.

1. Removal of trees on developed residential properties provided the types of trees and/or the tree removal activity does not meet the definitions of the following or as defined herein (see §283-2)
 - a. Protected, specimen, or street trees
 - b. Clearcutting
 - c. Tree located in regulated wetlands or wetland buffers
 - d. Trees located on steep slopes
 - e. Trees located within 10 feet of a property line
2. Removal of any tree under an actual or ongoing emergency condition when such tree removal is necessary for the protection and preservation of life or property. Removal of a tree that endangers adjoining property.
3. Any removal of trees removed by or on behalf of the Town.
4. Removal of a tree that is dead or so substantially diseased that it threatens the health of other trees. Uprooted, diseased or dying trees.

5. Pruning or maintaining a protected or specimen tree unless such pruning or maintenance damages more than 25% of the canopy or roots.
6. Forest or wild habitat management activities previously approved by the NYSDEC as prepared in accordance with a specific forest stewardship plan or qualified ecologist and on file with and accepted by the Town for all publically owned lands or lands under conservation stewardship.

B. Regulated activities

A permit is required for all regulated activities. In addition, regulated activities will require mitigation. Refer to Mitigation Requirements in §283-6 below.

1. Removal of trees associated with the construction of a residential home on an undeveloped single lot.
2. The removal of any tree on a commercial property.
3. Tree removal that occurs as a result of a site plan, subdivision, or special permit application (see §283-4. B.)
4. Removal of healthy trees on a vacant lot.
5. Clearing and land development activities defined herein.
6. Removal of healthy trees within a conservation area, protected open space, regulated landscape buffer zone, steep slope (as defined § 259) or wetlands buffer area (as defined § 179).
7. Removal of any specimen or protected tree.
8. Work conducted within the critical root zone of a street tree.
9. Removal of any tree on public property or within a Town designated right-of-way, park or other property by agencies other than the Town.
 - a. Public entities, agencies, or utilities are required to provide notification prior to the removal of any tree. Protected and specimen trees shall be identified and replanted or contribution made to the Town's Environmental fund unless exempt by State and Federal Law.

- b. No department, agency, commission or authority in the Town of Cortlandt, employee of the Town of Cortlandt or any firm or individual retained by the Town shall cut down, kill or otherwise destroy more than five trees within an area of 2,500 square feet, or any single specimen or protected tree on Town property, with the exception of Town highways and public rights-of-way, without first considering the parameters and intent of this chapter.
- c. All actions of the Town are subject to SEQR, and the provisions and intent of this chapter will be considered as part of the Town's approval of any projects or plans conducted by the Town.

§ 283-4 Permit Procedures.

A. Activities permitted by right

1. An activity requiring a permit under § 283-3, but not requiring subdivision approval, site plan approval, or a special permit, is determined to be limited in scope and in potential impact and is eligible for an administrative permit reviewed by Director of Technical Services or their designee. Unless it is determined that the application requires additional review or referral to another approval authority such as the Planning Board and/or Conservation Advisory Committee, the application shall be processed expeditiously of receipt of a complete application in accordance with the provisions of this chapter
2. Application requirements. An application for a permit required by this chapter shall be filed with the approving authority and shall contain the following information and such other information as required by it, except when waived by it as not pertinent or necessary for the proposed activity:
 - a. The name, address and phone number of the property owner and applicant.
 - b. The consent of the property owner, if the applicant is not the property owner.
 - c. The Tax Map designation of the property.
 - d. A written statement indicating the purpose and reasons for the removal of the tree(s). Indicate size, genus and cultivar of the trees proposed for removal.

- e. A plan or plans showing the following: the location of the property and property boundaries; the location of structures, driveways and roadways on the property; and the location of the proposed work.
- f. The location of wetlands, water bodies or watercourses.
- g. If tree cutting is proposed to be conducted in stages, the location of each stage.
- h. The location and size of loading areas for the removal of cut trees.
- i. A plan for tree disposition and cleanup.

