

Discussion: Montgomery County Bill 35-12 – Tree Canopy Conservation

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Completed: 1-3-13

Description

Montgomery County Bill 35-12 was introduced by the County Council on behalf of the County Executive on November 27, 2012. This bill proposes a new requirement on any person that is required to obtain a sediment control permit and that removes tree canopy. Persons that remove tree canopy will be required to pay a fee to mitigate for the removal of canopy. The fees collected are to be deposited into the Tree Canopy Conservation Fund, which would be authorized by the legislation. The funds will be used for the establishment and enhancement of existing tree canopy. The County Council is holding a public hearing on January 17, 2013. The public hearing will also be for Montgomery County Bill 41-12 entitled Street and Roads- Roadside Trees Protection. Bill 41-12 is not the subject of this staff report and this bill does not impact the Planning Department.

Summary

Staff recommends the Planning Board support Bill 35-12 with amendments.

Discussion

If approved by the Council, Bill 35-12 would supplement the County's Forest Conservation law or Chapter 22A of the County code. The County's Forest Conservation Law is modeled after statewide legislation passed in 1991 that required each county and municipality to develop and implement a forest conservation program. The County's Forest Conservation Law is primarily focused on the protection and creation of new forest. The Forest Conservation Law requires any regulated entity to preserve a certain percentage of their property in forest, or to plant new forest if no forest is currently onsite. If a person is unable to protect, or plant, the required percentage of forest onsite there is an offsite planting requirement. Not all projects have forest planting requirements. Recently the State and County Forest Conservation laws were amended to provide additional findings before trees greater than 30 inches diameter could be impacted by development. Montgomery County Bill 35-12 is not a State mandated requirement but was initiated by the County Executive to "minimize the loss and disturbance of tree canopy as a result of development".

Bill 35-12 requires any person that is required to obtain a sediment control permit pay a fee to mitigate canopy loss when land disturbing activities occurs under the tree canopy. The fee will be paid to the County

and deposited into the Tree Canopy Conservation Fund. The fee is to mitigate for the loss of, or disturbance, to tree canopy; however, the mitigation amount is based on the amount of ground disturbance under the tree canopy and not based on the actual removal of the tree canopy. The methodology is simple, however not always accurate for frequently land is disturbed under tree canopy without any portion of the tree above ground-level being impacted.

The methodology used to calculate the mitigation amount does not give credit to persons that utilize tree protection to save trees and thus tree canopy. The methodology does not consider the health of the tree nor the tree species. Certain tree species are more susceptible to construction damage than are others; similarly trees that are in poor health have difficulty withstanding any additional impacts such as the severing of roots. There should be consideration given to the health of a tree, however, the methodology does not require field visits but relies on aerial photography superimposed over the proposed limits of disturbance. There is a tradeoff between the simplicity of the methodology to identify tree canopy loss and the information and data needed to calculate the mitigation. The proposed methodology does not require persons subject to the law to have special qualifications to assess the health of the trees that support the canopy.

The proposed legislation does not indicate the unit fee amount nor does it discuss if the fee will be set at a flat rate or graduated to increase as more land under the tree canopy is disturbed. The legislation does not allow persons subject to the law to meet the mitigation requirements other than through payment into the Tree Canopy Conservation Fund.

If approved the legislation will be administered and enforced by the Planning Department and the Montgomery County Department of Permitting Services. The Planning Department will be required to implement and enforce the provisions of the law for properties that are subject to the forest conservation law. This will include all development applications that require Planning Board approval and all properties where a Forest Conservation plan, or exemption from submitting a forest conservation plan, is approved by the Planning Director. The Department of Permitting Services will administer and enforce the provisions of the law on all persons that are required to get a sediment control permit but do not require any approval from the Planning Department. This will typically apply to owners of recorded single lots less than 40,000 square feet in size. The legislation does not apply to any person that wishes to remove a tree when a sediment control permit is not required. Therefore, homeowners will be able to remove a hazardous tree without being subject to the legislation.

Impact to Planning Department

The additional work for the Planning Department review staff should be minimal for staff already has the aerial extent of tree canopy shown on natural resource inventories/forest stand delineations. All forest conservation plans and all exemptions from submitting a forest conservation plan show the limit of disturbance and the tree canopy therefore the amount of tree canopy impacted, according to the methodology, is simple to calculate.

The inspection staff would continue to ensure approved plans are fully implemented. There should be minimal additional work to the enforcement staff to implement this bill. However, the Bill as written provides the potential for all enforcement actions to be forwarded to the Planning Director for action (lines 349

through 367). This could substantially increase staff's workload. Staff is proposing changes to the Bill that keeps the enforcement of the law separate and distinct and prevents violations under the Department of Permitting Services' authority from being enforced by Planning staff, or penalties assigned by the Planning Board.

Impact to the Regulated Entities, including the Parks Department

The tree canopy legislation is a new cost to all persons subject to the legislation. Anyone that is required to obtain a sediment control permit will also be required to prepare a plan showing the aerial extent of canopy and the proposed limits of disturbance. The intersection between the limits of disturbance and the tree canopy will determine the amount of mitigation necessary. The fee associated with the mitigation will be set at a later date. The proposed legislation indicates that mitigation fees will not be applied to the first 5 percent of the area of tree canopy disturbed (lines 290 and 291). This is seen as a credit for on-site landscaping (line 289). However, the legislation does not provide a credit for meaningful tree protection.

The Parks Department will be subject the legislation each time they are required to obtain a sediment control permit. They will need to provide mitigation equal to the intersection between the tree canopy and the limits of disturbance. The Parks Department has certified arborists that design tree protection to protect the park assets but under the proposed Bill will receive no credit for tree protection. An example of a project that will be heavily impacted by this new legislation is Woodside Park. In October 2011 the Planning Board approved a forest conservation plan for the Park. The Park contains no forest but is almost completely covered by tree canopy. The limit of disturbance that is associated with the forest conservation plan is large and the tree protection to be installed is impressive, however, even though many trees will not be removed the intersection between the limit of disturbance and tree canopy will require a large amount of mitigation for the 5 acre park. The legislation does not grandfather previously approved plans and therefore the Parks Department will need to pay the required fee.

