

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Lands and Forests

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STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of an Emergency Order for
the Establishment of a Quarantine District and
Protective Zone to Prevent the Spread of
Oak Wilt Disease Pursuant to
ECL § 9-1303

ORDER

WHEREAS:

- Oak wilt is a serious tree disease that was first detected in the Great Lakes Region of the United States in 1944. Since that time, it has spread, killing thousands of oak trees each year. Oak wilt is caused by a fungus, *Bretziella fagacearum*, which causes blockage of the water conducting vessels (xylem) of host trees slowing the movement of water within the tree whereby the leaves wilt and drop off. Infected red oak trees typically die within a few weeks of infection. The disease is spread through underground root systems and by beetles that colonize infected trees. In addition, the spread of oak wilt disease is associated with the movement of firewood and other wood products. Thus, immediate action by the Department of Environmental Conservation (“Department”) is necessary to eliminate this infestation and prevent the spread of this fungus to protect oak trees in the surrounding area and the entire state;
- In 2008, oak wilt was confirmed for the first time in New York State in the community of Glen Oaks within the town of Glenville, Schenectady County, New York. Commissioner Grannis issued an emergency order directing staff to develop an eradication plan with public involvement and to notify affected landowners.
- Department staff confirmed that oak wilt disease had infected oak trees in the Town of Canandaigua and the Town of South Bristol, Ontario County, New York in 2016 and 2018, respectively. Commissioner Seggos issued an order for each infected area directing staff to develop an eradication plan with public involvement and to notify affected landowners; that order further established a protective zone;
- In September 2019, the Department confirmed that oak wilt disease had infected oak trees

in two locations within the town of Middlesex, Yates County, New York. The first location being on Widmer Road and the second being within the Bare Hill Unique Area. An order was issued to develop an eradication plan with public involvement and to notify affected landowners; that order further established a protective zone;

- In October of 2021, the Department confirmed that oak wilt had infected an oak tree in southern Middlesex and an oak tree in northern Italy, Yates County, New York. Both locations are within the Great Hill Nature Preserve the first is on Widmer Road and the second on South Hill Road;
- Environmental Conservation Law (“ECL”) § 9-1303(5) authorizes the Department by order to establish a Quarantine District to prohibit the movement of materials which may be harboring forest tree diseases;
- ECL § 9-1303(7) empowers the Department to establish protective zones for the purpose of preventing the spread of forest tree diseases;
- Department staff has delineated the area infected with oak wilt disease as follows: all of the town of Middlesex and a section of the town of Italy at the border of Middlesex and Italy, as described on Schedule A, which shall be known hereinafter as the “Quarantine District and Protective Zone”; and;
- ECL § 9-1303(7) provides that in establishing protective zones, the Department shall have the authority to enter onto private lands to make such modification in the composition of forest growth as it may deem necessary for the purpose of preventing the spread of forest tree diseases, including: spraying, cutting, destroying or otherwise treating trees or other vegetation located in the Protective Zone.

NOW, THEREFORE, pursuant to ECL § 9-1303 and based upon the above:

1. **I HEREBY FIND** that Oak Wilt Disease has infected oak trees in the Town of Middlesex, and Town of Italy, Yates County, New York and that, in order to protect the forests of New York State, the Department must take immediate action to eradicate this infestation and prevent its spread;

1A. Except as authorized by the Department by permit, no person shall move any living, dead, standing, cut or fallen oak trees or any portion thereof, including branches, logs, stumps or roots, green oak lumber and firewood (of any species) outside of the Quarantine District and Protective Zone unless it has been chipped to less than one (1) inch in two (2) dimensions or firewood that has been treated in a kiln certified by New York State Department of Agriculture & Markets (AGM) to reach a core

