

Conservation Montgomery
Position on Urban Tree Conservation
July 2011

KEY FINDINGS

- ▶ Trees are essential to mitigating climate change impacts, reaching greenhouse gas emissions reduction goals and meeting Chesapeake Bay restoration goals.
- ▶ Trees are a renewable resource with a natural life cycle and as such can be preserved, relocated or replaced.
- ▶ Trees are a distinct from forests, and mature canopy trees should be preserved whenever possible.
- ▶ Conservation can be practiced by preserving, replacing or transplanting trees in order to increase canopy.
- ▶ Trees and forested land help to cleanse the air, offset the heat island effects of urban development, and reduce energy needs.
- ▶ Trees in urban areas on small lots constitute part of the urban canopy and urban forest, along with street trees in the county rights of way and along roadsides.
- ▶ The Forest Conservation Law does not protect trees on properties that only require a building permit from the County Department of Permitting Services.
- ▶ Trees on land area of less than 40,000 square feet and below the 20,000 square foot county and State thresholds for forest clearing should be covered under a separate law.
- ▶ Stormwater management regulations can result in removal of trees on individual lots and small stands of trees not covered by current law.
- ▶ Preserving and planting trees on small lot sizes of 5,000 square feet or less pose challenges and constraints on planting space and site design.

GOALS AND OBJECTIVES

OF THE ENVIRONMENTAL AND CIVIC COMMUNITY REPRESENTATIVES:

- Develop legislation that picks up where the FCL leaves off – protect more trees on individual lots and provide county policy on the urban forest, which does not exist now but is needed.
- Embed a conservation ethic in the Montgomery County tree legislation.
- Short-term and long-range planning for the urban canopy, which should include street trees as a valuable asset in our communities.
- A collaborative and stakeholder-driven approach to sustaining the urban canopy in Montgomery County.
- Develop a simple tree bill with clear roles for county agencies involved with trees/forests – no muddying of the waters between FCL administration and administration of an urban forestry program in Montgomery County.
- Legislation should pick up where the FCL leaves off
- Discourage clear-cutting and provide regulatory incentives for developers to preserve more canopy trees on sites.

ISSUES WITH THE DEP DRAFT BILL:

1. Does not take a comprehensive approach to the urban canopy and does highlight services trees provide in stormwater management:

- a. Does not set goals for canopy. (**Solution:** In the short-term, use national standards American Forests uses. Then set canopy goals on separate planning areas by using the Tree Canopy Assessment, UFORE and other current data sets.)
- b. Does not include street trees as part of the urban canopy. (**Solution:** See c.iii below.)
- c. Does not make a policy connection to the Montgomery County Climate Action Plan which recommends, among other items:
 - i. Inventory tree and forest cover and set tree and forest canopy goals.
 - ii. Develop a comprehensive approach to protect forest and tree resources.
 - iii. Create landscape incentives in urban areas to increase number, quality and survival of trees.

(Solution to items under b and c): Implement a *Montgomery County Urban Forestry Program* by taking the first step of transferring the existing Certified Arborist/Urban Forester, his staff and funding for the street tree program to DPS where the CA/Urban Forester. The Montgomery County Urban Forester can establish a Tree Action Plan similar to the approach taken by Fairfax County. Street trees should be considered within the context of the urban forest – trees in the built environment.)

2. Does not provide enough staff review and oversight. Desk reviews are not enough. Site inspections are needed (**Solution:** Can fold tree or landscaping plan inspections into required number of sediment control inspections.)
3. Unfunded mandate: The bill proposes DPS as the agency to administer urban tree responsibilities without providing staff or funding. (**Solution:** Transfer the existing Certified Arborist/Urban Forester, his staff and funding for the street tree program to DPS.)
4. Lack of expertise for trees and forests at DPS: The bill proposes DPS as the agency to administer an urban tree law. However, there is no one at DPS with the credentials or expertise in trees or urban forestry. (**Solution:** Transfer the existing Certified Arborist/Urban Forester, his staff and funding for the street tree program to DPS.)
5. Lack of clarity in the bill regarding roles and responsibilities for trees vs. FCL administration. (**Solution:** Transfer the existing Certified Arborist/Urban Forester, his staff and funding for the street tree program to DPS.)
6. Does not provide credits for saving trees on site, tree transplanting or planting on site. (**Solution:** Provide stormwater management credit for saving existing trees on a site.)
7. Does not provide regulatory incentives in general for use of environmental site design. (**Solution:** See the discussion draft under “Green” expedited review and use of trees in stormwater management plans.)

Alternative Urban Tree Conservation Bill Elements:

MONTGOMERY COUNTY URBAN FORESTRY PROGRAM

- ▶ Delivers a comprehensive approach to planning the urban forest in Montgomery County.
- ▶ Consolidates street trees and review of urban planting plans under DPS for administration of the urban tree legislation.
- ▶ Establishes a *County Urban Forester*, using no additional funds in the FY.
- ▶ Provides technical oversight and advice on trees to the DPS Water Resources section for assistance in sediment control plans.
- ▶ Provides a system for setting canopy goals in planning areas of the county where increases are needed.
- ▶ Will allow for cross-training of sediment control inspectors.
- ▶ Codifies interagency coordination between DPS, DEP, Planning Department and the Maryland DNR as needed.

- ▶ Provides developers with a Certified Arborist and Urban Forester to consult as needed on landscaping or tree conservation plans.
- ▶ Has an important – and **needed** -- public engagement and public outreach component.

Additional Elements to Include in a Bill:

- Use of trees in stormwater management and allowing credits for trees saved on-site in sediment control plans.
- Expedited review – at no additional charge -- for developers who “do the right thing” and exceed requirements.
- Required number of trees for lot sizes (tables with numbers resolved..)
- Fee in lieu or tree fund set up for mitigation. (Recommend using the DEP formula or some type of mitigation calculator to establish a planting fund for lost canopy.)
- Require the use of Certified Arborists or professionals for tree or landscaping plans.
- Protection for critical root zones of trees on adjacent neighbors’ property.
- **Applicability:** Law should apply to...
 - Plans subject to sediment control permit
 - Areas falling below the Forest Conservation Law threshold: cutting or clearing of trees below the 20,000 square feet threshold and 40,000 square foot of land area where land disturbance requires a sediment control permit
 - Tree or cluster of canopy trees used as part of a stormwater management plan and whereby credits are granted by the Department of Permitting Services to meet requirements of the Sediment Control Law, Chapter19.
 - Trees located within the public Right of Way;
 - where credit can be issued for stormwater management by replanting or relocation of canopy trees, and;
 - to protect trees in the public Right of Way during construction activity;
 - where public Right of Way areas are identified as optional sites for tree-planting to comply with this Chapter.
- **Exceptions: Bill needs language..**
 - Consistent with the FCL
 - Hazard trees presenting a risk to property or lives
 - Tree nurseries
 - Cutting or clearing for utilities in public right of way
 - Emergency repairs or maintenance of utility rights of way
 - Logging or harvesting (per State language)
 - Non-coal surface mining (per State language)
- **Enforcement and Inspections: Bill needs language...**
 - Minimum of three inspections consistent with sediment control inspections
 - Field markings clear on sites
 - DPS may require additional inspections or meetings as necessary
 - Inspections must be coordinated by DPS with other agencies
 - Sediment control bond will not be released until all requirements are met by applicant including tree-save, tree relocation or planting of new trees.