Conclusion and Recommendation

Planning staff recommends the Planning Board support Bill 35-12 requesting the following amendments:

1. Provide an exemption that grandfathers any project that has obtained approval of a forest conservation plan or an exemption from submitting a forest conservation plan prior to the effective date of this legislation. Insert a new section 55-5(j) that grants an exemption to the provisions of this Bill if *"any person that has obtained approval of a preliminary or final forest conservation plan, or an exemption from submitting a forest conservation plan, before the effective date of this legislation."*
2. On line 209 change *"site plan"* to *"building site plan"* for site plan is identified in the "definition" section on lines 98 and 99 as *"a plan or an amendment to a plan approved under Division 59-D-3 or Chapter 59"*. Staff also recommends the term *"building site plan"* be identified in the section 55-2 as *"Building Site Permit means a drawing submitted in support of a building permit application for an individual lot"*.

3. Identify the mitigation rate in Section 55-9. That is, will the unit fee be the same for each unit square foot of tree canopy impacted or will the mitigation unit fee increase as the square footage of disturbance increases.
4. Include a subsection within Section 55-9 that provides mitigation credit to any person that does not remove any tree canopy and protects trees during the construction process.
5. Include a subsection within Section 55-9 that provides mitigation credit to any person that does not remove any tree canopy and impacts less than 30% of the critical root zone of a tree that supports the tree canopy.
6. Provide opportunities for persons that have a tree canopy mitigation requirement to meet their mitigation by planting new or replacement trees onsite instead of requiring an automatic payment into the Tree Canopy Conservation Fund. Base the on-site mitigation on the 20 year canopy of each tree species to be planted.
7. Under the "Penalties and enforcement" section, replace lines 339 to 342 "*Enforcement action. The Director of Permitting Services or the Planning Director may issue a notice of violation, corrective action order, stop-work order, or civil citation to any person that causes or allows a violation of this Chapter*" with "*Civil action: For any activity subject to Chapter 55-7, the County may bring any civil action authorized by law under Sections 1-18, 1-19, and 1-20 to enforce this Chapter or any regulation adopted under it.*"
8. Under the "Penalties and enforcement" section, replace lines 346 to 349 "*Other remedy. In addition to any other penalty under this Section the Planning Board may seek any appropriate relief authorized under Section 22A-16*" with "*For any activity subject to Chapter 55-8, the Planning Board may bring any enforcement action authorized under Article III of Chapter 22A to enforce this Chapter or any regulations adopted under it*". This clarifies that the Planning Board would not be asked to assess an administrative civil penalty to violations under the purview of the Department of Permitting Services.
9. Delete the entire section 55-12 "Administrative Enforcement" (lines 349 to 367) for this is already addressed in the changes mentioned above. Since the Planning Department's reviews associated with the Bill will be incorporated into a forest conservation plan (lines 261 to 264) this section is not necessary.
10. Modify lines 424 to 428 from "*Fines paid into the Tree Canopy Conservation Fund. Any fines collected for noncompliance with a limit of tree canopy disturbance or forest conservation plan related to tree canopy disturbance must be deposited in a separate account in the Tree Canopy Conservation Fund*" to "*Fines collected under the enforcement of Chapter 55-7 to be deposited in a separate account in the Tree Canopy Fund. Fines collected under the enforcement of Chapter 55-8 to be deposited in the County Forest Conservation Fund.*"

Attachment

1. Montgomery County Bill 35-12: Trees- Tree Canopy Conservation

Introduction

MEMORANDUM

November 21, 2012

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney
Amanda Mihill, Legislative Attorney *of Mihill*

SUBJECT: **Introduction:** Bill 35-12, Trees – Tree Canopy Conservation

Bill 35-12, Trees – Tree Canopy Conservation, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on November 27, 2012. A public hearing is tentatively scheduled for January 17, 2013 at 7:30 p.m.

Bill 35-12 would:

- save, maintain, and establish tree canopy for the benefit of County residents and future generations;
- maximize tree canopy retention and establishment;
- establish procedures, standards, and requirements to minimize the loss and disturbance of tree canopy as a result of development;
- provide for mitigation when tree canopy is lost or disturbed;
- establish a fund for tree canopy conservation projects, including plantings of individual trees, groups of trees, or forests, on private and public property; and
- generally revise County law regarding tree canopy conservation.

This packet contains:

	<u>Circle #</u>
Bill 35-12	1
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Bill No. 35-12
Concerning: Trees - Tree Canopy Conservation
Revised: 10/25/2012 Draft No. 1
Introduced: November 27, 2012
Expires: May 27, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) save, maintain, and establish tree canopy for the benefit of County residents and future generations;
- (2) maximize tree canopy retention and establishment;
- (3) establish procedures, standards, and requirements to minimize the loss and disturbance of tree canopy as a result of development;
- (4) provide for mitigation when tree canopy is lost or disturbed;
- (5) establish a fund for tree canopy conservation projects, including plantings of individual trees, groups of trees, or forests, on private and public property; and
- (6) generally revise County law regarding tree canopy conservation.

By adding

Montgomery County Code
Chapter 55, Tree Canopy Conservation
Sections 55-1, 55-2, 55-3, 55-4, 55-5, 55-6, 55-7, 55-8, 55-9, 55-10, 55-11, 55-12, 55-13 and 55-14.

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Chapter 55 is added as follows:**

2 **Article 1. Purpose and General Provisions.**

3 **55-1. Short title.**

4 This Chapter may be cited as the Montgomery County Tree Canopy
5 Conservation Law.

6 **55-2. Findings and purpose.**

7 (a) Findings. The County Council finds that trees and tree canopy
8 constitute important natural resources. Trees filter groundwater,
9 reduce surface runoff, help alleviate flooding, and supply necessary
10 habitat for wildlife. They cleanse the air, offset the heat island effects
11 of urban development, and reduce energy needs. They improve the
12 quality of life in communities by providing for recreation,
13 compatibility between different land uses, and aesthetic appeal. The
14 Council finds that tree and tree canopy loss as a result of development
15 and other land disturbing activities is a serious problem in the County.

