CROP: Coalition for Rural
Ontario Environmental
Protection

June 9, 2015

Planning Committee, City Council and Hamilton Planning Staff,
City of Hamilton,
71 Main St. West
Hamilton, ON L8P 4Y5

Re: Rural Zoning By-Law 05-200, and Associated amendments passed at Special Planning meeting on March 31, 2015, and adopted by council on April 8, 2015

Dear Hamilton City Council, Planning Committee members, and Hamilton Planning Staff,

We are the Coalition for Rural Ontario Environmental Protection ("CROP"), an Ontario not-for-profit corporation. We represent residents of Rural Hamilton who have concerns about the provisions of Hamilton's Rural Zoning By-Law 05-200, allowing Landscape Contracting Establishments to operate from A1 and A2-zoned land. While we had concerns with the draft by-law presented by staff to the Planning Committee on March 31, 2015, we now have significant concerns about the motion to "grandfather" existing legal and illegal landscaping businesses in Ancaster and Flamborough passed by the Planning Committee and subsequently ratified by Council's motion of April 8, 2015.

We request that the draft zoning and Official Plan amendments being prepared by staff to implement Council's April 8, 2015 motion be made available to the public as soon as possible so that we have sufficient time to have them reviewed by a professional planner and lawyer prior to their being presented for approval by Committee or Council.

We also wish to make it clear that by way of this written communication to City Council before adoption of the relevant Rural Zoning by-law and amendment we are securing CROP's right of appeal to the Ontario Municipal Board.

Our members have been dealing with nuisance impacts of legal and illegal Landscape Contracting Establishments for some time, and for this reason were active in submitting proposals to city staff and speaking at Planning Committee meetings to support the regulation of these commercial uses and the requirement that such uses be limited to Secondary Uses on Agricultural lands as required by the Greenbelt Plan.

Consultation with our experts has confirmed our belief that there are real problems with the current draft zoning regulations and very likely will be significant problems with the amendments intended to implement the "grandfathering" motion.

Accordingly:

- We have retained the legal services of *Garrod-Pickfield LLP*, a local specialty environmental law firm, with expertise in environmental law and OMB appeals

- We have retained the services of *Allan Ramsay Planning Associates* to review the relevant zoning by-law and amendment containing the grandfathering provisions. *Allan Ramsay Planning Associates* is a well-respected local land-planning firm, and their staff is well-versed in all aspects of the Planning Act and proper planning procedures
- We have engaged the *Canadian Environmental Law Association* to confirm our understanding of the relevant provincial laws and legal planning framework

Our understanding is that the current draft zoning by-law does not conform to the Official Plan. While the proposed zoning by-law would permit such uses where they are secondary to agriculture, the Official Plan limits secondary uses in Agriculture designations to "agri-tourism uses, farm vacation homes, home industries, kennels, and small scale retailing of agricultural products" - none of which reasonably include a Landscape Contracting Establishment. In addition, it would appear that the proposed zoning regulations for these establishments are inadequate to address the likely nuisance impacts where these operations are situated near residential lands or rural settlement areas.

There are also very likely to be significant problems with the amendments to implement the April 8, 2015 "grandfathering motion". These problems are likely to include:

- No way to ensure that self-identified Landscape Contracting Establishments actually existed on March 31, 2015, or that they are limited to the scale at which they were operating
- Providing carte-blanche grandfathering of potentially hundreds of existing, illegal businesses (Source: Flamborough Chamber of Commerce in presentation to the Planning Committee), with no site surveys, impact studies or determination of the nature of the business
- No method of ensuring that the use of the land is clearly Secondary to the Primary Agricultural Use in Prime Agriculture Areas (lands designated Agriculture in the Hamilton Rural Official Plan) as required by Greenbelt Plan
- No significant restriction on noise, environmental impact, number of vehicles and workers

While recognizing that the Planning Act would allow existing legal uses to continue to operate as legal non-conforming uses, we cannot accept an approach that would use zoning to exempt existing legal and illegal uses from the requirements of the Greenbelt Plan. Not only is it very poor planning to sanction the nuisances caused by these operations, we also understand that doing so may violate the Planning Act. As Council and staff will know, according to the Planning Act, Council has no power to pass a zoning by-law that conflicts with or does not conform to the Greenbelt Plan. A by-law intended to make an existing illegal use a legal use, while exempting it from the requirements of the Greenbelt Plan would appear to be the quintessential example of non-conformance or conflict. We are advised that it is therefore highly likely that a by-law amendment to implement the "grandfather motion" will conflict with the Greenbelt Plan in at least two respects:

(1) The Greenbelt Plan only permits such uses in Prime Agricultural Areas as a Secondary Use (as you will be aware, much of Ancaster and Flamborough is a Prime Agricultural Area), and

(2) The Greenbelt Plan only permits such uses in other rural areas in the Protected Countryside if the use meets the site development criteria set out in sections 4.1 to 4.6 of the Greenbelt Plan.

