

Introduction

MEMORANDUM

November 21, 2012

TO: County Council

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

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:

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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

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

55-3. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

Person means:

- (a) To the extent allowed by law, any agency or instrument of the federal government, the state, any county, municipality, or other political subdivision of the state, or any of their units;
- (b) An individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind;
- (c) Any partnership, firm, common ownership community or other homeowners' association, public or private corporation, or any of their affiliates or subsidiaries; or
- (d) Any other entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55-4. Applicability.

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

55-5. Exemptions.

This Chapter does not apply to:

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

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

(2) the cutting or clearing of forest or tree canopy is conducted so as to minimize the loss of both;

(d) routine maintenance or emergency repairs of any facility located in public utility rights-of-way;

(e) routine or emergency maintenance of an existing stormwater management facility, including an existing access road, if the person performing the maintenance has obtained all required permits;

(f) any stream restoration project if the person performing the work has obtained all necessary permits;

(g) the cutting or clearing any tree by an existing airport currently operating with all applicable permits to comply with applicable provisions of any federal law or regulation governing the obstruction of navigable airspace if the Federal Aviation Administration has determined that the trees create a hazard to aviation;

(h) cutting or clearing any tree to comply with applicable provisions of any federal, state, or local law governing the safety of dams; or

(i) any non-coal surface mining conducted in accordance with applicable state law.

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

55-6. Tree Canopy – General.

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

(1) Any person required by law to obtain a sediment control permit for land disturbing activity that is not subject to Chapter 22A must submit a limits of tree canopy disturbance concurrently with the sediment control permit application to the Director of Permitting Services under Section 55-7.

(2) Any person engaging in activity that is subject to Chapter 22A must submit a limits of tree canopy disturbance concurrently with any other plan required under Chapter 22A to the Planning Director under Section 55-8.

(b) Timing of submissions. The person must submit the limits of tree canopy disturbance for review in conjunction with the review process for a sediment control permit, forest conservation plan, development plan, project plan, preliminary plan of subdivision, site plan, special exception, or mandatory referral. If a natural resources inventory/forest stand delineation is required, the person must include the aerial extent of the tree canopy with the natural resources inventory/forest stand delineation as specified in Section 22A-10.

(c) Incomplete submissions. The Director of Permitting Services or the Planning Director must not approve an incomplete submission.

(d) Review of submissions. Each submission required under this Chapter must be reviewed concurrently with the review of any submission required under Article I of Chapter 19 or Chapter 22A.

(e) Coordination of review. The Director of Permitting Services and the Planning Director may coordinate the review of any information submitted under subsection (a) with other agencies as appropriate. The reviews may be performed concurrently, and in accordance with, any review coordination required under Chapter 19 or Chapter 22A.

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

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

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

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

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

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

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

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

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

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

(c) The limits of tree canopy disturbance. The limits of tree canopy disturbance information for the subject site must include:

(1) a map delineating:

(A) the property boundaries;

(B) the proposed limits of disturbance including any off-site 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 Section. Otherwise, the limits of tree canopy disturbance information must be prepared by a qualified professional as defined in Section 08.19.06.01 of the Code of Maryland Regulations or any successor regulation.

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

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

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

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

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

(1) field inspection or other evaluation reveals minor inadequacies of the plan, and modifying the plan to remedy those inadequacies will not increase the amount of tree canopy removed as shown on the final approved plan; or

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

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

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

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

(b) Fees paid for mitigation. Mitigation required to compensate for the loss of, or disturbance to, tree canopy must take the form of fees set by regulation under Method 3, which the applicant pays to the Tree Canopy Conservation Fund. Mitigation fees are based on the square footage of tree canopy disturbed and, therefore, increase as the amount of tree canopy disturbance increases. To provide credit for on-site landscaping, mitigation fees must not be applied to the first 5 percent of the area of tree canopy disturbed. Canopy identified as part of any

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

Article 3. Enforcement and Appeals.

55-10. Inspections and notification.

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

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

(c) *Inspections.*

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

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

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

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

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

(2) after necessary stress reduction measures for trees and roots have been completed and the protection measures have been installed, but before any clearing or grading begins; and

(3) after all construction activities are completed, to determine the level of compliance with the limits of tree canopy disturbance.

(e) Scheduling requirements. A person must request an inspection by:

(1) the Director of Permitting Services within the time required to schedule an inspection under Section 19-12; or

(2) the Planning Director within the time required to schedule an inspection under Section 22A-15.

(f) Coordination. The Department of Permitting Services and the Planning Department must coordinate their inspections to avoid inconsistent activities relating to the limits of tree canopy disturbance.

55-11. Penalties and enforcement.

(a) Enforcement authority. The Department of Permitting Services has enforcement authority for any activity approved under Section 55-7 and the Planning Board has enforcement authority for any activity approved under Section 55-8.

(b) Enforcement action. The Director of Permitting Services or the Planning Director may issue a notice of violation, corrective order, stop-work order, or civil citation to any person that causes or allows a violation of this Chapter.

(c) Civil penalty. The maximum civil penalty for any violation of this Chapter or any regulation adopted under this Chapter is \$1,000. Each day that a violation continues is a separate offense.

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

55-12. Administrative enforcement.

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

- (1) stop the violation;
- (2) stabilize the site to comply with a forest conservation plan;
- (3) stop all work at the site;
- (4) restore or reforest unlawfully cleared areas;
- (5) submit a limits of tree canopy disturbance, forest conservation plan, or tree save plan for the net tract area;
- (6) place forested land, reforested land, or land with individual significant trees under long-term protection by a conservation easement, deed restriction, covenant, or other appropriate legal instrument; or
- (7) submit a written report or plan concerning the violation.

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

Article 4. Administration

55-13. General.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55-14. Tree Canopy Conservation Fund.

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

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

(c) Fines paid into the Tree Canopy Conservation Fund. Any fines collected for noncompliance with a limits 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. The Fund may be used to administer this Chapter.

(d) Use of the Tree Canopy Conservation Fund.

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

(A) establish tree canopy;

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

(C) establish forest; and

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

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

(3) The establishment of tree canopy to satisfy the mitigation requirements of a project must occur in the subwatershed where the project is located. Otherwise the tree canopy may be 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
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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

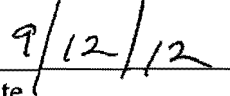
4. If a Bill is likely to have no economic impact, why is that the case?

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



Date