16 (b) Purpose. The purposes of this Chapter are to:

- 17 (1) save, maintain, and establish tree canopy for the benefit of
18 County residents and future generations;
19 (2) maximize tree canopy retention and establishment;
20 (3) establish procedures, standards, and requirements to minimize
21 the loss and disturbance of tree canopy as a result of
22 development;
23 (4) provide for mitigation when tree canopy is lost or disturbed;
24 and

25 (5) establish a fund for tree canopy conservation projects, including
26 plantings of individual trees, groups of trees, or forests, on
27 private and public property.

28 **55-3. Definitions.**

29 In this Chapter, the following terms have the meanings indicated:

30 **Critical Root Zone** means the minimum area beneath a tree. The critical
31 root zone is typically represented by a concentric circle centering on the tree
32 trunk with a radius equal in feet to 1.5 times the number of inches of the
33 trunk diameter.

34 **Development plan** means a plan or an amendment to a plan approved under
35 Division 59-D-1 of Chapter 59.

36 **Director of Environmental Protection** means the Director of the
37 Department of Environmental Protection or the Director's designee.

38 **Director of Permitting Services** means the Director of the Department of
39 Permitting Services or the Director's designee.

40 **Forest conservation plan** means a plan approved under Chapter 22A.

41 **Forest stand delineation** means the collection and presentation of data on
42 the existing vegetation on a site proposed for development or land disturbing
43 activities.

44 **Land disturbing activity** means any earth movement or land change which
45 may result in soil erosion from water or wind or the movement of sediment
46 into County waters or onto County lands, including tilling, clearing, grading,
47 excavating, stripping, stockpiling, filling, and related activities, and covering
48 land with an impermeable material.

49 **Limits of disturbance** means a clearly designated area in which land
50 disturbance is planned to occur.

51 Limits of tree canopy disturbance means all areas within the limits of
 52 disturbance where tree canopy or forest exists.

53 Lot means a tract of land, the boundaries of which have been established by
 54 subdivision of a larger parcel, and which will not be the subject of further
 55 subdivision, as defined by Section 50-1, without an approved forest stand
 56 delineation and forest conservation plan.

57 Mandatory referral means the required review by the Planning Board of
 58 projects or activities to be undertaken by government agencies or private and
 59 public utilities under Section 20-302 of the Land Use Article of the
 60 Maryland Code.

61 Natural resources inventory means a collection and presentation of data on
 62 the existing natural and environmental information on a site and the
 63 surrounding area proposed for development and land disturbing activities.

64 Person means:

65 (a) To the extent allowed by law, any agency or instrument of the federal
 66 government, the state, any county, municipality, or other political
 67 subdivision of the state, or any of their units;

68 (b) An individual, receiver, trustee, guardian, executor, administrator,
 69 fiduciary, or representative of any kind;

70 (c) Any partnership, firm, common ownership community or other
 71 homeowners' association, public or private corporation, or any of their
 72 affiliates or subsidiaries; or

73 (d) Any other entity.

74 Planning Board means the Montgomery County Planning Board of the
 75 Maryland-National Capital Park and Planning Commission, or the Planning
 76 Board's designee.

77 **Planning Director** means the Director of the Montgomery County Planning
78 Department or the Director's designee.

79 **Preliminary plan of subdivision** means a plan for a proposed subdivision
80 or resubdivision prepared and submitted for approval by the Planning Board
81 under Chapter 50 before preparation of a subdivision plat.

82 **Project plan** means a plan or an amendment to a plan approved under
83 Division 59-D-2 of Chapter 59.

84 **Public utility** means any water company, sewage disposal company, electric
85 company, gas company, telephone company, or cable service provider.

86 **Qualified professional** means a licensed forester, licensed landscape
87 architect, or other qualified professional who meets all of the requirements
88 under Section 08.19.06.01A of the Code of Maryland Regulations or any
89 successor regulation.

90 **Retention** means the deliberate holding and protecting of existing trees and
91 forests on the site.

92 **Sediment control permit** means a permit required to be obtained for certain
93 land disturbing activities under Chapter 19.

94 **Site** means any tract, lot, or parcel of land, or combination of tracts, lots, or
95 parcels of land, under a single ownership, or contiguous and under diverse
96 ownership, where development is performed as part of a unit, subdivision, or
97 project.

98 **Site plan** means a plan or an amendment to a plan approved under Division
99 59-D-3 of Chapter 59.

100 **Special exception** means a use approved under Article 59-G of Chapter 59.

101 **Subwatershed** means the total drainage area contributing runoff to a single
102 point, and generally refers to the 8-digit hydrologic unit codes.

103 **Technical Manual** means a detailed guidance document adopted under
 104 Section 55-13 and used to administer this Chapter.

105 **Tree** means a large, woody plant having one or several self-supporting
 106 stems or trunks and numerous branches that can grow to a height of at least
 107 20 feet at maturity. Tree includes the critical root zone.

108 **Tree canopy** means the area of one or many crowns of the trees on a site
 109 including trees in forested areas.

110 **Tree Canopy Conservation Fund** means a special fund maintained by the
 111 County to be used as specified in Section 55-14.

112 **Tree canopy cover** means the combined area of the crowns of all trees on the
 113 site, including trees in forested areas.

114 **Tree canopy cover layer** means the Geographic Information System (GIS)
 115 layer, or shape file, that contains polygons outlining the aerial extent of tree
 116 canopy in the County or any portion of the County.

117 **55-4. Applicability.**

118 Except as otherwise provided under Section 55-5, this Chapter applies to any
 119 person required by law to obtain a sediment control permit.

