

TOWN OF SIDNEY

BYLAW NO. 2138

A BYLAW TO REGULATE THE PRESERVATION OF TREES

WHEREAS Part 2, Division 1, Section 8(3) of the *Community Charter* authorizes the Town of Sidney to, by bylaw, regulate, prohibit and impose requirements in relation to trees;

AND WHEREAS The Council considers it in the public interest to provide for the protection and preservation of trees, the regulation of their cutting down and removal and their replacement;

NOW THEREFORE the Council of the Town of Sidney in open meeting assembled hereby enacts as follows:

This Bylaw is divided into the following parts relating to the following subjects:

Index:

1. Citation of Bylaw
2. Severability
3. Definitions
4. Application of this Bylaw
5. Measurements Applicable to this Bylaw
6. General Prohibitions
7. Emergency Removal of Trees
8. Removal of Hazardous Trees or branches
9. Tree Protection During Development
10. Replacement Trees
11. Tree Permits, Fees and Deposits
12. Administration and Enforcement
13. Appeals
14. Repeal

Schedules:

- | | |
|---------------------|--|
| Schedule "A" | Tree Protection Fencing |
| Schedule "B" | Tree Planting and Maintenance Guidelines |

1. **CITATION**

This Bylaw may be cited for all purposes as "Tree Preservation Bylaw No. 2138".

2. **SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this Bylaw is for any reason found invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Bylaw.

3. **DEFINITIONS**

In this Bylaw, the following terms have the following definitions:

Certified Arborist means a person certified as an arborist by the American Society of Consulting Arborists or the International Society of Arboriculture.

Crown means the entire system of branches, leaves and reproductive structures of a Tree extending away from the trunk or main stem(s), measured from the lowest branch

Cut means to cut all or any part of a Protected Tree by any means and includes to pull up, push or pull over or otherwise fall a Protected Tree and, for certainty, to Prune a Protected Tree.

Development Permit means a permit issued by the Town under section 490 of the *Local Government Act*.

Diameter, subject to section 5, shall mean, as the context requires:

- i. the diameter of any Protected Tree, measured at 1.4m above the ground surface;
- ii. the diameter of any branches Pruned;
- iii. the diameter of any cut made unlawfully;
- iv. the diameter of any Pruning made pursuant to a Tree Permit.

Director means the person appointed from time to time by the Council of the Town as the Director of Development Services, Engineering, Parks and Works or his or her designate.

Drip Line means the line on the ground surface described by the vertical projection down from the tip of the outermost branches of a Tree to the ground.

Lot means any lot, block or other area in which land is held or into which it is subdivided, but does not include a highway

Protected Species shall mean Douglas Fir (*Pseudotsuga menziesii*) that has Diameter of 30 cm or more and Arbutus (*Arbutus menziesii*), Dogwood (*Cornus nuttallii*) and Garry Oak (*Quercus garryana*) Trees with a Diameter of 15 cm or more.

Protected Tree means a Tree that is any of the following:

- i. a Protected Species;
- ii. a Replacement Tree;
- iii. required to be planted or retained under a Development Permit;
- iv. within an area designated in the Town's Official Community Plan as a development permit area for the protection of the natural environment, its

- ecosystems and biological diversity under section 488 of the *Local Government Act*;
- v. on a highway, park or other Town owned or occupied lands;
- vi. having a Diameter greater than 75cm;
- vii. listed in Schedule 'C'.

Protected Root Zone means the area of land surrounding the trunk of a Protected Tree within the Drip Line.

Prune means to Cut or remove any branch, limb, stems or roots of a Protected Tree.

Replacement Tree means a Tree planted or to be planted pursuant to a Tree Permit.

Town means the Town of Sidney or the area within the boundaries of the Town of Sidney, as the context requires.

Tree means a living perennial plant with a woody self-supporting main trunk with a diameter greater than 3cm.

Tree Permit means a permit issued pursuant to this Bylaw.

