

Bill No. 35-12
Concerning: Trees - Tree Canopy Conservation
Revised: 7/23/13 Draft No. 4
Introduced: November 27, 2012
Enacted: July 23, 2013
Executive: July 31, 2013
Effective: March 1, 2014
Sunset Date: None
Ch. 21, Laws of Mont. Co. 2013

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]]~~ to offset the environmental impacts of development and address the loss of environmental resources, including trees and potential growing space for shade trees;
- ~~[[~~(5) (3) establish ~~[[a fund]]~~ an account for shade tree ~~[[canopy conservation]]~~ planting projects, including plantings of individual trees~~[[,]]~~ or groups of trees~~[[, or forests,]]~~ on private and public property; and
- ~~[[~~(6) (4) 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, and 55-11

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
 16 County.

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

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

27 including plantings of individual trees, groups of trees, or
28 forests, on private and public property.

29 **55-3. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

65 Person means:

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

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

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

74 (d) Any other entity.

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

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

80 Preliminary plan of subdivision means a plan for a proposed subdivision or

81 resubdivision prepared and submitted for approval by the Planning Board
 82 under Chapter 50 before preparation of a subdivision plat.

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

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

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

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

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

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

99 **Site plan** means a plan or an amendment to a plan approved under Division
 100 59-D-3 of Chapter 59.

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

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

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

106 **Tree** means a large, woody plant having one or several self-supporting
 107 stems or trunks and numerous branches that can grow to a height of at least

108 20 feet at maturity. **Tree** includes the critical root zone.

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

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

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

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

118 **55-4. Applicability.**

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

121 **55-5. Exemptions.**

122 This Chapter does not apply to:

123 (a) any tree nursery activity performed with an approved Soil Conservation
 124 and Water Quality Plan as defined in Section 19-48;

125 (b) any commercial logging or timber harvesting operation with an
 126 approved exemption from the requirements under Article II of Chapter
 127 22A;

128 (c) cutting or clearing trees in a public utility right-of-way for the
 129 construction or modification of electric generation facilities approved
 130 under the Maryland Code Public Utilities Article if:

131 (1) the person cutting or clearing the trees has obtained a certificate
 132 of public convenience and necessity required under Sections 7-
 133 207 and 7-208 of the Public Utilities Article; and

134 (2) the cutting or clearing of forest or tree canopy is conducted so as

- 135 to minimize the loss of both;
 136 (d) routine maintenance or emergency repairs of any facility located in
 137 public utility rights-of-way;
 138 (e) routine or emergency maintenance of an existing stormwater
 139 management facility, including an existing access road, if the person
 140 performing the maintenance has obtained all required permits;
 141 (f) any stream restoration project if the person performing the work has
 142 obtained all necessary permits;
 143 (g) the cutting or clearing any tree by an existing airport currently
 144 operating with all applicable permits to comply with applicable
 145 provisions of any federal law or regulation governing the obstruction of
 146 navigable airspace if the Federal Aviation Administration has
 147 determined that the trees create a hazard to aviation;
 148 (h) cutting or clearing any tree to comply with applicable provisions of any
 149 federal, state, or local law governing the safety of dams; or
 150 (i) any non-coal surface mining conducted in accordance with applicable
 151 state law.

152 **Article 2. Tree Canopy Conservation Requirements, Procedures, and Approvals.**

153 **55-6. Tree Canopy – General.**

- 154 (a) Submissions. A person that is subject to this Chapter must submit to
 155 either the Director of Permitting Services or the Planning Director the
 156 following information on the amount of disturbance of tree canopy.
 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
172 of 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
- 210 a 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

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areas;

- (C) the aerial extent of existing tree canopy cover on the subject site, up to 45 feet beyond the proposed limits of disturbance;
- (D) the intersection of aerial extent of existing tree canopy cover and the limits of disturbance; and
- (E) any additional information specified by regulation; and

(2) a table summarizing the square footage of:

- (A) the property;
- (B) the limits of disturbance of the proposed activity;
- (C) the aerial extent of existing tree canopy cover;
- (D) the limits of tree canopy disturbance; and
- (E) any additional information specified by regulation.