Beyond this legal problem, as concerned residents, we have seen the results of unrestricted land use by Landscape Contracting Establishments: Noise and nuisance at all hours during the spring/summer/fall

"work" season, increased traffic, illegal dumping and burning of landscape waste, and operation of heavy equipment on already-stressed rural roads. In addition, the value of rural residential properties will be directly affected by allowing unbridled commercial use of agricultural land.

We are not aware of any other Municipality in the Greenbelt that recognizes Landscape Contractors as a Secondary use to Agricultural Land. These are classified as commercial businesses, and accordingly should be located on commercially-zoned land. Their associated land use is not agricultural: In many cases, these are large employers taking advantage of lower tax rates on rural land. The sheer quantity of "Special Exceptions" in the amendment is itself problematical – potentially over 200 illegal businesses -- and could be seen as a method for rezoning large amounts of primary agricultural land into de-facto commercial use. This would directly contravene the requirements of Ontario's Greenbelt Legislation.

In presentations to staff and the Planning Committee, lobbyists for the commercial landscaping industry explained that these illegal businesses would otherwise not be viable: That it was important that they locate on non-commercial land to keep their costs down and maintain profitability. On the contrary, allowing these illegal businesses to operate freely on Agricultural land moves the costs from their urban commercial and residential customers onto rural residents, in the form of increasing nuisance, noise, unregulated operating hours, and more. In addition, it further hollows out Hamilton's commercial tax base by allowing clearly commercial businesses to take advantage of rural farm property tax rates.

> *By way of example, the Rural Farm mill rate in Ancaster is approximately 0.23%; the Commercial rate is approximately 3.34%. A business that would pay $10,000 in taxes on commercially-zoned land in Ancaster would pay only $688 if operating from a Rural Farm-zoned site, a tax revenue loss of 93%. For a city such as Hamilton with a declining commercial tax base, this is a huge waste of resources and tax revenue, with the targeted benefits going to businesses that can afford to pay.*

We urge the Planning Committee and council to rescind the proposed grandfathering amendment. In addition, we recommend that the Planning committee and council defer adoption of the new bylaws until such time as the final text is made available for in-depth review, and we have had reasonable time to discuss the implications with our legal and planning representatives.

Should this go to an appeal before the Ontario Municipal Board, we feel that we have a strong case that the zoning bylaw and associated amendments do not conform to Hamilton's Official Plan, and the relevant provincial legal framework, including the Provincial Policy Statement and The Greenbelt Act. We would prefer to resolve these issues before such a step is taken. Accordingly, we would welcome the opportunity to discuss our specific concerns with the appropriate councilors and staff.

Best regards,

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Jim McCullough
Coalition for Rural Ontario Environmental Protection
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Summary of findings from our experts:

- Grandfathering Official Plan amendments and zoning exceptions allow specific unacceptable impacts from existing illegal operation to continue, which is not good planning: Depending on any limits that are put on the existing business, the use is potentially not in conformity with the Greenbelt Plan

- When undertaking comprehensive zoning reviews it is common practice not to grandfather existing operations that do not conform to the policies in the Official Plan. This approach is based on the principle that non-conforming uses are intended to evidently cease and be replaced by uses that conform to the Official Plan. The Planning Act recognizes this situation and provides a process under Section 45 (Committee of Adjustment) to deal with the extension or enlargement of such legal non-conforming uses.

- The direction to staff to include a grandfathering clause to recognize and permit existing landscape contractors does not distinguish between existing operations that are legally existing today and other operations that might be operating in contravention of the existing zoning by-law. Grandfathering exceptions should most appropriately be limited to legally existing uses. Existing uses that are illegally operating today should not be recognized in the new bylaw.

- The direction to staff to include a grandfathering clause to recognize and permit existing landscape contractors does not indicate the regulations, if any, that these uses will be subject to. If no regulations are included in the exception clauses then it is conceivable that these operations could expand well beyond the requirements of the A1, A2 and P6 Zones for new landscape contractors.

- The grandfathering resolution directs City Staff to prepare an Official Plan Amendment, as required. The details of the proposed amendment should be made available for review and be subject to a public meeting prior to any further consideration by City Council.

- According to Hamilton's official policy, secondary uses shall only be permitted if "… the use shall be clearly secondary to the primary agricultural use maintained on the lot". The proposed zoning regulations and grandfathering do not satisfy the above Official Plan requirements. In most situations the nursery operation would be subordinate to the Landscape Contractor.

- The proposed zoning regulations do not adequately address the potential for nuisance impacts particularly with respect to impacts on nearby residential lands within rural settlements area and built up urban areas.