4. APPLICATION OF THIS BYLAW

- 4.1. This Bylaw applies to all Protected Trees within the Town except as set out in sections 4.2 and 4.3.
- 4.2. This Bylaw does not apply to Protected Trees that are altered, Cut, damaged or removed to ensure airport navigational safety, or pursuant to the *Railway Safety Act*, S.B.C. 2004, c.8, the *Hydro and Power Authority Act*, R.S.B.C. 1996, c.212, or the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36.
- 4.3. This Bylaw does not apply to Trees on Town-owned property or highways that are Cut or removed by the Town or its authorized agents.

5. MEASUREMENTS APPLICABLE TO THIS BYLAW

- 5.1. In this Bylaw:
 - a. The Diameter of a Protected Tree shall be determined at a point 1.4 metres above the average ground level at the base of the Tree, by dividing the measurement of the circumference of the trunk by 3.142.
 - b. The Diameter of a Protected Tree having multiple trunks 1.4 metres above the ground shall be determined by the sum of:
 - i. one hundred (100%) percent of the Diameter of the largest trunk; and
 - ii. sixty percent (60%) of the Diameter of each additional trunk.
 - c. The location of a Protected Tree on a Lot shall be measured from the point at which the centre of the trunk of the Tree meets the ground.
 - d. Measurements of any Cut made unlawfully will be determined by measuring the Diameter of the butt of the Cut.

6. GENERAL PROHIBITIONS

- 6.1. No person shall Cut, remove or damage any Protected Tree, or allow any Protected Tree to be Cut, removed or damaged, except where permitted by and carried out in accordance with this Bylaw.

- 6.2. Without limiting section 6.1, no person shall Prune any Protected Tree or allow any Protected Tree to be Pruned, except where permitted by and carried out in accordance with this Bylaw.
- 6.3. Notwithstanding section 6.1 and 6.2 but subject to section 6.4, a person may Prune, in a manner consistent with the standards of arboriculture practice set by the International Society of Arboriculture or the American Society of Consulting Arborists, up to 20% of Crown of a Protected Tree during a season for the purpose of maintaining or improving the health of the Tree.
- 6.4. No person shall Prune, or allow to be Pruned, any branch, limb, stem or root of a Protected Tree where the branch, limb, stem or root is:
 - a. over 5 cm in Diameter; or
 - b. over 2.5 cm in Diameter for the species *Arbutus (Arbutus menziesii)*, Dogwood (*Cornus nuttallii*), and Garry Oak (*Quercus garryana*);unless the person holds a valid Tree Permit for the Pruning.
- 6.5. Without limiting section 6.1, no person shall do or permit to be done any of the following:
 - a. Cut or damage the roots of a Protected Tree growing inside the Protected Root Zone;
 - b. place fill, building materials, asphalt or any building or other structure, or store or stockpile of organic material, within the Protected Root Zone of a Protected Tree;
 - c. operate a truck, backhoe, excavator or other heavy equipment inside the Protected Root Zone;
 - d. dent, gouge or damage the trunk of a Protected Tree;
 - e. remove bark from a Protected Tree;
 - f. deposit concrete washout or other liquid or chemical substances harmful to the health of a Protected Tree within the Protected Root Zone of a Protected Tree;
 - g. remove soil from the Protected Root Zone of a Protected Tree;
 - h. blast within the Protected Root Zone of a Protected Tree;
 - i. blast outside the Protected Root Zone of a Protected Tree in a manner that causes damage Tree roots or disturbs soil inside the Protected Root Zone of a Protected Tree; or
 - j. undermine the roots of a Protected Tree.

7. EMERGENCY REMOVAL OF TREES

In the event that a Protected Tree or any part thereof is in imminent danger of falling and injuring persons or property, and it is not possible to obtain a Tree Permit prior to the Tree falling, a person may Cut the Tree without a Tree Permit, but shall report the Cutting to the Director within the next business day. No person shall remove a Protected Tree or any parts of a Protected Tree Cut under this section from the Lot until a Town employee has attended the Lot and confirmed that the Tree was in imminent danger of falling and injuring persons or property.