(d) Modification to limits of tree canopy disturbance. The Director of Permitting Services may approve a modification to an approved limits of tree canopy disturbance if:

- (1) the modification is consistent with this Chapter, field inspections or other evaluations reveal minor inadequacies of the plan, and modifying the plan to remedy the inadequacies will not increase the amount of tree canopy removed as shown on the final approved plan; or
- (2) the action is otherwise required in an emergency.

(e) Qualification of preparer. If a tree canopy cover layer developed by the County is available and is used without alteration, a professional engineer, land surveyor, architect, or other person qualified to prepare erosion and sediment control plans under Chapter 19 is also qualified to 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
 251 proposed activity. The Planning Director may use the information to
 252 identify the most suitable and practical areas for tree conservation and
 253 mitigation.

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

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

266 (d) Modification to limits of tree canopy disturbance. The Planning
 267 Director may approve a modification to an approved limits of tree
 268 canopy disturbance that is consistent with this Chapter if:

269 (1) field inspection or other evaluation reveals minor inadequacies

270 of the plan, and modifying the plan to remedy those inadequacies
 271 will not increase the amount of tree canopy removed as shown on
 272 the final approved plan; or

273 (2) the action is required because of an emergency.

274 (e) Submission for special exception. If a special exception application is
 275 subject to this Chapter, the applicant must submit to the Planning Board
 276 any information necessary to satisfy the requirements of this Chapter
 277 before the Board of Appeals considers the application for the special
 278 exception.

279 **55-9. Tree Canopy – Fee to Mitigate Disturbance.**

280 (a) Objectives. The primary objective of this Section is the retention of
 281 existing trees. Every reasonable effort should be made to minimize the
 282 cutting or clearing of trees and other woody plants during the
 283 development of a subdivision plan, grading and sediment control
 284 activities, and implementation of the forest conservation plan.

285 (b) Fees paid for mitigation. Mitigation required to compensate for the loss
 286 of, or disturbance to, tree canopy must take the form of fees set by
 287 regulation under Method 3, which the applicant pays to the Tree
 288 Canopy Conservation Fund. Mitigation fees are based on the square
 289 footage of tree canopy disturbed and, therefore, increase as the amount
 290 of tree canopy disturbance increases. To provide credit for on-site
 291 landscaping, mitigation fees must not be applied to the first 5 percent of
 292 the area of tree canopy disturbed. Canopy identified as part of any
 293 forest delineated in an approved natural resources inventory/forest
 294 stand delineation and subject to a forest conservation plan is not subject
 295 to mitigation fees under this Chapter.

296 **Article 3. Enforcement and Appeals.**

297 **55-10. Inspections and notification.**

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

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

307 (c) Inspections.

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

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

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

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

320 (1) after the limits of disturbance have been staked and flagged, but
 321 before any clearing or grading begins;

322 (2) after necessary stress reduction measures for trees and roots
 323 have been completed and the protection measures have been

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

335 **55-11. Penalties and enforcement.**

- 336 (a) Enforcement authority. The Department of Permitting Services has
 337 enforcement authority for any activity approved under Section 55-7
 338 and the Planning Board has enforcement authority for any activity
 339 approved under Section 55-8.
- 340 (b) Enforcement action. The Director of Permitting Services or the
 341 Planning Director may issue a notice of violation, corrective order,
 342 stop-work order, or civil citation to any person that causes or allows
 343 a violation of this Chapter.
- 344 (c) Civil penalty. The maximum civil penalty for any violation of this
 345 Chapter or any regulation adopted under this Chapter is \$1,000.
 346 Each day that a violation continues is a separate offense.
- 347 (d) Other remedy. In addition to any other penalty under this Section, the
 348 Planning Board may seek any appropriate relief authorized under
 349 Section 22A-16.