120 **55-5. Exemptions.**

121 This Chapter does not apply to:

- 122 (a) any tree nursery activity performed with an approved Soil Conservation
 123 and Water Quality Plan as defined in Section 19-48;
- 124 (b) any commercial logging or timber harvesting operation with an
 125 approved exemption from the requirements under Article II of Chapter
 126 22A;
- 127 (c) cutting or clearing trees in a public utility right-of-way for the
 128 construction or modification of electric generation facilities approved
 129 under the Maryland Code Public Utilities Article if:

- 157 (1) Any person required by law to obtain a sediment control permit
158 for land disturbing activity that is not subject to Chapter 22A
159 must submit a limits of tree canopy disturbance concurrently with
160 the sediment control permit application to the Director of
161 Permitting Services under Section 55-7.
- 162 (2) Any person engaging in activity that is subject to Chapter 22A
163 must submit a limits of tree canopy disturbance concurrently with
164 any other plan required under Chapter 22A to the Planning
165 Director under Section 55-8.
- 166 (b) Timing of submissions. The person must submit the limits of tree
167 canopy disturbance for review in conjunction with the review process
168 for a sediment control permit, forest conservation plan, development
169 plan, project plan, preliminary plan of subdivision, site plan, special
170 exception, or mandatory referral. If a natural resources inventory/forest
171 stand delineation is required, the person must include the aerial extent of
172 the tree canopy with the natural resources inventory/forest stand
173 delineation as specified in Section 22A-10.
- 174 (c) Incomplete submissions. The Director of Permitting Services or the
175 Planning Director must not approve an incomplete submission.
- 176 (d) Review of submissions. Each submission required under this Chapter
177 must be reviewed concurrently with the review of any submission
178 required under Article I of Chapter 19 or Chapter 22A.
- 179 (e) Coordination of review. The Director of Permitting Services and the
180 Planning Director may coordinate the review of any information
181 submitted under subsection (a) with other agencies as appropriate. The
182 reviews may be performed concurrently, and in accordance with, any
183 review coordination required under Chapter 19 or Chapter 22A.

184 (f) Time frame of validity. An approved limits of tree canopy disturbance
 185 submission remains valid for:

186 (1) not more than 2 years unless the Planning Director has approved
 187 either a final forest conservation plan or preliminary forest
 188 conservation plan that includes the limits of tree canopy
 189 disturbance;

190 (2) not more than 2 years unless a sediment control permit has been
 191 issued by the Director of Permitting Services and remains valid;
 192 or

193 (3) 5 years if the accuracy of the limits of tree canopy disturbance
 194 has been verified by a qualified professional.

195 (g) Issuance of sediment control permit. The Director of Permitting
 196 Services must not issue a sediment control permit to a person that is
 197 required to comply with this Article until:

198 (1) the Planning Board or Planning Director, as appropriate, or the
 199 Director of Permitting Services has approved an applicant's
 200 limits of disturbance; and

201 (2) the applicant pays any fee required under this Article.

202 **55-7. Tree Canopy – Submissions to the Director of Permitting Services.**

203 (a) General. The limits of tree canopy disturbance information submitted to
 204 the Director of Permitting Services must document the extent of the
 205 existing area of tree canopy and the total area of tree canopy to be
 206 disturbed by the proposed activity.

207 (b) Incorporation of limits of tree canopy disturbance. The limits of tree
 208 canopy disturbance information for the subject property must be
 209 incorporated in a sediment control permit or the site plan submitted for a
 210 building permit.

- 211 (c) The limits of tree canopy disturbance. The limits of tree canopy
 212 disturbance information for the subject site must include:
- 213 (1) a map delineating:
- 214 (A) the property boundaries;
- 215 (B) the proposed limits of disturbance including any off-site
 216 areas;
- 217 (C) the aerial extent of existing tree canopy cover on the
 218 subject site, up to 45 feet beyond the proposed limits of
 219 disturbance;
- 220 (D) the intersection of aerial extent of existing tree canopy
 221 cover and the limits of disturbance; and
- 222 (E) any additional information specified by regulation; and
- 223 (2) a table summarizing the square footage of:
- 224 (A) the property;
- 225 (B) the limits of disturbance of the proposed activity;
- 226 (C) the aerial extent of existing tree canopy cover;
- 227 (D) the limits of tree canopy disturbance; and
- 228 (E) any additional information specified by regulation.
- 229 (d) Modification to limits of tree canopy disturbance. The Director of
 230 Permitting Services may approve a modification to an approved limits
 231 of tree canopy disturbance if:
- 232 (1) the modification is consistent with this Chapter, field inspections
 233 or other evaluations reveal minor inadequacies of the plan, and
 234 modifying the plan to remedy the inadequacies will not increase
 235 the amount of tree canopy removed as shown on the final
 236 approved plan; or
- 237 (2) the action is otherwise required in an emergency.

238 (e) Qualification of preparer. If a tree canopy cover layer developed by the
 239 County is available and is used without alteration, a professional
 240 engineer, land surveyor, architect, or other person qualified to prepare
 241 erosion and sediment control plans under Chapter 19 is also qualified to
 242 prepare the limits of tree canopy disturbance information under this
 243 Section. Otherwise, the limits of tree canopy disturbance information
 244 must be prepared by a qualified professional as defined in Section
 245 08.19.06.01 of the Code of Maryland Regulations or any successor
 246 regulation.

247 **55-8. Tree Canopy – Submission to the Planning Director.**

248 (a) General. The limits of tree canopy disturbance information submitted
 249 to the Planning Director must document the extent of existing tree
 250 canopy and the total area of tree canopy to be disturbed by the proposed
 251 activity. The Planning Director may use the information to identify the
 252 most suitable and practical areas for tree conservation and mitigation.

253 (b) Limits of tree canopy disturbance. A person that is subject to this
 254 Section must submit the same limits of tree canopy disturbance
 255 information as required under Section 55-7.

256 (c) Incorporation of the limits of tree canopy, the natural resources
 257 inventory/forest stand delineation, and forest conservation plan. If an
 258 applicant is required to submit a natural resources inventory/forest stand
 259 delineation, the extent of tree canopy must be incorporated into that
 260 submission for the same area included in the natural resources
 261 inventory/forest stand delineation. If an applicant is required to submit
 262 a forest conservation plan, both the extent of tree canopy and the limits
 263 of tree canopy disturbance must be incorporated into that submission for
 264 the same area included in the forest conservation plan.