8. REMOVAL OF HAZARDOUS TREES OR BRANCHES

- 8.1. The Director may, by providing written notice to such person, require that an owner or occupier of a Lot trim, remove, or Cut any Trees, hedges, bushes or shrubs on the Lot that the Director considers to be:
 - a. a hazard to the safety of persons on public land;
 - b. likely to damage public property; or
 - c. a serious inconvenience to the public.

9. TREE PROTECTION DURING DEVELOPMENT

- 9.1. The Director may recommend to council in connection with a proposed Development Permit one or more of the following:
- a. that the Development Permit applicant engage a Certified Arborist to prepare a Tree protection and retention strategy for a Protected Tree or Protected Trees;
 - b. that Tree protection fencing be installed in accordance with Schedule 'A' of this Bylaw;
 - c. that a Certified Arborist be present during all excavation work under the Development Permit;
 - d. that any proposed structures be relocated if the proposed siting interferes with a Protected Tree or Protected Trees;
 - e. that any proposed driveways or drive aisles be relocated if the proposed siting interferes with a Protected Tree or Protected Trees; or
 - f. Replacement Trees be planted if a Protected Tree or Protected Trees is/are to be removed

10. REPLACEMENT TREES

- 10.1. Every person who Cuts, removes, or damages or suffers or permits the Cutting, removal or damage of a Protected Tree, (whether allowed by this bylaw or in contravention of this bylaw) which results in the death of that Protected Tree shall at that person's expense plant two (2) Replacement Trees of a type and in a location specified by the Director.
- 10.2. When required as a condition of a Tree Permit, the Tree Permit holder shall:
- a. plant all Replacement Trees on the same property as the Trees to be removed and in a location approved by the Director or as designated by the Director in the Tree Permit; or
 - b. if approved by the Director, pay seven hundred fifty dollars (\$750) in lieu of each Replacement Tree, so that the Town may plant a Tree on public lands. Payment in lieu will only be allowed in cases where, in the judgement of the Director, space or soil conditions on a Lot do not permit a reasonable chance of replacement tree survival.
- 10.3. All Replacement Trees shall be:
- a. of a species, size and standard prescribed by the Director in the Tree Permit; and
 - b. planted in accordance with Schedule 'B' of this Bylaw and any additional requirements specified in the Tree Permit.

11. TREE PERMITS, FEES AND DEPOSITS

- 11.1. A person wishing to Cut or remove a Protected Tree or Prune a Protected Tree in a manner other than as specified in section 6.3 of this Bylaw shall apply to the Director for a Tree Permit by completing and submitting the application form prescribed from time to time by the Director and including the following with that application:
- a. the address and legal description for the Lot or Lots on which the Protected Trees proposed to be Cut or removed are located;
 - b. if the applicant is not the owner of the Lot on which the Protected Tree proposed to be Cut or removed is located, the written consent of the owner of that Lot;
 - c. where the Protected Tree is a Tree with any part of its trunk crossing a property line, a letter from the owners of the adjacent Lot consenting to the Cutting or removal of the Tree, together with current contact information for each of those owners; and
 - d. any other information, reports, plans and documents required by the Director pursuant to this Bylaw.

- 11.2. The Director may require that all or any of the following be included as part of an application for a Tree Permit:
 - a. that the Protected Trees on the parcel be tagged with ribbon indicating the Tree(s) covered by the application;
 - b. a detailed report from a Certified Arborist in support the application, including, if the Tree Permit is for Pruning of a branch, limb stem or root specified in section 6.4, confirmation from the Certified Arborist that the proposed Pruning is for the purpose of maintaining or improving the health of the Tree;
 - c. the species, condition, location and Diameter of the Tree(s) to be removed or Cut, be submitted on a scaled drawing prepared by a registered land surveyor;
 - d. the location of any proposed construction and/or excavation activities on the Lot, be submitted on a scaled drawing prepared by a registered land surveyor;
 - e. a Tree retention plan, prepared by a Certified Arborist;
 - f. a Tree protection plan, prepared by a Certified Arborist;
 - g. a Tree replacement plan, prepared by a Certified Arborist;
 - h. where the hazard of tree is being assessed, the opinion of a Certified Arborist with the ISA Tree Risk Assessment Qualification may be required;
 - i. the reason why the Tree(s) is/are to be removed or Pruned.