350 **55-12. Administrative enforcement.**

- 378 canopy and the limits of tree canopy disturbance;
- 379 (2) providing protective measures during and after clearing or
- 380 construction, including root pruning techniques and guidance
- 381 on removing trees that are or may become hazardous;
- 382 (3) monitoring and enforcing the limits of disturbance and the
- 383 limits of tree canopy disturbance; and
- 384 (4) other appropriate guidance for program requirements
- 385 consistent with this Chapter and applicable regulations.
- 386 (c) Administrative fee. The Planning Board and the County Executive
- 387 may each, by Method 3 regulation, establish a schedule of fees to
- 388 administer this Chapter.
- 389 (d) Reports. On or before March 1 of each year, the Department of
- 390 Permitting Services, the Planning Board, and the Department of
- 391 Environmental Protection each must submit an annual report on the
- 392 County tree conservation program to the County Council and County
- 393 Executive.
- 394 (e) Comprehensive plan for mitigation. The Department of Environmental
- 395 Protection must develop and maintain a comprehensive County-wide
- 396 plan to mitigate disturbance to tree canopy. The Department of
- 397 Environmental Protection should develop the plan in consultation
- 398 with the Planning Department, the Department of Transportation, the
- 399 Department of General Services, the Department of Economic
- 400 Development, the Soil Conservation District, and other agencies as
- 401 appropriate.
- 402 (f) Sediment control permit application. To prevent circumvention of this
- 403 Chapter, the Planning Director and the Director of Permitting
- 404 Services may require a person to submit an application for a sediment

- 405 control permit enforceable under this Chapter if that person:
 406 (1) limits the removal of tree canopy or limits land disturbing or
 407 construction activities to below requirements for a sediment
 408 control permit; and
 409 (2) later disturbs additional tree canopy or land on the same
 410 property, or by any other means, such that in total, a sediment
 411 control permit would be required.

412 **55-14. Tree Canopy Conservation Fund.**

- 413 (a) General. There is a County Tree Canopy Conservation Fund. The
 414 Fund must be used in accordance with the adopted County budget and
 415 as provided in this Section.
- 416 (b) Mitigation fees paid into the Tree Canopy Conservation Fund. Money
 417 deposited in the Tree Canopy Conservation Fund to fulfill mitigation
 418 requirements must be spent on establishing and enhancing tree
 419 canopy, including costs directly related to site identification,
 420 acquisition, preparation, and other activities that increase tree
 421 canopy, and must not revert to the General Fund. The Fund may also
 422 be spent on permanent conservation of priority forests, including
 423 identification and acquisition of a site within the same subwatershed
 424 where the disturbance occurs.
- 425 (c) Fines paid into the Tree Canopy Conservation Fund. Any fines
 426 collected for noncompliance with a limits of tree canopy disturbance
 427 or forest conservation plan related to tree canopy disturbance must be
 428 deposited in a separate account in the Tree Canopy Conservation
 429 Fund. The Fund may be used to administer this Chapter.
- 430 (d) Use of the Tree Canopy Conservation Fund.
 431 (1) Any fees collected for mitigation must be used to:

- 432 (A) establish tree canopy;
- 433 (B) enhance existing tree canopy through non-native invasive
- 434 and native invasive species management control,
- 435 supplemental planting, or a combination of both;
- 436 (C) establish forest; and
- 437 (D) acquire protective easements for existing forests or areas
- 438 with existing tree canopy that are not currently protected,
- 439 including forest mitigation banks approved under Section
- 440 22A-13.
- 441 (2) The canopy established under paragraph (1)(A) should shade
- 442 impervious surfaces, manage stormwater runoff, and generally
- 443 increase tree canopy coverage. Trees native to the Piedmont area
- 444 of the County should be used, if feasible, to meet the mitigation
- 445 requirements of this Chapter.
- 446 (3) The establishment of tree canopy to satisfy the mitigation
- 447 requirements of a project must occur in the subwatershed where
- 448 the project is located. Otherwise the tree canopy may be
- 449 established anywhere in the County.]]

Article 1. Purpose and General Provisions.

55-1. Short title.

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

55-2. Findings and purpose.