- 265 (d) Modification to limits of tree canopy disturbance. The Planning
 266 Director may approve a modification to an approved limits of tree
 267 canopy disturbance that is consistent with this Chapter if:
- 268 (1) field inspection or other evaluation reveals minor inadequacies of
 269 the plan, and modifying the plan to remedy those inadequacies
 270 will not increase the amount of tree canopy removed as shown on
 271 the final approved plan; or
- 272 (2) the action is required because of an emergency.
- 273 (e) Submission for special exception. If a special exception application is
 274 subject to this Chapter, the applicant must submit to the Planning Board
 275 any information necessary to satisfy the requirements of this Chapter
 276 before the Board of Appeals considers the application for the special
 277 exception.

278 **55-9. Tree Canopy – Fee to Mitigate Disturbance.**

- 279 (a) Objectives. The primary objective of this Section is the retention of
 280 existing trees. Every reasonable effort should be made to minimize the
 281 cutting or clearing of trees and other woody plants during the
 282 development of a subdivision plan, grading and sediment control
 283 activities, and implementation of the forest conservation plan.
- 284 (b) Fees paid for mitigation. Mitigation required to compensate for the loss
 285 of, or disturbance to, tree canopy must take the form of fees set by
 286 regulation under Method 3, which the applicant pays to the Tree
 287 Canopy Conservation Fund. Mitigation fees are based on the square
 288 footage of tree canopy disturbed and, therefore, increase as the amount
 289 of tree canopy disturbance increases. To provide credit for on-site
 290 landscaping, mitigation fees must not be applied to the first 5 percent of
 291 the area of tree canopy disturbed. Canopy identified as part of any

292 forest delineated in an approved natural resources inventory/forest stand
 293 delineation and subject to a forest conservation plan is not subject to
 294 mitigation fees under this Chapter.

295 **Article 3. Enforcement and Appeals.**

296 **55-10. Inspections and notification.**

297 (a) Permission to gain access. The Director of Permitting Services or the
 298 Planning Director may enter any property subject to this Chapter to
 299 inspect, review, and enforce.

300 (b) Plan to be on site; field markings. A copy of the approved limits of
 301 tree canopy disturbance must be available on the site for inspection by
 302 the Director of Permitting Services or the Planning Director. Field
 303 markings must exist on site before and during installation of all tree
 304 protection measures, sediment and erosion control measures,
 305 construction, or other land disturbing activities.

306 (c) Inspections.

307 (1) The Director of Permitting Services must conduct field
 308 inspections concurrently with inspections required for a
 309 sediment control permit under Article I of Chapter 19 for any
 310 activity subject to Section 55-7.

311 (2) The Planning Director must conduct field inspections
 312 concurrently with inspections required for a forest conservation
 313 plan for any activity subject to Section 55-8.

314 (3) The Director of Permitting Services or the Planning Director
 315 may authorize additional inspections or meetings as necessary
 316 to administer this Chapter.

317 (d) Timing of inspections. The inspections required under this Section
 318 must occur:

- 319 (1) after the limits of disturbance have been staked and flagged, but
 320 before any clearing or grading begins;
- 321 (2) after necessary stress reduction measures for trees and roots
 322 have been completed and the protection measures have been
 323 installed, but before any clearing or grading begins; and
- 324 (3) after all construction activities are completed, to determine the
 325 level of compliance with the limits of tree canopy disturbance.
- 326 (e) Scheduling requirements. A person must request an inspection by:
- 327 (1) the Director of Permitting Services within the time required to
 328 schedule an inspection under Section 19-12; or
- 329 (2) the Planning Director within the time required to schedule an
 330 inspection under Section 22A-15.
- 331 (f) Coordination. The Department of Permitting Services and the
 332 Planning Department must coordinate their inspections to avoid
 333 inconsistent activities relating to the limits of tree canopy disturbance.

334 **55-11. Penalties and enforcement.**

- 335 (a) Enforcement authority. The Department of Permitting Services has
 336 enforcement authority for any activity approved under Section 55-7
 337 and the Planning Board has enforcement authority for any activity
 338 approved under Section 55-8.
- 339 (b) Enforcement action. The Director of Permitting Services or the
 340 Planning Director may issue a notice of violation, corrective order,
 341 stop-work order, or civil citation to any person that causes or allows a
 342 violation of this Chapter.
- 343 (c) Civil penalty. The maximum civil penalty for any violation of this
 344 Chapter or any regulation adopted under this Chapter is \$1,000. Each
 345 day that a violation continues is a separate offense.

346 (d) Other remedy. In addition to any other penalty under this Section, the
 347 Planning Board may seek any appropriate relief authorized under
 348 Section 22A-16.

349 **55-12. Administrative enforcement.**

350 (a) Administrative order. In addition to any other remedy allowed by
 351 law, the Planning Director may at any time, including during the
 352 pendency of an enforcement action under Section 55-11, issue an
 353 administrative order requiring the violator to take one or more of the
 354 following actions within the time specified by the Planning Director:

355 (1) stop the violation;

356 (2) stabilize the site to comply with a forest conservation plan;

357 (3) stop all work at the site;

358 (4) restore or reforest unlawfully cleared areas;

359 (5) submit a limits of tree canopy disturbance, forest conservation
 360 plan, or tree save plan for the net tract area;

361 (6) place forested land, reforested land, or land with individual
 362 significant trees under long-term protection by a conservation
 363 easement, deed restriction, covenant, or other appropriate legal
 364 instrument; or

365 (7) submit a written report or plan concerning the violation.

366 (b) Effectiveness of order. An order issued under this Section is effective
 367 when it is served on the violator.

368 **Article 4. Administration**

369 **55-13. General.**

370 (a) Regulations. The County Executive must adopt regulations, including
 371 technical manuals, to administer this Chapter, under Method 2. The

372 regulations must include procedures to amend a limits of tree canopy
373 disturbance.