B. Regulated Activities, Residential Construction, Site Plans, and Special Permits.

- 1. Tree removal for individual lots in a subdivision shall only be permitted at the time of the issuance of a building permit by the Department of Technical Services - Code Enforcement Division.
- 2. Any person proposing to conduct or cause to be conducted a regulated activity specified in § 283-3 as part of an application for a subdivision, site plan or special permit hereof shall file an application for a permit with the approval authority as provided pursuant to the local laws and ordinances of the Town of Cortlandt. All Application requirements identified in § 283-4.A.2 are required along with the following.

- a. A tree inventory and protection plan within 100 feet of the proposed area of disturbance. This inventory shall be compiled by A Town approved arborist appointed by the Town but paid for by the applicant and it must include:
 - b. A comprehensive list of all individual trees on said property, depicting size, genus, species and cultivar. Include notes pertaining to the tree rating. The tree inventory shall be both depicted on a site drawing and presented in tabular form.
- c. An integrated site plan identify all trees proposed for removal required for proposed improvements such as common infrastructure (roads/driveways), utilities (water/sewer/electric) and other land development activities. Plans shall depict trees to be removed with an "X".
- d. For subdivisions, site plans and special permits, a detailed plan to protect and preserve trees before, during and for a period of two years after construction. Trees to remain shall be noted to remain with proper tree protection and plan addressing the same.

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- e. A written statement setting forth those steps to be taken to protect trees, roots and canopy from damage during all stages of work on the site. Explanation as to why the proposed activity could not occur elsewhere on site.
 - f. Prior to commencement of any grading, construction or tree removal, a clearing and grading stake-out sketch prepared by a licensed professional land surveyor is required also identifying a tree protection area within 100 feet of any proposed grading, construction or tree removal, or within the tree's critical root zone, whichever is greater, must be established by physical barriers and maintained until such work is completed.
 - g. Active tree protection shall consist of chain-link, orange laminated plastic, wooden post and rail fencing or other equivalent restraining material placed at the edge of the critical root zone. In addition to fencing, where tree trunks are in jeopardy of being damaged by equipment, the administrator shall require boards of two inches by four inches to be strapped around the trunk of the trees. In addition, where active tree protection is required, each tree to be saved shall be marked at the base of the trunk with blue-colored water-based paint.
 - h. Any additional information reasonably required by the approval authority.
3. Submittal of a landscape mitigation / reforestation plan per the requirements set forth in §283-6. The approving authority if it is the Planning or Town Board, may vary this requirement if it is determined during the course of review that:
- a. Due to site constraints it is impractical to replace certain trees.
 - b. Due to diligent consideration during design and planning, alternatives were developed and presented by the Applicant, preserving additional open space through a combination of low impact development, adaptive re-use of a property and other soil conservation and mitigation measures which minimized tree removal.
 - c. An invasive and vine removal strategy is provided which may be used to reduce and offset required mitigation.

4. Prior to the commencement of any land development activity authorized under a permit pursuant to this chapter, the approving authority may require the applicant post a performance bond in an amount with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the permit.
5. The applicant shall be required to pay the cost for the Town to retain a Town approved arborist or other professional to review compliance with the requirements of this chapter.

C. Referral; regulated activities only

1. Upon receipt of a completed application, the approving authority shall e-mail and send via standard mail said application to the CAC for review and report.
2. The CAC shall report back to the approving authority within 15 days of such referral if the approving authority is the Director of Technical Services, within 30 days of referral if the approving authority is the Zoning Board of Appeals or the Town Board, and within 45 days of referral if the approving authority is the Planning Board. The time period within which the CAC shall be required to report back may be modified at the discretion of the approving authority.
3. The approving authority shall give significant weight to the recommendations of the CAC as well as any reports or recommendations offered by the Town Arborist or other environmental officials. Failure by the CAC to report back to the approving authority within the specified time period shall be interpreted as indicating no objection to the application. The approving authority shall send the final approved plan(s) to the CAC.
4. All applications for the construction of a new single family home shall be referred to the Town's CAC for comment. This option shall be reserved for all clearing and land development activities and building permit applications at the discretion of the Director of Technical Services or designee.
5. The Director of Technical Services or their designee has the discretion to review all other applications otherwise not requiring CAC referral (e.g., clearing, land development activities, etc.)