(a) Findings. The County Council finds that it is in the public interest to
offset the environmental impacts of development and address the loss
of environmental resources, including trees and potential growing
space for shade trees, and conserve tree canopy throughout the
County. Trees and tree canopy constitute important environmental

459 resources. Trees cleanse the air, offset the heat island effects of urban
460 development, reduce energy needs, and provide oxygen. They
461 improve the quality of life in communities by providing for a greater
462 sense of well-being and increasing esthetic appeal and compatibility
463 between different land uses. Trees filter groundwater, reduce surface
464 runoff and soil erosion, help alleviate flooding, and supply necessary
465 habitat for a diversity of wildlife. The Council finds that the damage
466 to or loss of environmental resources as a result of development and
467 other land disturbing activities is a serious problem in the County, and
468 that establishing shade trees and tree canopy helps mitigate these
469 losses and increase the diversity of species and age classes of trees.
470 The Council finds that, given the expected survival rate of newly
471 planted shade trees, at least 3 new shade trees should be planted to
472 produce the canopy coverage of one mature shade tree.

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

- 474 (1) save, maintain, and establish tree canopy for the benefit of
475 County residents and future generations; and
476 (2) provide for mitigation when environmental resources, including
477 trees and potential growing space for shade trees, are lost or
478 disturbed as a result of development, by establishing:
479 (A) shade tree planting requirements and standards; and
480 (B) a program to plant shade trees, including planting
481 individual trees or groups of trees, on private and public
482 property.

483 **55-3. Definitions.**

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

485 Department means the Department of Permitting Services.

486 Director means the Director of the Department of Permitting Services or the
487 Director's designee.

488 Limits of disturbance means a clearly designated area where land
489 disturbance is expected to occur.

490 Person means:

491 (a) to the extent allowed by law, any agency or instrument of the federal
492 government, the state, any county, municipality, or other political
493 subdivision of the state, or a unit of any of them;

494 (b) an individual, receiver, trustee, guardian, executor, administrator,
495 fiduciary, or representative of any kind;

496 (c) any partnership, firm, common ownership community or other
497 homeowners' association, public or private corporation, or a affiliate
498 or subsidiary of any of them; or

499 (d) any other entity.

500 Public utility means any water company, sewage disposal company, electric
501 company, gas company, telephone company, or cable service provider.

502 Sediment control permit means a permit required to be obtained for certain
503 land disturbing activities under Chapter 19.

504 Shade tree means a tree of large stature that is capable of growing to heights
505 greater than 50 feet.

506 Site means any tract, lot, or parcel of land, or combination of tracts, lots, or
507 parcels of land, under a single ownership, or contiguous and under diverse
508 ownership.

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

511 Technical Manual means a detailed guidance document that may be adopted
512 under Section 55-9 and used to administer this Chapter.

513 Tree canopy means the area covered by the crown of one or more trees.

514 Tree Canopy Conservation Account means a special account maintained by
515 the County to be used as specified in Section 55-10.

516 **55-4. Applicability.**

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

519 **55-5. Exemptions.**

520 This Chapter does not apply to:

- 521 (a) any activity that is subject to Article II of Chapter 22A;
522 (b) any commercial logging or timber harvesting operation with an
523 approved exemption from Article II of Chapter 22A;
524 (c) any tree nursery activity performed with an approved Soil Conservation
525 and Water Quality Plan as defined in Section 19-48;
526 (d) cutting or clearing trees in a public utility right-of-way for the
527 construction or modification of electric generation facilities approved
528 under the Maryland Code Public Utilities Article if:
529 (1) the person cutting or clearing the trees has obtained a certificate
530 of public convenience and necessity required under Sections 7-
531 207 and 7-208 of the Public Utilities Article; and
532 (2) the cutting or clearing of forest or tree canopy is conducted so as
533 to minimize the loss of both;
534 (e) routine maintenance of a public utility right-of-way, and cutting or
535 clearing any tree by a public utility as necessary to comply with
536 applicable vegetation management requirements, to maintain, repair,
537 replace, or upgrade any public utility transmission or distribution line,
538 or for a new transmission or distribution line;
539 (f) any activity conducted by the County Parks Department;