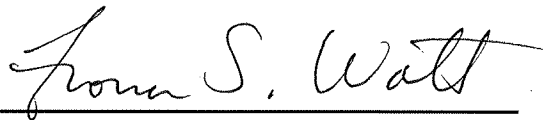
temperature of seventy one (71) degrees Celsius (one hundred sixty (160) degrees Fahrenheit) for seventy five (75) minutes (refer to CRR-NY 192.5);

- 1B.** Oak nursery stock grown for a period exceeding two years within the Quarantine District and Protective Zone may be moved out of the Quarantine District and Protective Zone only pursuant to a permit issued by the AGM, Division of Plant Industry, specifically authorizing such movement, and only if the shipping nursery is under a compliance agreement with the AGM, Division of Plant Industry. This compliance agreement will require oak wilt surveys in nurseries and specify production practices to minimize the risk of spreading oak wilt through nursery stock movement. It will also require nursery growers handling regulated articles to compile, maintain and make available for inspection for a period of two years, records of inventory and sales of regulated articles on a form or forms prescribed by the Commissioner of AGM;
- 1C.** Living or dead oak trees or any portion thereof and firewood (of any species may be moved outside of the Quarantine District and Protective Zone under a Department, Division of Lands and Forests limited transportation permit, providing the materials are from sources apparently free of oak wilt disease; transportation of such materials shall only occur from August 1st through March 31st; materials shall be shipped with a copy of the permit and proper shipping documents.
- 2. I HEREBY ORDER** Department staff to continue to develop and implement, with public involvement, an control plan including: (1) the removal of infected and potentially infected host trees, (2) proper disposal of infected material, and (3) any other action reasonably necessary to prevent the spread of oak wilt disease.
- 3. I FURTHER ORDER** Department staff to continue to take reasonable steps and exercise due diligence to notify, work cooperatively with and enter into agreements with affected landowners as appropriate to implement the Department's control plan;
- 4. I FURTHER ORDER** that all of the Town of Middlesex and a section of the Town of Italy boarding the Town of Middlesex, further delineated on Schedule A and the attached map of boundaries, is designated as the Quarantine District and Protective Zone for the purposes of carrying out this order;
- 5. I FURTHER ORDER** that the Quarantine District and Protective Zone established in this Order supersedes the Protective Zone previously established in February 24, 2020 for the Town of Middlesex;
- 6. I FURTHER ORDER** that the areas where any oak species is removed by the

Department shall be free of intentionally planted oak by humans, except as authorized by the Department in writing, including any appropriate preventive measures;

7. **I FURTHER ORDER** that a copy of this order be immediately filed in the Office of the Clerk of Yates County; and
8. **THIS ORDER SHALL BE EFFECTIVE** ten days from the filling thereof with such Office and shall remain effective until oak wilt disease has been declared eradicated from within the Quarantine District and Protective Zone.

