A Proposal for a Montgomery County Urban Tree Bill

Presented to County Executive Isiah Leggett
By Stakeholders in the Business, Civic & Environmental Communities

July 11, 2011

Why legislation is needed

- FCL has shown some modest progress in the Up County where it was originally intended to replace forest lost to sprawl in the 1980s.
- Development patterns and trends have shifted, creating more pressure on urban sections of the county where infill and redevelopment are most common.
- Older tree canopy in older and more urban areas of the county is in jeopardy. Losses are from development, disease, old age, storm damage, and landowner practices.
- Legislation is needed to maintain or protect tree canopy (individual and smaller lots) not covered under the FCL.

Taking action on climate change

- County climate goals: Reduce emissions of greenhouse gases by 5% every year for an ultimate reduction of 80% by 2050
- A few key County *Climate Action Plan* recommendations:
  - Inventory tree and forest cover and set tree and forest canopy goals.
  - Develop a comprehensive approach to protect forest and tree resources.
  - Create landscape incentives in urban areas to increase number, quality and survival of trees.

Background

- **2006:** Executive promised legislation to include protection for trees that are not covered under the FCL.
- **2007-08:**
  - Forest Conservation Advisory Committee was convened.
  - A tree workgroup was led by Berliner and Elrich to explore a tree ordinance.
  - M-NCPPC and Elrich proposed FCL amendments.
  - After months of confusion and political wrangling, the bill died in T&E.
- **2008:** DEP started work in November on a new approach.
- **2010:** DEP draft bill shared in December with stakeholders.
- **2011:** Members of the civic, environmental and building community convene a work group to draft alternative to DEP bill.

The process

- Meetings held at BIA since Jan. 2011
- Tree bill components framed up in an outline.
- April letter from Executive requested proposal by July 1, or DEP bill would be sent to Council.
- Ordinance research, stormwater/trees research.
- Website set up to house documents and keep the process transparent.
- Early July meeting set with Executive.

Research and analysis

- Used the Montgomery County Urban Canopy Assessment (University of VT analysis) procured by M-NCPPC. (Cutting edge technology used across the U.S. now.)
- Compared existing ordinances and bills in and around Montgomery County.
- University of Maryland, USDA Forest Service and Casey Trees Research on life span of trees.
- American Society of Landscape Architecture data.
- Reviewed the Montgomery *Climate Action Plan* released in 2009.
- Consulted arborists and urban foresters who have implemented urban forestry programs and designed building sites using trees in plans.

Our Stakeholder Work Group

- Bob Kaufman, BIA
- Caren Madsen, Conservation Montgomery
- Larry Cafritz, Cafritz Builders
- Ginny Barnes, Conservation Montgomery, West Montgomery Citizens Association
- Clark Wagner, Bozzuto
- Diane Cameron, Audubon Naturalist Society, Conservation Montgomery
- Chuck Sullivan, CS Homes, Renewing Montgomery
- Marcia Rucker, Glen Echo Heights Citizens Association
- Carter Willson, Carter, Inc.
- As needed: arborists, M-NCPPC for consultation