- 11.3. The Director may impose any of the following conditions in a Tree Permit:
 - a. that one or more Replacement Trees be planted in accordance with section 10 of this Bylaw;
 - b. other conditions dealing with the extent, timing and phasing of Tree Cutting, removal and replacement.

- 11.4. If, in the Director's opinion, an activity proposed to be undertaken under an application for a Tree Permit is likely to endanger the health or life of a Protected Tree, the Director may:
 - a. refuse to issue the Tree Permit; or
 - b. impose Tree Permit conditions for the purposes of preserving the health or life of or otherwise protecting a Protected Tree.

- 11.5. In connection with an application for a Tree Permit, the Director may obtain and consider one or more reports from Certified Arborists retained or employed by the Town.

- 11.6. A Tree Permit shall, for the purpose of permitting the Tree Cutting or removal contemplated by the Tree Permit, be valid for two (2) calendar months from the date of issuance.

- 11.7. Before a Tree Permit is issued, the applicant shall pay to the Town the following non-refundable fees, as applicable to the Tree Permit:
 - a. To Cut (other than Prune) or remove first Protected Tree
\$250
 - b. To Cut (other than Prune) or remove each additional Tree
\$50/Tree
 - c. To Prune, other than as specified in section 6.3 of this Bylaw, first Protected Tree
\$50
 - d. To Prune, other than as specified in section 6.3 of this Bylaw, each additional Protected Tree
\$10/Tree.

- 11.8. A Tree Permit fee is not required to remove a Protected Tree where such removal is authorized by a Development Permit issued by the Town.
- 11.9. Before a Tree Permit is issued, the applicant shall pay to the Town a security deposit, in the form of cash or a letter of credit, in the amount of seven hundred fifty dollars (\$750) for every Replacement Tree required pursuant to the Tree Permit.
- 11.10. The security deposit provided to the Town for Replacement Trees under a Tree Permit will be released upon the Town's Certified Arborist determining that all Replacement Trees required under the Tree Permit have been planted and maintained for a period of at least 12 months and are healthy and established.
- 11.11. Any letter of credit to be provided as a security deposit under this Bylaw shall be a clean, unconditional and irrevocable letter of credit drawn from a Canadian financial institution acceptable to the Director and in a form acceptable to the Director and shall specify that in the event that the Director receives notice that the letter of credit will not be renewed, the Director may draw down the letter of credit and hold the cash as the security deposit.
- 11.12. If at any time a Tree Permit holder fails to comply with the requirements of a Tree Permit relating to planting and maintenance of Replacement Trees, the Town may by its employees or contractors enter upon the Lot that is the subject of the requirements to plant and maintain Replacement Trees and fulfill the requirements and the Town may use the security deposit provided for the Tree Permit to pay the Town's costs and expenses of fulfilling the requirements. In fulfilling such requirements the Town may:
 - a. plant a Replacement Tree that was not planted as required by the Tree Permit in the same location or a different location from that specified in the Tree Permit; and
 - b. where a Replacement Tree is not healthy or established, may re-plant that Tree or plant another Replacement Tree in the same location or in another location.In addition, where the Tree Permit holder has planted all required Replacement Trees but one or more of those Replacement Trees is not healthy and established after 12 months following planting, the Director may provide the Tree Permit holder with an opportunity to plant another Replacement Tree for each such failed Replacement Tree by issuing a written Tree Permit amendment, which shall form part of the Tree Permit.
- 11.13. The Director shall issue a Tree Permit, in the form prescribed from time to time by the Director, if:
 - a. the Director is satisfied that one or more of the following conditions exists:
 - i. the Protected Tree has defects sufficient to significantly increase the likelihood that all or part of the Tree will fall, resulting in a risk of personal injury or property damage or loss;
 - ii. the Protected Tree is located within the footprint of a proposed building or structure for which the Town has issued a building permit under the Town's Building Regulations Bylaw No. 2016;
 - iii. if the Tree Permit is for Pruning of a branch, limb stem or root specified in section 6.4, the proposed Pruning is for the purpose of maintaining or improving the health of the Tree;
 - b. the Director has approved all information, reports, plans and documents (including any Certified Arborist reports, Tree replacement plans, Tree protection plans and Tree retention plans) required to be provided by the Director or under this Bylaw in connection with the Tree Permit;
 - c. the applicant has paid all fees and provided all security deposits required by this Bylaw with respect to the Tree Permit; and
 - d. all other conditions of this Bylaw have been met.