- 540 (g) routine or emergency maintenance of an existing stormwater
- 541 management facility, including an existing access road, if the person
- 542 performing the maintenance has obtained all required permits;
- 543 (h) any stream restoration project if the person performing the work has
- 544 obtained all necessary permits;
- 545 (i) cutting or clearing any tree by an existing airport currently operating
- 546 with all applicable permits to comply with applicable provisions of any
- 547 federal law or regulation governing the obstruction of navigable
- 548 airspace if the Federal Aviation Administration has determined that the
- 549 trees create a hazard to aviation;
- 550 (j) cutting or clearing any tree to comply with applicable provisions of any
- 551 federal, state, or local law governing the safety of dams;
- 552 (k) any development activity permitted as a small land disturbing activity
- 553 under Section 19-5B; or
- 554 (l) any non-coal surface mining conducted in accordance with applicable
- 555 state law.

Article 2. Mitigation Requirements and Review.

55-6. Shade Tree Planting.

- 558 (a) Alternatives. An applicant for a sediment control permit must plant
- 559 shade trees on the affected property or, if the applicant opts not to plant
- 560 the required number of trees, pay a fee under subsection (d).
- 561 (b) Quantity. The number of shade trees required to be planted under this
- 562 Section must be based on the square footage of the area in the limits of
- 563 disturbance.
- 564 (1) Unless modified or superseded by applicable regulations adopted
- 565 under Method 1, the number of shade trees planted must comply
- 566 with the following schedule:

<u>Area (sq. ft.) of the Limits of Disturbance</u>		<u>Number of Shade Trees Required</u>
<u>From</u>	<u>To</u>	
<u>1</u>	<u>6,000</u>	<u>3</u>
<u>6,001</u>	<u>8,000</u>	<u>6</u>
<u>8,001</u>	<u>12,000</u>	<u>9</u>
<u>12,001</u>	<u>14,000</u>	<u>12</u>
<u>14,001</u>	<u>40,000</u>	<u>15</u>

567 (2) If the area in the limits of disturbance exceeds 40,000 square
 568 feet, the minimum number of shade trees required must be
 569 prorated using the ratio of 15 trees per 40,000 square feet.

570 (c) Planting. Each planting of shade trees under this Section must conform
 571 to the following requirements:

572 (1) Each shade tree must be allowed at least 400 square feet, unless
 573 applicable regulations adopted under Method 1 specify a smaller
 574 amount, of open surface area free of any impervious surface,
 575 utility, stormwater management system, or other impediment to
 576 root growth and development.

577 (2) Shade trees may be planted anywhere on the subject property,
 578 including outside the limits of disturbance if sufficient open
 579 surface area is available entirely within the property boundaries.
 580 Open surface area on an adjacent County right-of-way may be
 581 included if no utility, public utility easement, or impervious
 582 surface is located in that part of the right-of-way and the tree is
 583 located on the affected property so that its stem will not grow into
 584 the right-of-way.

585 (d) Fees. If the applicant concludes that any required shade tree cannot be
 586 planted on the affected property because sufficient open surface area is
 587 not available or for any other reason, the applicant must pay into the
 588 Tree Canopy Conservation Account a fee for each required shade tree

589 that is not planted on the affected property. The fee must be equal to the
 590 applicable rate the Department sets for bonding trees in the right-of-
 591 way.

592 **55-7. Submissions.**

593 (a) Required submissions. A person subject to this Chapter must submit to
 594 the Director the following information with each application for a
 595 sediment control permit:

- 596 (1) a plan delineating:
 - 597 (A) the property boundaries;
 - 598 (B) the proposed limits of disturbance, including any off-site
 599 areas;
 - 600 (C) any shade tree planting locations and the required open
 601 surface area for each planting location;

- 602 (2) a table summarizing:
 - 603 (A) the square footage of the property;
 - 604 (B) the square footage of the limits of disturbance of the
 605 proposed activity;
 - 606 (C) the number of shade trees required under Section 55-6(b),
 607 the number of shade trees to be planted, and the amount of
 608 fees to be paid under Section 55-6(d); and
 - 609 (D) the open surface area surrounding each shade tree planting
 610 location; and

611 (3) any additional information specified by regulation.