D. Notice.

1. For applications to the Zoning Board of Appeals, the Planning Board or the Town Board, such property owners shall have 20 business days from said date of notice or until such time as any required public hearings are closed by the approving authority, whichever is later, to submit written comments to the approving authority.

The approving authority may waive this notice procedure if it has received responses from the adjoining property owners prior to action by it. Upon receipt of a completed application pursuant to this chapter, the approving authority shall cause notice of receipt of the same to be mailed by first-class mail to adjoining property owners and those across the street adjoining the involved property.

2. For new residential construction administratively handled by the Department of Technical Services upon receipt of a completed application under this chapter, the Director of Technical Services or his designee, shall cause such notice of receipt of the same to property owners and those across any street or right-of-way abutting the involved property. Such property owners shall have 15 business days from the day of notice to submit written comment to the approval authority with regard to said application. The approval authority may waive this notice procedure if responses for all of the above property owners have been received prior to the action.

3.

The applicant shall prepare written response to all comment received by the Town.

- E. Public hearing. For applications involving the Planning Board, the Zoning Board or Town Board, a public hearing shall be held by the approval authority on the application made hereunder at such times, under such circumstances and upon such notice as may be required for the granting of the other permit or approval required of such approval authority pursuant to the local laws and ordinances of the Town.
- F. Action by the approving authority. The approving authority shall review said application to ensure conformity with the requirements of this chapter. A determination shall be made to approve, approve with conditions and/or modifications or disapprove the issuance of such permit simultaneously with the determination by the approving authority of any other permit or approval for which application was made.

§ § 283-5 Approving Authority.

The approving authority shall be as follows:

- A. The Zoning Board of Appeals shall be the approving authority with respect to any application which requires the issuance of any other permit or approval by it pursuant to the local laws and ordinances of the Town of Cortlandt.
- B. The Planning Board shall be the approving authority with respect to any application which requires the issuance of any other permit or approval by it pursuant to the local laws and ordinances of the Town of Cortlandt.
- C. The Town Board shall be the approving authority with respect to any application which requires the issuance of any other permit or approval by it pursuant to the local laws and ordinances of the Town of Cortlandt, including any application which also requires the issuance of any permit or approval by the Planning Board or Zoning Board.
- D. The Director of Technical Services shall be the approving authority with respect to all other single lot applications and activities (i.e., administrative permits).

§ 283-6 Mitigation Requirements / Reforestation and Landscape Plans

- A. Requirements and regulations.
 - 1. Activities permitted as of right shall not require mitigation.
 - 2. A landscape mitigation / reforestation plan shall be required for all regulated activities unless varied by the Planning or Town Board.
 - 3. Mitigation is required for 100% of the aggregate DBH trees proposed for removal as follows:

ADMINISTRATIVE PERMIT (Director – Department of Technical Services)	
Category	Mitigation
ALL RESIDENTIAL DISTRICTS	10% of DBH of regulated trees removed 20% of DBH of regulated trees removed within regulated landscape and wetlands buffer 30% of DBH for any protected or specimen tree removed; site wide

DRAFT TREE ORDINANCE

	<p>50% of DBH for any tree removed on steep slopes with grades in excess of 30%</p> <p>The minimum number of trees required for mitigation shall be one (1) for each 2,500 square feet of proposed land disturbance.</p>
<p>COMMERCIAL / INDUSTRIAL Developed not requiring amended site plan or special permit</p>	<p>25% of DBH of regulated trees removed</p> <p>50% of DBG of regulated trees removed within regulated landscape and wetlands buffer</p> <p>100% of DBH for any protected or specimen tree removed; site wide</p> <p>100% of DBH for any tree removed on steep slopes with grades in excess of 30%</p> <p>The minimum number of trees required for mitigation shall be three (3) trees for lots Zoned CC and five (5) for all others districts</p>
<p>SUBDIVISIONS, SITE PLANS, SPECIAL PERMITS (Zoning Board, Planning Board, Town Board)</p>	
Category	Mitigation
<p>Subdivisions</p>	<p>20% of DBH of regulated trees removed required for common infrastructure (utilities, roadway, storm water drainage)</p> <p>40% of DBH of regulated trees removed within regulated landscape and wetlands buffer</p> <p>60% of DBH for any protected or specimen tree removed; site wide</p> <p>100% of DBH for any tree removed on steep slopes with grades in excess of 30%</p> <p>The minimum number of trees required for mitigation shall be no less than five (5) trees per</p>