- 11.14. The Director may, by providing notice to the owner, revoke a Tree Permit if any provision of this Bylaw or any Tree Permit condition is breached or the information on which the issuance of a Tree Permit was based is found to be incorrect. If a Tree Permit has been revoked, all Tree Cutting and removal authorized by that Tree Permit must cease until the breach has been remedied or the effect of the incorrect information has been accommodated in a Tree Permit's condition and the Director has withdrawn the revocation of the Tree Permit in writing.

12. ADMINISTRATION AND ENFORCEMENT

- 12.1. The Director shall have the right to enter any Lot to make an assessment or inspection for any purpose under this Bylaw.
- 12.2. Any person who:
- a. contravenes or violates any provision of this Bylaw or of any Tree Permit issued under this Bylaw;
 - b. allows any act or thing to be done in contravention or violation of this Bylaw or any Tree Permit issued under this Bylaw; or
 - c. fails or neglects to do anything required to be done by this Bylaw or any Tree Permit issued under this Bylaw,
- commits an offence, and where the offence is a continuing one, each day the offence is continued constitutes a separate offence.
- 12.3. Where more than one Protected Tree is Cut, removed or damaged, other than as authorized by this Bylaw or a Tree Permit issued under this Bylaw, or more than one Protected Tree is not replaced or maintained in accordance with this Bylaw or a Tree Permit issued under this Bylaw, a separate offence is committed in respect of each Protected Tree.
- 12.4. Upon being convicted of an offence under this Bylaw, a person shall be liable to pay a fine of not less than \$1,000 and not more than \$10,000.
- 12.5. If a person who is subject to a requirement under this Bylaw fails to take the required action within 5 days following the provision of the notice from the Town, the Town may:
- a. enter the Lot and fulfill the requirement at the expense of the person; and
 - b. recover the costs incurred in fulfilling the requirement from that person as a debt payable within 30 days following delivery of an invoice to that person.
- 12.6. All amounts referred to in section 12.5 incurred by the Town in respect of work done or services provided in relation to land or improvements may be collected in the same manner and with the same remedies as property taxes respecting the Lot, and if such amounts remain unpaid on December 31 following the date payable such amounts are deemed to be taxes on the Lot in arrears.

13. APPEALS

The owner of a Lot on which a Tree is the subject to a decision of the Director may request that Council reconsider the decision or any condition attached to the decision.

14. REPEAL

Sidney Tree Preservation Bylaw No.1663 and all subsequent amendments to that bylaw are hereby repealed.

Read a first time the 26th day of June, 2017.

Read a second time the 26th day of June, 2017.

Read a third time the 26th day of June, 2017.