374 (b) Technical manual. The technical manual must include guidance and
375 methodologies for:

376 (1) preparing and evaluating maps of the aerial extent of the tree
377 canopy and the limits of tree canopy disturbance;

378 (2) providing protective measures during and after clearing or
379 construction, including root pruning techniques and guidance
380 on removing trees that are or may become hazardous;

381 (3) monitoring and enforcing the limits of disturbance and the
382 limits of tree canopy disturbance; and

383 (4) other appropriate guidance for program requirements consistent
384 with this Chapter and applicable regulations.

385 (c) Administrative fee. The Planning Board and the County Executive
386 may each, by Method 3 regulation, establish a schedule of fees to
387 administer this Chapter.

388 (d) Reports. On or before March 1 of each year, the Department of
389 Permitting Services, the Planning Board, and the Department of
390 Environmental Protection each must submit an annual report on the
391 County tree conservation program to the County Council and County
392 Executive.

393 (e) Comprehensive plan for mitigation. The Department of
394 Environmental Protection must develop and maintain a
395 comprehensive County-wide plan to mitigate disturbance to tree
396 canopy. The Department of Environmental Protection should develop
397 the plan in consultation with the Planning Department, the
398 Department of Transportation, the Department of General Services,

399 the Department of Economic Development, the Soil Conservation
 400 District, and other agencies as appropriate.

401 (f) Sediment control permit application. To prevent circumvention of
 402 this Chapter, the Planning Director and the Director of Permitting
 403 Services may require a person to submit an application for a sediment
 404 control permit enforceable under this Chapter if that person:

405 (1) limits the removal of tree canopy or limits land disturbing or
 406 construction activities to below requirements for a sediment
 407 control permit; and

408 (2) later disturbs additional tree canopy or land on the same
 409 property, or by any other means, such that in total, a sediment
 410 control permit would be required.

411 **55-14. Tree Canopy Conservation Fund.**

412 (a) General. There is a County Tree Canopy Conservation Fund. The
 413 Fund must be used in accordance with the adopted County budget and
 414 as provided in this Section.

415 (b) Mitigation fees paid into the Tree Canopy Conservation Fund. Money
 416 deposited in the Tree Canopy Conservation Fund to fulfill mitigation
 417 requirements must be spent on establishing and enhancing tree
 418 canopy, including costs directly related to site identification,
 419 acquisition, preparation, and other activities that increase tree canopy,
 420 and must not revert to the General Fund. The Fund may also be spent
 421 on permanent conservation of priority forests, including identification
 422 and acquisition of a site within the same subwatershed where the
 423 disturbance occurs.

424 (c) Fines paid into the Tree Canopy Conservation Fund. Any fines
 425 collected for noncompliance with a limits of tree canopy disturbance

426 or forest conservation plan related to tree canopy disturbance must be
427 deposited in a separate account in the Tree Canopy Conservation
428 Fund. The Fund may be used to administer this Chapter.

429 (d) Use of the Tree Canopy Conservation Fund.

430 (1) Any fees collected for mitigation must be used to:

431 (A) establish tree canopy;

432 (B) enhance existing tree canopy through non-native invasive
433 and native invasive species management control,
434 supplemental planting, or a combination of both;

435 (C) establish forest; and

436 (D) acquire protective easements for existing forests or areas
437 with existing tree canopy that are not currently protected,
438 including forest mitigation banks approved under Section
439 22A-13.

440 (2) The canopy established under paragraph (1)(A) should shade
441 impervious surfaces, manage stormwater runoff, and generally
442 increase tree canopy coverage. Trees native to the Piedmont area
443 of the County should be used, if feasible, to meet the mitigation
444 requirements of this Chapter.

445 (3) The establishment of tree canopy to satisfy the mitigation
446 requirements of a project must occur in the subwatershed where
447 the project is located. Otherwise the tree canopy may be
448 established anywhere in the County.

LEGISLATIVE REQUEST REPORT

Bill 35-12

Tree Canopy Conservation

- DESCRIPTION:** This bill introduces requirements for fees when tree canopy is disturbed. Generally, it applies when a sediment control permit is required under Chapter 19 of the Montgomery County Code and the trees are not subject to Article II of Chapter 22A. The bill requires the fees to be used to plant new trees to mitigate for the loss of benefits provided by the tree canopy. The new trees will be located using a comprehensive approach to enhancing tree canopy across the County.
- PROBLEM:** Currently, the Forest Conservation Law (FCL) does not apply to most disturbances to individual trees outside of forests during development. Also, it does not apply to development activity on lots less than approximately one acre. In recent years, a significant increase in development activity on small lots that are not subject to the FCL has raised awareness of the value of trees to all residents, as well as the need to provide communities some compensation for the loss of trees when development occurs.
- GOALS AND OBJECTIVES:** This bill is designed to provide mitigation for the loss or disturbance to tree canopy not currently regulated by the FCL, as well as specifying that the fees will be used to plant trees across the county using a comprehensive approach that will enhance the existing canopy.
- COORDINATION:** Department of Permitting Services, Maryland-National Capital Park & Planning Commission, Department of Environmental Protection
- FISCAL IMPACT:** See Fiscal and Economic Impact Statement
- ECONOMIC IMPACT:** See Fiscal and Economic Impact Statement
- EVALUATION:**
- EXPERIENCE ELSEWHERE:** The Forest Conservation Law, Chapter 22A of the Montgomery County Code, requires mitigation when forest land and/or champion trees, as well as certain other vegetation, are disturbed.
- SOURCE OF INFORMATION:** Stan Edwards, Division Chief, Division of Environmental Policy and Compliance, Department of Environmental Protection (7-7748)
- APPLICATION WITHIN MUNICIPALITIES:** This bill applies to all municipalities if the land disturbing activity requires a sediment control permit under Chapter 19 of the Montgomery County Code that is approved and enforced by the Department of Permitting Services.
- PENALTIES:** Class A




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

October 25, 2012

TO: Roger Berliner, President
County Council

FROM: Isiah Leggett 
County Executive

SUBJECT: Proposed Legislation: Tree Canopy Conservation Program

I am transmitting for Council introduction a bill that creates a Tree Canopy Conservation Program which is intended to protect and enhance the County's valuable tree canopy. I am also transmitting a Legislative Request Report, Fiscal Impact Statement, and Economic Impact Statement.