	lot created and two (2) trees per 1000 sf of land development.
<p align="center">Commercial / Industrial As part of site plan approval or amended site plan approval.</p>	<p>25% of DBH of regulated trees removed</p> <p>100% of trees removed for all trees previously approved as part of mitigation.</p> <p>100% of DBG of regulated trees removed within regulated landscape and wetlands buffer</p> <p>100% of DBH for any protected or specimen tree removed; site wide</p> <p>100% of DBH for any tree removed on steep slopes with grades in excess of 30%</p> <p>The minimum number of trees required for mitigation shall be three (3) trees for lots Zoned CC and five (5) for all others districts</p>
<p align="center">Commercial / Industrial Undeveloped, as part of a site plan approval or special permit approval</p>	<p>50% of DBH of regulated trees removed</p> <p>100% of DBG of regulated trees removed within regulated landscape and wetlands buffer</p> <p>100% of DBH for any protected or specimen tree removed; site wide</p> <p>100% of DBH for any tree removed on steep slopes with grades in excess of 30%</p> <p>The minimum number of trees required for mitigation shall (5) trees per 1000 sf of land development activity.</p>
<p>Removal of trees on public property and within Town right-of-way by entities other than the Town refer to <u>§ 283-3 B. 9.</u></p>	<p>Mitigation required for protected and specimen trees. Mitigation shall be no less than 1 tree planted for each tree removed or contribution made to the Town's Environmental Fund unless exempt by State and Federal Law.</p>
<p>UNAUTHORIZED REMOVAL OF TREES</p>	

Category	Mitigation
Residential	1.5 times the requirements outlined above.
Commercial	Double the requirements outlined above. Mitigation shall be no less than 1 tree planted for each tree removed.

4. Mitigation is only required for those tree determined to be healthy. Trees that are inventoried noted as dangerous, diseased, uprooted, or dying and accepted by the approving authority are omitted from the aggregation.
5. Replacement trees of the same or similar species as the tree to be removed shall be planted as required in the tree replacement table as set forth in Appendix B. Replacement trees shall be ecologically compatible with the site and adjacent properties. Invasive trees shall not be allowed under any circumstance. Deviations from the recommended planting list is acceptable with prior written approval from the approving authority.
 - a. Standards for transplanting shall be in keeping with those established in the International Society of Arboriculture publication "Trees and Shrub Transplanting Manual." Reference The Manual of Woody Landscape Plants (Michael Dir., 1983, Castle Books) or similar publication for information on tree species site requirements.
 - b. Landscape plans shall incorporate multiple tree species with no single species accounting for more than one third of all plantings. For landscape / reforestation plans which require more than ten (10) trees, 50% shall be canopy trees and no less than 25% shall be understory trees.
6. Each replacement tree shall be a minimum of 3 inch DBH (deciduous) and a minimum of 8 feet (coniferous) in height when planted.
7. For protected or specimen trees proposed for removal, replacement of the same tree type is required unless otherwise authorized by the approving authority when site conditions warrant such a change.
8. For commercial site plans an irrigation system or watering schedule shall be included to ensure their survival in accordance with the generally accepted methods.

9. Each replacement tree shall be planted on the same subdivision or development site from which the tree was removed.
10. Contribution to the Town's Environmental Fund shall be permitted when It is recommended by a licensed professional landscape architect or A Town approved arborist and accepted by the Approving Authority as follows:
 - a. There is not a suitable location for the replacement tree(s) on the same site.
 - b. The replacement tree(s) are unable to survive on the site.

The balance of mitigation is required to be submitted to the Town's Environmental Fund prior to the regulated activity taking place.

11. For subdivisions, site plans and special permits replacement planting shall be required to be bonded as to replace any vegetation for a period on no less than two (2) years from the date of written acceptance and issuance of a certificate of occupancy/compliance.

§283-7 Standards for approval.