612 (b) Qualification of preparer. A professional engineer, land surveyor,
 613 architect, or other person qualified to certify an erosion and sediment
 614 control plan under Chapter 19 is also qualified to submit the information
 615 required under this Chapter.

- 616 (c) Incomplete submissions. The Director must not accept an incomplete
617 submission.
- 618 (d) Review of submissions. Each submission required under this Chapter
619 must be reviewed along with any submission required under Article I of
620 Chapter 19.
- 621 (e) Coordination of review. The Director may coordinate the review of any
622 information submitted under subsection (a) with one or more other
623 agencies as appropriate. If the Director coordinates the review with
624 other agencies, the reviews must be performed concurrently and in
625 accordance with any review coordination required under Chapter 19.
- 626 (f) Issuance of sediment control permit. The Director must not issue a
627 sediment control permit to a person that is subject to this Chapter until:
- 628 (1) the Director has approved the applicant's planting plan;
629 (2) the applicant pays any fee required under this Article; and
630 (3) the applicant has satisfied all applicable requirements under
631 Article I of Chapter 19.
- 632 (g) Validity period. An approved shade tree planting plan remains valid for
633 the length of the associated sediment control permit.
- 634 (h) Application requirement. To prevent circumvention of this Chapter,
635 the Director may require a person to apply for a sediment control
636 permit if that person limits the removal of tree canopy or limits land
637 disturbing or construction activities below the requirements for a
638 sediment control permit and within the next 10 years disturbs
639 additional tree canopy or land on the same property, or conducts other
640 activities, such that in the aggregate a sediment control permit would
641 have been required.

642 **55-8. Inspections.**

- 643 (a) Permission to gain access. The Director may enter any property
 644 permitted under this Chapter to inspect the property and enforce this
 645 Chapter while the permit is in effect.
- 646 (b) Plan to be on site; field markings. A copy of the approved limits of
 647 disturbance, including [[shade tree species,]] planting locations and
 648 minimum open surface areas, must be available on the site for
 649 inspection by the Director. Field markings must exist on site before
 650 and during installation of all newly planted shade trees, sediment and
 651 erosion control measures, construction, or other land disturbing
 652 activities.
- 653 (c) Inspections. The Director must conduct field inspections for any
 654 activity subject to this Chapter along with any inspection required for
 655 a sediment control permit under Article I of Chapter 19. The Director
 656 may authorize additional inspections or meetings as necessary to
 657 administer this Chapter.
- 658 (d) Timing of inspections. The inspections required under this Section
 659 must occur after all construction activities are completed to determine
 660 the level of compliance with shade tree planting requirements.

Article 3. Administration.

55-9. General.

- 663 (a) Regulations. Except as otherwise provided, the County Executive
 664 must adopt regulations, including a technical manual, to administer
 665 this Chapter, under Method 2.
- 666 (b) Technical manual. The technical manual must include guidance and
 667 methods to:
- 668 (1) preserve trees onsite where possible;