This bill introduces requirements for fees when tree canopy is disturbed as a result of development activity. Generally, the bill applies when a sediment control permit is required under Chapter 19 of the Montgomery County Code and the trees are not subject to the County's Forest Conservation Law (FCL). The bill requires the fees to be used to plant new trees to mitigate the loss of benefits that were provided by the disturbed tree canopy.

When the FCL was adopted, the majority of development in the County was occurring on large, previously undeveloped parcels, much of which was forested. The FCL was intended to provide compensation for the loss of forested land through the long-term protection of undisturbed forest or the planting of new forests. As the amount of undeveloped land in the County has diminished, the majority of development is now occurring on smaller, previously undeveloped "in-fill" properties or as the result of redevelopment of previously built-out sites. While these parcels contain few forests, they often contain significant tree canopy due to the presence of individual trees or clusters of trees not meeting the definition of a forest. These trees provide significant benefits to communities, including helping to reduce ambient temperatures, clean the air, manage stormwater, and generally increasing the economic value of the property. However, the majority of these trees are not covered under the FCL and, as a result, there is no mechanism requiring compensation for the loss of these trees.

The Tree Canopy Conservation Program would be implemented by the Department of Permitting Services or the Montgomery County Planning Department, depending on the nature of the development activity. The process has been designed to be as streamlined as possible by incorporating tree canopy review into the existing sediment control permitting process or the existing FCL review process. The bill outlines the process for determining the extent of disturbed tree canopy subject to regulation, but the specific fee structure would be set by regulation.

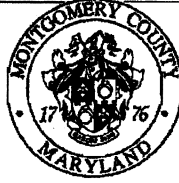
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Roger Berliner
October 25, 2012
Page 2

If you have any questions about this bill, please contact Bob Hoyt, Director of the Department of Environmental Protection, at 240-777-7730 or bob.hoyt@montgomerycountymd.gov.

Attachments (4)

- c. Bob Hoyt, Director Department of Environmental Protection
- Joe Beach, Director, Finance Department
- ~~Kathleen Boucher, Assistant Chief Administrative Officer~~
- Marc Hansen, County Attorney
- Diane Jones, Director, Department of Permitting Services
- Jennifer Hughes, Director, Office of Management and Budget



ROCKVILLE, MARYLAND

MEMORANDUM

September 25, 2012

TO: Timothy L. Firestine, Chief Administrative Officer

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Bill XX-12 – Tree Canopy Conservation

Please find attached the fiscal and economic impact statement for the above-referenced legislation.

JAH:ms

Attachment

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Michael Coveyou, Department of Finance
David Platt, Department of Finance
Stan Edwards, Department of Environmental Protection
Barbara Comfort, Department of Permitting Services
Reginald Jetter, Department of Permitting Services
Alex Espinosa, Office of Management and Budget
Amy Wilson, Office of Management and Budget
Matt Schaeffer, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Bill XX-12 – Tree Canopy Conservation

1. Legislative Summary

The proposed bill revises County law regarding tree canopy conservation in an effort to save, maintain, and establish tree canopy for the benefits of County residents and future generations. The bill would maximize tree canopy retention and establishment by establishing fees to be assessed when disturbance to the tree canopy occurs; these fees would then fund mitigation activities to restore the disturbed tree canopy.

The Department of Permitting Services (DPS) and the Maryland National Capital Park and Planning Commission (M-NCPPC) will administer the law; the Department of Environmental Protection (DEP) will have oversight of tree canopy restoration activities.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

DEP has indicated that new work created as a result of this legislation (tree canopy restoration activities) will have costs that will correlate to the amount of received fees. While the cost of future work is not known, DEP has asserted that any future costs related to tree canopy restoration activities will not exceed collected fees.

A. M-NCPPC has estimated a cost of \$12,480 annually and a one-time first-year expenditure of \$3,600 related to planning the tree canopy restoration policies outlined in the bill. Some of the specific planning activities related to tree canopy restoration conducted by MNCPPC¹ include:

- Development of a planting plan (One-time investment of 20 work hours)
- Annual Report development (20 work hours)
- Development of a Fee Schedule (One-time investment of 40 work hours)
- Annual adjustment of fee schedules (8 work hours)
- Plan Review Time (60 forest conservation plans per year @ 3 hours per plan)

B. DPS has indicated fiscal impacts relating to the inspection and fine assessments of tree canopy disturbance of approximately \$67,118 annually in the following work areas:

500 additional inspection and assessment projects (\$25,752/annually)

- **Permit Technicians (250 work hours): \$8,878**
(.5 Hrs each project @ Grade 19 midpoint salary of \$56,828 plus benefits² or \$35.51/hr)
- **Permit Services Specialists/Plan Reviewers (125 work hours): \$6,166**
(.25 Hrs each project @ Grade 26 midpoint salary of \$78,929 plus benefits or \$49.33/hr)
- **Inspectors (250 work hours): \$10,708**
(.5 Hrs each project @ Grade 23 midpoint salary of \$68,531 plus benefits or \$42.83/hr)

200 additional complaints relating to tree loss (\$41,366/annually)

- **Permit Technicians (200 work hours): \$7,102**
(1 Hr each project @ Grade 19 midpoint salary of \$56,828 plus benefits or \$35.51/hr)

¹ Cost estimates are based on a rate of \$60 per hour.

² Benefit calculation is 30 percent of base pay.

- **Inspectors (800 work hours): \$34,264**
(4 Hrs each project @ Grade 23 midpoint salary of \$68,531 plus benefits or \$42.83/hr)

Revenues resulting from this legislation will depend on the determination of a rate model for tree canopy disturbance fees. The rate model will be established via method 2 regulation.

- 3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**
DEP has indicated that new work created as a result of this legislation (tree canopy restoration activities) will have costs that will correlate to the amount of received fees. While the cost of future work is not known, DEP has asserted that any future costs related to tree canopy restoration activities will not exceed collected fees.