In granting, denying or conditioning any application for a permit required by this section, the approving authority shall evaluate the proposed activity, its purpose, and available alternatives, and shall determine that the impact of the proposed activity will not be detrimental to public health and safety, soil erosion, wildlife habitat, fire protection and drainage. Such determination shall be made in accordance with the following standards, considerations and conditions:

- A. Notwithstanding any other factors, the removal of a regulated tree may be favored:
 1. If the tree is located near existing or proposed improvements, especially if
 - a. The tree is within three feet of an existing or proposed sidewalk or driveway.
 - b. The tree is within 10 feet of an existing cesspool, dry well, leaching pit, septic tank or field, or other subsurface improvement.
 - c. The tree is within 10 feet of any other existing or proposed permanent structure. A permanent structure is one that requires a building permit and certificate of occupancy or a certificate of compliance under the NYS Building Code and is not a shed.

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- d. The proposed subsurface improvement, structure, sidewalk, driveway or roadway cannot be reasonably relocated.
 2. If the tree removal is necessary to achieve compliance with state, county or local standards for sight lines, driveways or intersections.
 3. If the tree removal is consistent with good horticultural or vegetation management and will not have an adverse effect on an ecological system.
 4. If the tree to be removed, due to disease, blight, infestation, storm damage, accident or other condition, causes undue hardship for the property owner to maintain.
 5. If the tree removal is limited to non-native species of trees.
 6. If the tree removal will have a positive effect upon wildlife habitat.
 7. The property owner will replant replacement trees of a similar species or add other vegetation to offset the negative effects of the tree removal to the satisfaction of the approving authority.
- B. With consideration of the above factors, the proposed tree removal may be denied or granted with conditions after consideration of the following:
1. The tree is a protected or specimen tree, as defined in this chapter, unless there is no feasible alternative to the proposed activity.
 2. The tree removal will have a significant negative effect upon, among other things:
 - a. Erosion potential and drainage patterns in the vicinity.
 - b. Growth of existing adjacent vegetation.
 - c. Property values and aesthetics of nearby properties.
 - d. Wildlife habitat.
 3. Consideration shall be given to preserving specimen trees and protected trees where feasible and practical.
 4. The approving authority will require the replanting of trees as a condition of permit approval pursuant to this chapter.

§ 283-8 Permit Duration

- A. Activities specified by the permit shall be undertaken pursuant to any conditions of the permit and shall be completed according to any schedule set forth in the permit.
- B. A permit shall expire on completion of the activities specified and shall be valid for a period of one year from the date of approval or for the period of any other permit issued by the approving authority.
- C. A permit not issued in conjunction with any other permit may be renewed by the approving authority for a period of up to one year.
- D. If commencement of work does not begin within (3) three years, the applicant must re-inventory the site.
- E. The approving authority may revoke or suspend a permit if it finds that the applicant has not complied with any of the conditions or limitations set forth in the permit.

§ 283-9 Unauthorized Removal of Trees

- A. All persons who remove or cause to be removed trees without a permit, as required, shall restore the affected area by backfilling all holes and by creating an acceptable grade and plantings, subject to approval by the Director of Technical Services in consultation with the Town Arborist as set forth pursuant to this chapter.
- B. Any tree damaged during construction or development of the property originally not designated or approved for removal shall be mitigated pursuant to this chapter.
- C. All trees which fail to survive for a period of two calendar years following planting shall be replaced by the permit holder at no expense to the Town or the owner of the land, if other than the holder of the permit. Said replacement shall be within 60 days following written demand for such replacement from the Director of Technical Services or within an extended period of time as may be specified.
- D. All tree planting, tree dressing and associated restoration work must be substantially completed within one year from the date of issuance of the permit, except that the permit may be extended by the approving authority, which shall have the discretion to grant such an extension.