- 669 [(1)] (2) identify, map, and evaluate the suitability of planting site
670 locations, including acceptable shapes of open surface areas and
671 the use of County rights-of-way;
- 672 [(2)] (3) identify criteria for acceptable species, sizes, and health of
673 newly planted shade trees;
- 674 [(3)] (4) identify criteria for acceptable installation techniques; and
675 [(4)] (5) otherwise comply with program requirements, consistent
676 with this Chapter and applicable regulations.
- 677 (c) *Administrative fee.* The County Executive may, by Method 2
678 regulation, adopt a schedule of fees to administer this Chapter.
- 679 (d) *Reports.* On or before March 1 of each year, the Directors of
680 Permitting Services and Environmental Protection must jointly submit
681 an annual report on the County shade tree planting program to the
682 County Council and County Executive.
- 683 (e) *Comprehensive planting plan.* The Director of Environmental
684 Protection must adopt and maintain a comprehensive County-wide
685 shade tree planting plan to specify appropriate uses for funds in the
686 Tree Canopy Conservation Account. The Director should develop the
687 plan after consulting other County agencies and the Planning
688 Department.
- 689 (f) *Survival and mortality analysis.* The Department of Environmental
690 Protection must collect data on shade trees planted under this Chapter,
691 and those planted under other programs, to evaluate and provide
692 guidance to the County's tree canopy programs.
- 693 (g) *Tree canopy plan.* The Director of Environmental Protection, after
694 consulting other County agencies, the Planning Department, the
695 Forest Conservation Advisory Committee, organizations representing

696 development and environmental interests, and the public, must
 697 propose to the Executive and Council recommendations regarding:
 698 (1) tree canopy goals for the County; and
 699 (2) a comprehensive strategy to increase the number of trees
 700 planted in the County.

701 **55-10. Tree Canopy Conservation Account.**

702 (a) Established. A Department assigned by the Executive must create a
 703 County Tree Canopy Conservation Account. The Account must be
 704 used as provided in this Chapter and the adopted operating budget.

705 (b) Use of funds. The assigned Department must use funds deposited in the
 706 Tree Canopy Conservation Account only to plant and maintain shade
 707 trees, including costs directly related to site identification, preparation,
 708 and other activities that increase tree canopy. Funds deposited into the
 709 Account must not revert to the General Fund and must not be used to
 710 hire additional County staff or to supplant funds otherwise appropriated
 711 to plant and maintain shade trees and enhance tree canopy.

712 (c) Fines. Any fine collected for noncompliance with shade tree planting
 713 requirements must be deposited in a separate account in the Tree
 714 Canopy Conservation Account and must be used to administer this
 715 Chapter.

716 (d) Plantings.
 717 (1) Shade trees native to the Piedmont area of the County should be
 718 used, if feasible, to meet the mitigation requirements of this
 719 Chapter.

720 (2) The planting of shade trees under this Chapter must occur in the
 721 subwatershed where the project is located, if feasible. Otherwise
 722 the shade trees may be planted anywhere in the County.

723 (3) In planting trees under this paragraph, the assigned Department
724 must give highest priority to those areas of the County, such as
725 central business districts and other urban and suburban areas, that
726 have relatively low tree canopy coverage.

727 **55-11. Enforcement.**

728 (a) Compliance. The Director may issue a notice of violation, corrective
729 order, stop-work order, or civil citation to any person that causes or
730 allows a violation of this Chapter.

731 (b) Civil penalty. A violation of this Chapter is a Class A violation. The
732 maximum civil penalty for any violation of this Chapter or any
733 regulation adopted under this Chapter is \$1,000. Each day that a
734 violation continues is a separate offense.

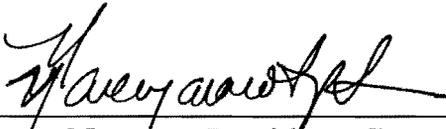
735 **Sec. 2. Effective date; transition.**

736 This Act takes effect on March 1, 2014. County Code Chapter 55, as inserted
737 by this Act, does not apply to any application for a sediment control permit that is
738 accepted by the Director of Permitting Services before that date.

739 *Approved:*

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741



7/26/13

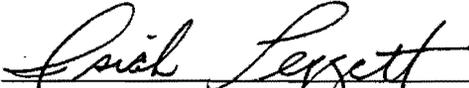
742 Nancy Navarro, President, County Council

Date

743 *Approved:*

744

745



July 31, 2013

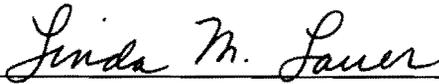
746 Isiah Leggett, County Executive

Date

747 *This is a correct copy of Council action.*

748

749



July 31, 2013

750 Linda M. Lauer, Clerk of the Council

Date