DPS reports future expenditures of approximately \$62,118 annually (as explained above). The total six-year expenditures for DPS are approximately \$402,708.

M-NCPPC reports annual expenditures of \$12,480 with a one-time startup charge of \$3,600 to implement the planning and implementation plan for the bill (as explained above). Total six-year expenditures for M-NCPPC are approximately \$78,480.

Revenues resulting from this legislation will depend on the determination of a rate model for tree canopy disturbance fees. The rate model will be established via method 2 regulation.

- 4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable. This bill does not affect retiree pension or group insurance costs.

- 5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

The bill authorizes the creation of a Tree Canopy Conservation Fund that would fund tree canopy restoration activities in the future.

- 6. An estimate of the staff time needed to implement the bill.**

While DEP does not expect the need for additional staff time to implement the bill, future staff needs could change depending on the extent of tree canopy restoration activities resulting from the bill.

DPS reports the need for an additional 1,625 work hours annually in different job classes to implement the bill.

MNCPPC reports the need for an additional 208 hours annually and 60 hours to start up the program in the first year of implementation.

- 7. An explanation of how the addition of new staff responsibilities would affect other duties.**

24

While DEP does not expect the need for additional staff time to implement the bill, the actual impact on staff will depend on the extent of tree canopy restoration activities as a result of implementing the bill.

DPS reports that the bill would impact both the workload of permitting staff and permit reviewing staff. Estimates for costs of additional work are provided above.

M-NCPPC reports that the bill would impact the workload of forest conservation planners. Estimates for costs of addition work are provided above.

- 8. An estimate of costs when an additional appropriation is needed.**
Not applicable.

- 9. A description of any variable that could affect revenue and cost estimates.**
DEP has indicated that costs and revenues relating to tree canopy restoration will be dependent on the amount of fees received. The rate model for fees will be established by method 2 regulation.

Article IV, Section 55-13(c) allows for the establishment of a fee for administering the program; this fee would be adopted under method 3. An administrative fee has not been established but could impact revenue and cost estimates.

Article III, Section 55-11(c) establishes a maximum \$1,000 civil penalty for violation of the proposed legislation. Fines would be deposited into the Tree Canopy Conservation Fund and could be used to implement any part of the bill. Estimates of revenue from these fines are difficult to predict without knowing the extent of the violations.

- 10. Ranges of revenue or expenditures that are uncertain or difficult to project.**
DEP has indicated that costs and revenues relating to tree canopy restoration will be dependent on the amount of fees received. The rate model for fees will be established by method 2 regulation.

Article IV, Section 55-13(c) allows for the establishment of a fee for administering the program; this fee would be adopted under method 3. An administrative fee has not been established but could impact revenue and cost estimates.

Article III, Section 55-11(c) establishes a maximum \$1,000 civil penalty for violation of the proposed legislation. Fines would be deposited into the Tree Canopy Conservation Fund and could be used to implement any part of the bill. Estimates of revenue from these fines are difficult to predict without knowing the extent of the violations.

- 11. If a bill is likely to have no fiscal impact, why that is the case.**
Not applicable.

25

12. Other fiscal impacts or comments.

This bill creates a Tree Canopy Conservation Fund as the account for fees collected as a result of tree canopy disturbance and the source of funds for tree canopy restoration projects. DEP would manage this fund.

13. The following contributed to and concurred with this analysis:

Stan Edwards, Department of Environmental Protection

Barbara Comfort, Department of Permitting Services

Reginald Jetter, Department of Permitting Services

Rose Krasnow, MNCPPC

Amy Wilson, Office of Management and Budget

Matt Schaeffer, Office of Management and Budget

Naeem Mia, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

9/21/12
Date

Economic Impact Statement
Council Bill XX-12, Tree Canopy Conservation

Background:

The purpose of this legislation is to: 1) save, maintain, and establish tree canopy for the benefit of County residents and future generations; 2) maximize tree canopy retention and establishment; 3) establish procedures, standards, and requirements to minimize the loss and disturbance of tree canopy as a result of development; 4) provide for mitigation when tree canopy is lost or disturbed; and 5) establish a fund for tree canopy conservation projects, including plantings of individual trees, groups of trees, or forests, on private and public property. The proposed legislation generally revises County law regarding tree canopy conservation.

The requirements of this bill are applicable when a sediment control permit is required under Chapter 19 of the Montgomery County Code and the trees are not subject to Article II of Chapter 22A. The bill supplements the Forest Conservation Law (FCL). The FCL does not apply to most disturbances to individual trees outside of forests during development, and it does not apply to development activity on lots less than approximately one acre.

1. The sources of information, assumptions, and methodologies used.

Not applicable

2. A description of any variable that could affect the economic impact estimates.

The economic impact of the bill will vary based on a number of factors including the amount of acreage that is the subject of the sediment control permit, the area of tree canopy on land covered by such a permit, the amount of the fee imposed per square foot of tree canopy disturbed as a result of the development activity subject to the permit, and the market conditions at the time of development. The cost of development for each property will be affected by the amount of tree canopy disturbed times the fee.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

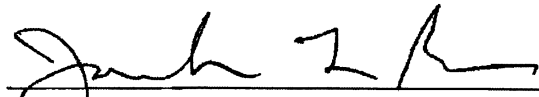
The bill may increase the cost for developing some properties, and those costs may affect the gross profit margin to the developers or the price of the property. However, some studies indicate that property with trees can have a higher value than property that is cleared of trees. To the extent that the proposed legislation encourages developers to retain trees, they may realize a higher return than if they clear the site. However, this analysis would vary by property and market conditions and would need to factor in the cost of removing trees as well as the impact of the cost of the fee. With a specific fee structure it will be possible to estimate these potential costs.

Economic Impact Statement
Council Bill XX-12, Tree Canopy Conservation

4. If a Bill is likely to have no economic impact, why is that the case?

Not applicable; see item 3.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance and Stan Edwards, Environmental Protection.



Joseph F. Beach, Director
Department of Finance

9/12/12
Date