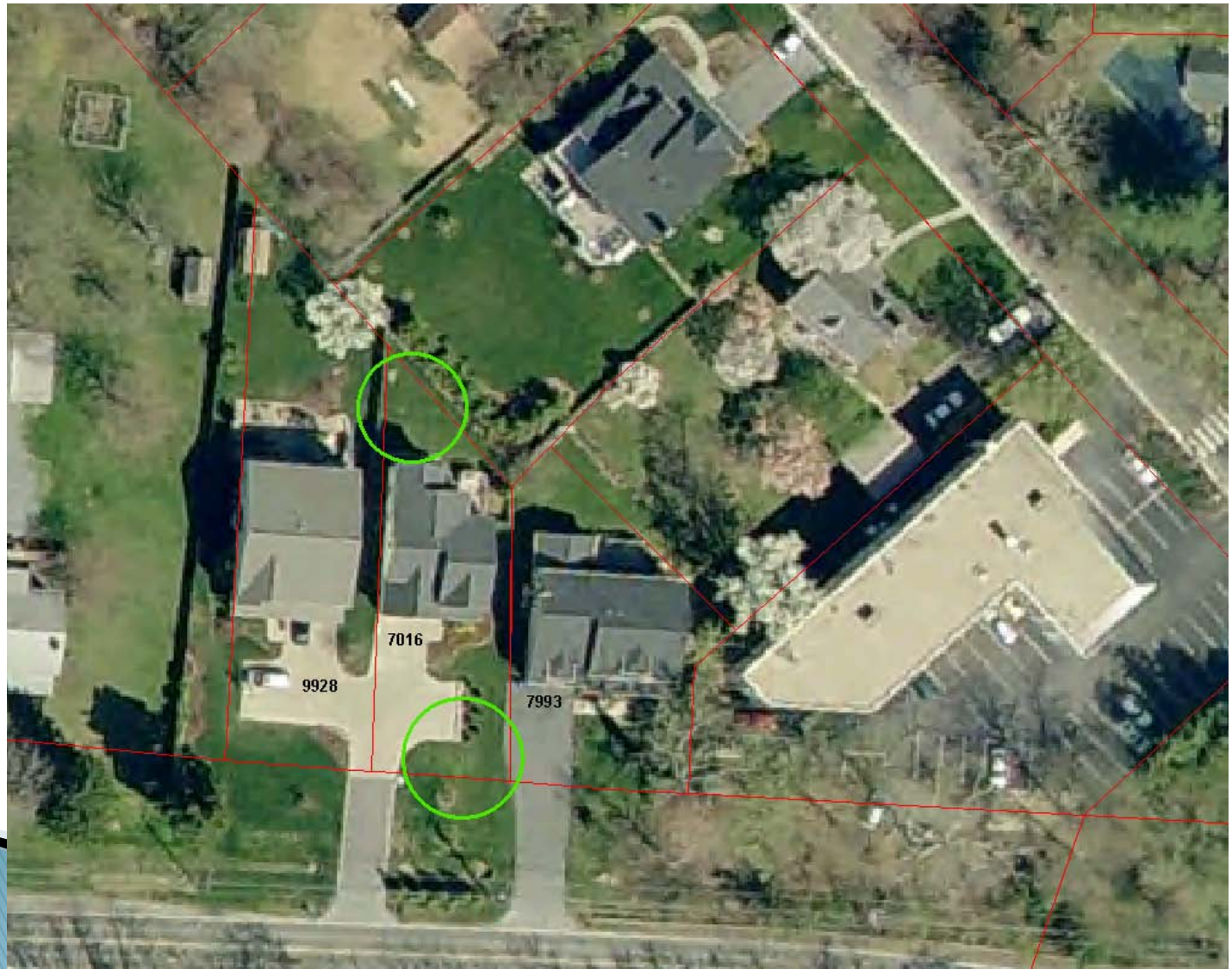
Shared Goals

- Protect more trees on individual lots and increase tree canopy where it's needed most
- 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
- 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

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.

Challenges and opportunities for saving or planting trees on SF lots



Administration

Montgomery County Urban Forestry Program Proposed in Discussion Draft

- 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.

Applies 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

- 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 & Inspections

- 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.

Trees and stormwater management *Making the connection*

- Draft bill languages blazes three important trails for Montgomery County trees/forests:
  - Proposes a technical standard for using trees in stormwater management plans.
  - Establishes an Urban Forestry Section under the DPS Land Development Division. This section would work in tandem with the Water Resources Section of DPS and bring trees into focus with county stormwater regs and sustainable development.
  - Provides regulatory incentives

Areas where we have agreement:

- Builders required to save, relocate or plant a certain number of trees on lots
- Conservation ethic will be the basis for a bill and using this sequence emphasizing 'preservation-first': 1) preserve, 2) transplant, 3) if other options are exhausted, remove, then replant at required number
- Trees need to be part of the stormwater management plan
- Number of trees based on lot size
- Keep bill approach simple
- Use combination of canopy/understory trees

Areas of agreement, cont'd…

- Implement law under sediment control permits
- Sediment/erosion training to enforce requirements, protection measures for trees
- Sediment control bonds used to enforce tree requirements
- Allow for tree planting first on lot, then ROW in front of house for curb appeal
- Size of new trees to plant: 1.5" to 2" caliper
- Agree that DPS should be agency to administer
- Builders who exceed requirements get expedited "green" reviews at DPS
- 90 day effective date for new law

Areas of disagreement:

- Administration:
  - Builders do not want a Certified Arborist/Urban Forester/staff moved from DOT to DPS to advise and administer law.
  - Builders do not want an Urban Forestry Program set up for the County.
- Required number of trees for lot sizes (tables)
- Whether and how to protect critical root zones of trees on adjacent neighbors' property
- Fee in lieu or tree fund set up for mitigation
- Use of Certified Arborists or professionals for tree or landscaping plans

Requirements for tree planting, transplanting and replacement

Chart 1 (From builders)

Size of Lot	Minimum number of Canopy Trees required (Existing or planted)	Minimum Number of Understory Trees required
0 to 5,000 sq. ft.	1 tree	
5000 to 10,000 sq. ft.	2 trees	
10,000 to 15,000 sq. ft.	3 trees	
15,000 to 20,000 sq. ft.	5 trees	1 tree
20,000 to 25,000 sq. ft.	5 trees	2 trees
25,000 to 30,000 sq. ft.	6 trees	3 trees
30,000 to 35,000 sq. ft.	7 trees	4 trees
35,000 to 40,000 sq. ft.	8 trees	5 trees

Requirements for tree planting, transplanting and replacement

Chart 2 (From civics and enviros at the table*)

Size of Lot	Minimum number of Canopy Trees required (Existing or planted) * Numbers are still under discussion in this stakeholder community and fluid.	Minimum Number of Understory Trees required
0 to 5,000 sq. ft.	1 tree	1 tree
5000 to 10,000 sq. ft.	3 trees	2 trees
10,000 to 15,000 sq. ft.	4 trees	2 trees
15,000 to 20,000 sq. ft.	5 trees	2-3 trees
20,000 to 25,000 sq. ft.	8 trees	4 trees
25,000 to 30,000 sq. ft.	10 trees	5 trees
30,000 to 35,000 sq. ft.	12 trees	5 trees
35,000 to 40,000 sq. ft.	14 trees	5 trees

Thank you.

Questions?
Discussion?
Next steps?