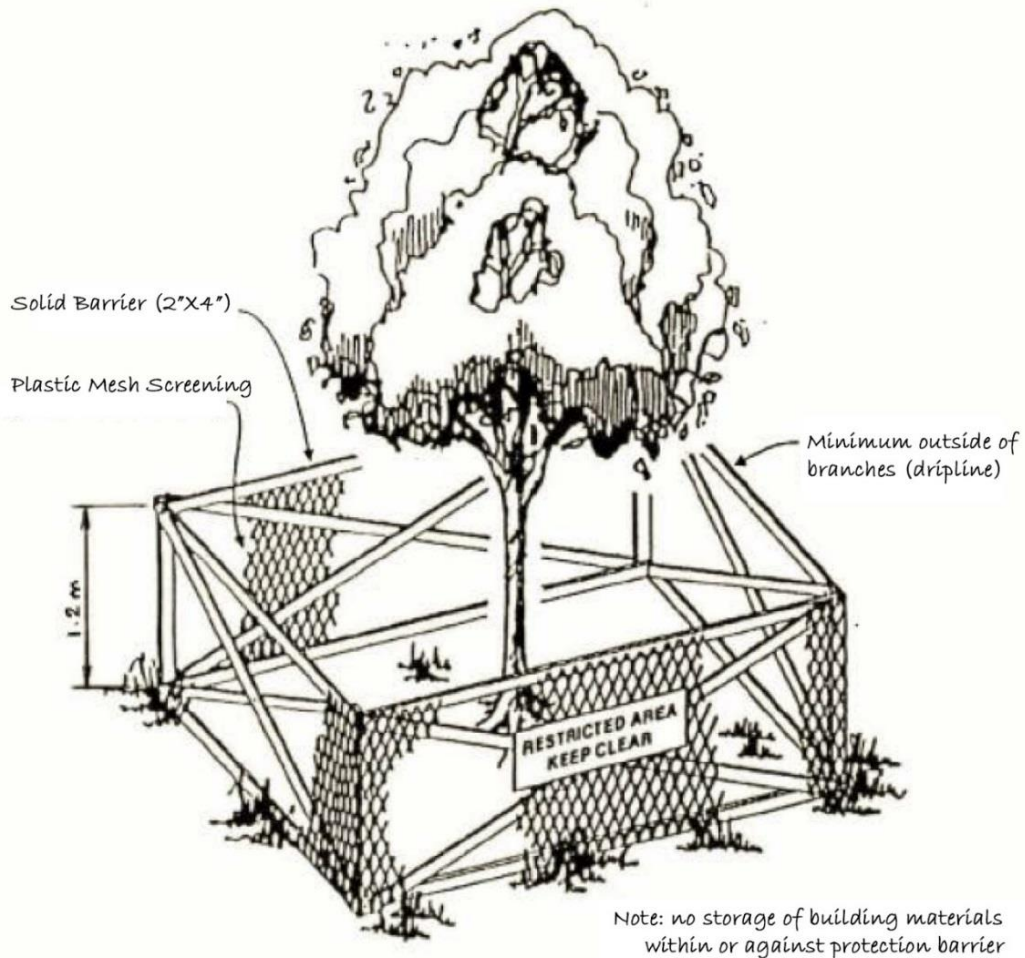
Adopted the 10th day of July, 2017.

MAYOR

CORPORATE OFFICER

SCHEDULE 'A'

Tree Protection Fencing



Tree Protection Barrier

Notes:

