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July 18, 2011

Honorable Isiah Leggett, Montgomery County Executive
101 Monroe Street
Rockville, MD 20850

Dear Mr. Leggett:

This letter is a follow-up to our July 11th meeting with you, the Director of Environmental Protection (DEP), the Acting Director of the Department of Permitting Services (DPS), representatives from the Maryland-National Capital Building Industry Association (BIA), county staff and members of the civic and environmental community. We appreciate your time and the attention that you are giving the very important issue of maintaining our valuable county tree canopy.

As you know, we met with builders and members of the Maryland-National Capital Building Industry Association (BIA) for six months to try and develop some new ideas and solutions to what we jointly saw as areas of deficiency in the draft tree legislation prepared by DEP. We reached agreement on a long list of items but unfortunately, we were unable to reach consensus on two key areas:

- 1) setting a required number of trees for lots and,
- 2) regarding Conservation Montgomery's proposal to transfer the Certified Arborist and Urban Forester and street tree program out of DOT and into DPS to administer what would be Montgomery County's first urban forestry program.

We offer the following recommendations in moving forward with your stated commitment to adding amendments to strengthen the Forest Conservation Law (FCL) so that more trees are protected:

- Tree canopy demolished must be replaced in some form or fashion. We have reviewed many tree ordinances in other jurisdictions and find that the majority of those laws include a fund for replanting trees in order to replace or maintain tree canopy. Montgomery County must follow suit and have a fund akin to the FCL fee in lieu fund or use that fund to compensate for trees removed due to construction either on residential or commercially zoned property. Therefore, we support establishment of a tree fund in legislation (as DEP had presented) to deliver the purpose of replanting trees where they are most needed in the county. If the DEP formula for canopy replacement is one that would not be entirely fair to the building community, then another formula might be considered. Either way, canopy lost to development must be compensated at a reasonable rate. We support a "you-break-it-you-buy-it" approach. The impact of damage to mature trees and clear-cutting lots carries a high cost for communities. If natural resources are destroyed, then there must be compensation so that the county can pursue mitigation.
- In light of being unable to reach consensus with builders on the number of trees to require on individual lots (by preserving, relocating or planting new trees), we see the best option to be that of requiring a set number of trees per lot and covering lot sizes that are not covered by the current FCL. In addition to this requirement, we recommend using a tree fund as referenced above. If builders are unable to fit a required number of trees on a site after a home is built, then they need to have off-site alternatives for planting -- or the ability to use a fund to pay into to replace canopy sacrificed for construction.

- We stand firm in our recommendation that Montgomery County should set up a comprehensive urban forestry program that goes above and beyond our discussions with builders in recent months. Establishing such a program is consistent with the recommendations in the *Montgomery County Climate Action Plan* and with goals set for in Chesapeake Bay restoration plans. A lot of time and effort went into developing our *Climate Action Plan*. And we are overdue in implementing the recommendations in that plan related to trees and forestry.
- We recommend an overall canopy goal for the county of 40%. Our current countywide is above that level, however, sections of the county have a significantly depleted percentage of canopy. Planning areas of the county where canopy is low need to be addressed with legislation of the type referenced in this letter. With the tree canopy assessment used by the Planning Department and the pending DEP product, we will have the technology to target areas where canopy coverage is most needed. We trust that our decision makers will make the best use of that technology.
- In moving forward with legislation, we believe the best approach is to combine the best elements of both the discussion draft produced in our trees work group meetings and the DEP draft bill. The best bill would do the following:
 - include the core discussion draft bill and points of agreement we've been pondering in meetings with BIA
 - include oversight, inspections, monitoring and enforcement via an urban forestry component within DPS
 - Place a Certified Arborist/urban forester on staff at DPS who can advise on urban forestry in general and administer the street tree program as part of the county urban canopy. This can be done via a transfer of the street tree program, staff and budget, from DOT to DPS. The first year would be a pilot for balancing the needs of the street tree program with the Certified Arborist/Urban Forester available as an advisor to DPS sediment control review staff. This is the most economical and budget-neutral means of delivering an urban forestry component to DPS where legislation can be implemented. If DPS is to be handed responsibility for trees in legislation being drafted, then that agency must be also given the capacity to carry out that responsibility.
 - includes the mitigation fees for clearing tree canopy that DEP had proposed along with a fund for tree planting
 - includes adequate requirements for # of trees on individual lots.
 - Requires tree plans or landscaping plans for every tract of land being developed or redeveloped. The plans should include protective measures for trees to be saved on lots, as well as protection for street trees nearby which may be damaged during construction.
 - includes regulatory incentives of: a) using trees for stormwater management, and b) provides "green stamp" expedited review in the sediment control permitting process for builders who exceed requirements in retaining, relocating or replanting trees.

In the above scenario, everyone involved in this endeavor can get something that they see as necessary in legislation. I know you will agree with us when we point out that negotiations of this type are not the same as a drive-through window at Burger King, where you can "have it your way." Everyone must be willing to compromise. Members of our community have gone to the Nth degree to address the concerns of the building industry. We hope to see a spirit of compromise over the next few weeks as legislation is finalized by your office.

We realize that will not be able to reach full consensus with the builders. That's the reality we must accept and the reality that you and the Council will face as a bill is finalized and introduced in the Council very soon. We arrived as close as we could to reaching consensus in our work group.

We have listened to our colleagues in the building industry and understand their limitations in terms of retaining or planting trees on smaller lots in Montgomery County. We have done a lot of legwork and met with County officials and staff to sort things out in an effort to give the builders "regulatory incentives" in the discussion draft language. In short, we have done our part. It is time now for the County government to step in again and make the most of what stakeholders have been able to sort out over the months in our discussions.

We look forward to working with you. We hope this legislation can be introduced in a timely fashion now that we have presented our positions to you in the July 11th meeting. We remain open to dialogue with the building industry and with the executive and legislative branches of county government on this issue.

Sincerely,



Caren Madsen
On behalf of the Board of Directors

Cc: Robert Hoyt, DEP
Robert Kaufman, M-NCBIA
Jennifer Hughes, DPS
Kathleen Boucher, Special Assistant to the Executive