§ 283-10 Establishment of Town's Environmental Fund

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- A. The Environmental Fund has been established to receive and earmark payments in lieu of restoration and replacement requirements as set forth in § 283-6. Payments in lieu may only be accepted by the Approving Authority as adopted by the Town Board in the Fee Schedule.
 - B. The Fund applies to all properties seeking a tree removal permit in the Town of Cortlandt pursuant to this chapter.
 - C. Use of funds may occur for public benefit on public property or private property within a public easement. Consideration must be given first, to projects within the closest proximity to where the tree removal has occurred.
 1. The Fund shall be used for the purpose of:
 - a. planting and maintaining trees, including fertilizing and trimming
 - b. installation of irrigation systems to support plantings
 - c. irrigation projects to maintain existing parks and facilities
 - d. wetland enhancements
 - e. and other applicable landscaping projects
 - f. other associated project tasks including, design, tree inventory, tree boxes, and soil amendments that enhance and promote long-term sustainability of plantings.
 2. Funds shall be administered by the Director of Technical Services once allocation has been approved by the Town of Cortlandt Town Board in consultation with the Planning Board, CAC and other commissions as determined by the Town Board.
 3. Proposed landscaping may include trees, shrubs, and other permanent plant materials. Planting and maintenance includes purchase, transportation, mulching, watering, fencing and labor associated with replacement plantings, and other applicable landscaping.

4. Public lands include but are not limited to parks, recreation and open space, conservation open space, preserves, community and civic facilities, and land within public rights-of-way within the Town of Cortlandt.
- D. An Environmental Fund Report shall be prepared and submitted to the Town Board identifying a list of proposed projects with estimated budgets. The report shall be re-submitted annually updating the current balance remaining in the Fund, projects completed and year end expense.
- E. The required contribution shall be set forth by the Town Board with the adoption of a Master Fee. Payment into the Fund shall be made prior to the issuance of any tree, building or other applicable permit by the approving authority.

§ 283-11 Security

In granting a permit, the approving authority may require a security in an amount and with surety and conditions satisfactory to it securing to the Town of Cortlandt compliance with the conditions and limitation set forth in the permit.

§ 283-12 Inspection and Monitoring

- A. The approving authority may inspect or cause to be inspected by its representative activities undertaken pursuant to a permit so as to ensure satisfactory completion.
- B. The approving authority may require that the applicant submit for approval a detailed monitoring program, including but not necessarily limited to written status reports at specified intervals documenting activities undertaken pursuant to a permit.
- C. The approving authority may require that the activities undertaken pursuant to a permit be supervised by an appropriate licensed professional.

§ 283-13. Penalties for offenses.

- A. Any person who violates, disobeys or disregards any provision of this chapter shall be liable to the people of the Town of Cortlandt for a civil penalty not to exceed \$1,000 for the first such offense; \$2,000 for a second offense; and \$3,000 for each subsequent violation thereafter. Each week's continuation of a condition violating this chapter shall be deemed a separate violation.
- B. In lieu of the above civil fine, any person who violates any provision of this chapter shall be guilty of a violation pursuant to the Penal Law, punishable by a fine of not more than \$500. For a second and each subsequent offense, the violator shall be guilty of a misdemeanor, punishable by a fine of not more than \$1,000 or a term of imprisonment

up to 30 days, or both. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

- C. In addition to the above civil and criminal penalties, the Town Board and Director of Code Enforcement, with the advice and consent of the Town Attorney, shall have the right to seek equitable relief to restrain and/or remedy any violation of any provisions of this chapter.
- D. The Director of Code Enforcement or his designee shall have the power to direct a violator to cease violation of this chapter and, with the consultation from the Town Arborist and review by the CAC, satisfactorily restore the affected area insofar as that is possible. The exercise of such power may be with or without the imposition of a fine under Subsections A and B of this section.
- E. During the ninety-day period following the effective date of this chapter, anyone who is in violation but who complies after notice from the Code Enforcement Officer shall not be subject to any fine or penalty.

§ 283-14. Repealer.

In adopting this chapter all prior tree ordinances and regulations and amendments thereto are hereby repealed.

§ 283-15. Interpretation of provisions.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the protection of trees. It is not intended by this chapter to interfere with, or abrogate, any other greater requirements than are imposed or required by any other ordinance, rule or regulation.

§ 283-16. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this chapter is declared by any court of competent jurisdiction to be invalid, such invalidity shall not affect any other portion of this chapter.

§ 283-17. Appeals.