DATED: 6/6/2023



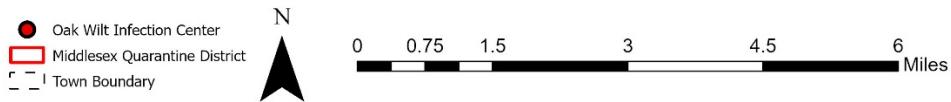
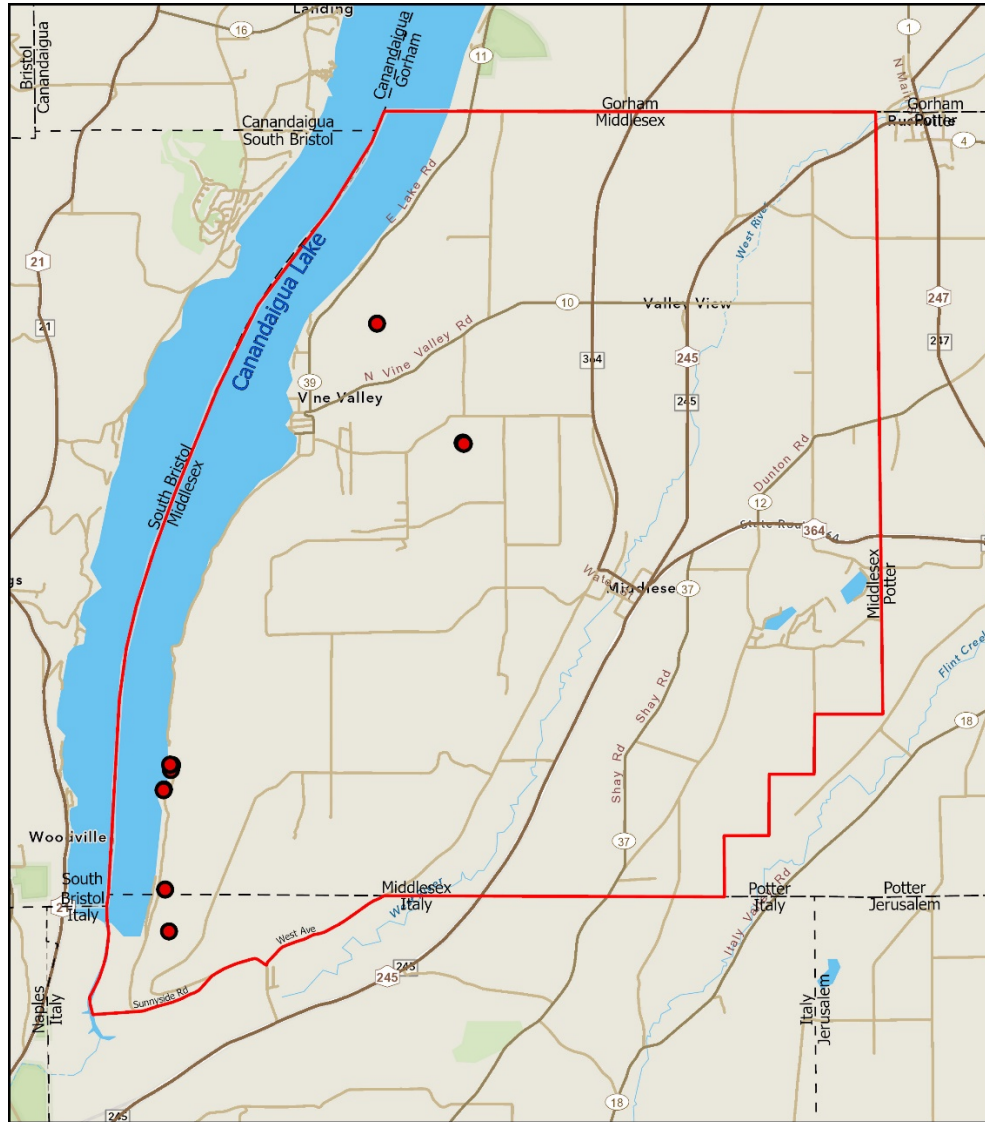
Fiona Watt

Director

Division of Lands and Forests

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

Schedule A



Starting at the town of Middlesex border and West Ave intersection, the quarantine boundary follows West Ave west until it reaches Sunnyside Road. From the Sunnyside Road West Avenue intersection, the quarantine boundary follows Sunnyside Road west for 1.6 miles then continues due west. Once the quarantine boundary reaches West River it continues north following the West River until it reaches the Middlesex town border. Once the quarantine boundary joins the Middlesex town border it follows the town border north through Canandaigua Lake to the northwestern corner of the Middlesex town boundary. At the northwest corner of the Middlesex town boundary the quarantine boundary continues east along the Middlesex town boundary to the northeastern corner of Middlesex. After the northeastern corner of the Middlesex town border the quarantine boundary continues south following the Middlesex town boundary. The quarantine border follows the Middlesex town border until it reaches the southeastern corner of the Middlesex town line continues along the town border back to the West Ave and Middlesex town line intersection.