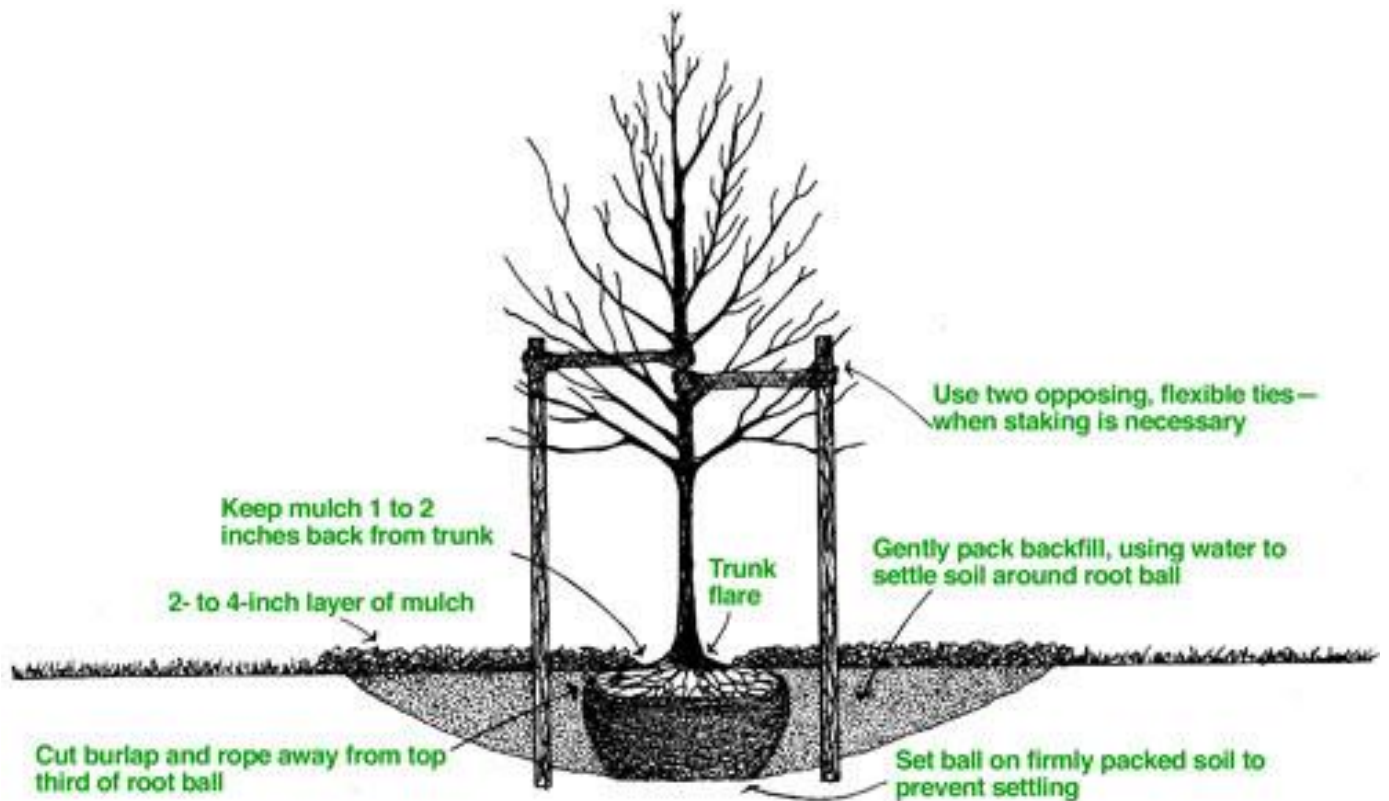
Location of fencing to be determined or approved by Town of Sidney Certified Arborist or consulting Certified Arborist prior to any on-site works.

Barrier must contain 2 x 4 top and bottom rails, or other acceptable system as approved by Town of Sidney Certified Arborist or consulting Certified Arborist.

Restricted Access Signage, provided by the Town, shall be placed on the fencing, in a visible location, in a manner consistent with the example image above.

SCHEDULE 'B'

Tree Planting and Maintenance Guidelines



Notes:

Planting a Tree should be done between approximately March 1st and April 30th, or September 15th and November 15th.

Tree should be well watered at time of planting, and regularly for the first few months during dry periods.

SCHEDULE 'C'

Significant Trees

# OF TREE	TYPE OF TREE	LOCATION OF TREE(S)
A1	KILMARNOCK WILLOW	Brethour Cemetary
A2	WEeping LARCH	2333 Malaview Avenue
A3	LONDON PLANE TREE	2243 Beacon Avenue – Memorial Park Society grounds
A4	CAMPERDOWN ELM	Brethour Cemetary
A5	CAUCASIAN FIR	2255 Weiler Avenue