Any decision of an administrative official acting as the approving authority may be appealed to the Zoning Board of Appeals. Any decisions of the Town, Planning or Zoning Boards as approval authorities are subject to review under Article 78 of the New York State Civil Practice Law and Rules.

§ 283-18. When effective.

This chapter shall be effective immediately upon its filing with the Secretary of State of the State of New York.

TREES
283 Attachment 2
Town of Cortlandt
Appendix B Tree Planting List

Trees Acceptable for General Use:

Botanical Name	Common Name
Acer campestre	Hedge maple
Acer griseum	Paperbark maple
Acer negundo	Box Elder
Acer pensylvanicum	Striped Maple
Acer rubrum	Red maple
Acer saccharum	Sugar maple
Aesculus hippocastanum	Horsechestnut
Aesculus pavia	Red buckeye
Amelanchier arborea	Downy Serviceberry
Amelanchier canadensis	Serviceberry
Amelanchier x grandiflora	Autumn Brilliance - serviceberry
Betula lenta	Black birch
Betula nigra	River birch
Betula papyrifera	Paper birch
Betula populifolia	Gray birch
Carpinus caroliniana	American hornbeam
Carya cordiformis	Bitternut hickory
Carya glabra	Pignut hickory
Carya laciniosa	Shellbark hickory
Carya ovata	Shagbark hickory
Catalpa speciosa	Northern catalpa
Cedrus atlantica	Atlas cedar
Cercis canadensis	Eastern redbud
Chamaecyparis thyoides	Atlantic white cedar
Chionanthus virginicus	Fringetree
Cornus alternifolia	Pagoda dogwood
Cornus florida	Flowering dogwood

DRAFT TREE ORDINANCE

Crataegus phaenopyrum	Washington hawthorn
Fagus grandifolia	American beech
Gymnocladus dioica	Kentucky coffeetree
Ilex opaca	American Holly
Juglans cinerea	Butternut
Juglans nigra	Black walnut
Juniperus scopulorum	Rocky Mountain juniper
Juniperus virginiana	Eastern red cedar
Liquidambar styraciflua	American sweetgum
Liquidambar styraciflua	Sweetgum
Liriodendron tulipifera	Tuliptree
Magnolia virginiana	Sweetbay magnolia
Malus spp.	Professor Sprenger flowering crabapple
Meta sequoia glypostroboides	Dawn redwood
Nyssa sylvatica	Black tupelo
Ostrya virginiana	Hophornbeam
Oxydendrum arboreum	Sourwood
Picea abies	Norway spruce
Picea glauca	White spruce
Picea pungens	Colorado blue spruce
Pinus strobus	White Pine
Platanus occidentalis	Sycamore
Prunus 'Accolade' (P. sargentii x P. subhirtella)	Accolade flowering cherry
Prunus serotina	Black cherry
Prunus virginiana	Chokecherry
Pseudotsuga menziesii	Douglas fir
Sassafras albidum	Sassafras
Quercus alba	White oak
Quercus bicolor	Swamp white oak
Quercus coccinea	Scarlet Oak
Quercus macrocarpa	Bur oak
Quercus muehlenbergii	Chinkapin Oak
Quercus palustris	Pin oak
Quercus phellos	Willow oak
Quercus robur	English oak
Quercus rubra	Red oak
Quercus velutina	Black oak
Quercus virginiana	Live oak
Taxodium distichum	
Tilia americana	
Tilia cordata and cvs.	
Tilia tomentosa	

<p>Ulmus americana</p>	<p>Bald cypress American linden Little leaf linden Silver linden American elm 'Valley Forge,' 'New Harmony'</p>
<p>Trees prohibited for general use for planting:</p>	
<p>Botanical Name</p>	<p>Common Name</p>
<p>Acer platanoides Acer saccharinum Ailanthus altissima Morus spp. Populus spp. Salix spp. Sorbus spp. (except S. alnifolia) Pauwlonia tomentosa Populus deltoides Pyrus calleryana Ulmus pumila</p>	<p>Norway maple Silver maple Tree of heaven Mulberry Poplar Willows Empress tree Bradford pear Siberian elm</p>