March 25, 2024

FISCAL AND POLICY NOTE

TO: Jennifer A. Jenkins
Council Administrator

Colette R. Gresham, Esq.
Deputy Council Administrator

THRU: Josh Hamlin
Director of Budget and Policy Analysis

FROM: Alex Hirtle
Legislative Budget and Policy Analyst

Policy Analysis and Fiscal Impact Statement
CB-020-2024; CB-021-2024; CB-022-2024 Woodland and Wildlife Habitat Conservation and Tree Canopy Ordinances; Environmental Strategy Area

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CB-020-2024; CB-021-2024; CB-022-2024 (*proposed by*: the Chair by the request of the Planning Board, Maryland National Capital Park and Planning Commission, M-NCPPC)

Assigned to Transportation, Infrastructure, Energy and Environment (TIEE) Committee

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AN ACT CONCERNING WOODLAND AND WILDLIFE HABITAT CONSERVATION ORDINANCE for the purpose of revising the existing subtitle in order to comply with mandated as per the Maryland Forest Conservation Act; revising and adding definitions; revising applicability and exemption requirements; revising plan review, validity and grandfathering requirements; revising the variance and appeal process; revising enforcement process; revising the conservation requirements including priority areas, thresholds and replacement ratios; revising conservation requirements design criteria, priorities, options and bonding; revising forest stand delineation area; and revising forest harvesting.

AN ACT CONCERNING TREE CANOPY COVERAGE ORDINANCE for the purpose of revising the existing applicability language, revising the tree canopy coverage requirements, revising the credit and security requirements and adding the Planning Director to those that can issue waivers.

AN ACT CONCERNING SUBDIVISION REGULATIONS' ENVIRONMENTAL STRATEGY AREA for the purpose of removing environmental strategy area from definitions, and removing environmental strategy area from environmental standard and replacing with development location, and amending the required minimum stream buffer widths.

Fiscal Summary

Direct Impact:

Expenditures: Additional expenditures, mainly through increased workload, *possibly requiring additional positions*.

Revenues: Possible additional revenues resulting from collected fees associated with a more stringent permitting process related to Tree Conservation Plans.

Indirect Impact:

Favorable.

Legislative Summary:

CB-020-2024, CB-021-2024, and CB-022-2024 were presented on March 12th, 2024, and referred to the Transportation, Infrastructure, Energy and Environment (TIEE) Committee. These three pieces of legislation provide updates to the County's Woodland and Wildlife Habitat Conservation Ordinance, the Tree Canopy Cover Ordinance, and the Subdivision Ordinance. The legislation was initiated by State House and Senate Bills that passed in 2023.

CB-20-2024 proposes new and revised definitions to Subtitle 25. Sec. 25-118 incudes new definitions such as Development Review Division applications, Green Infrastructure, Historic Tree, Licensed Tree Expert, Selective (tree) Clearing, and Transit-oriented centers to clarify the development process in terms of Tree Conservation Plan(s). Due to the State mandates on which this legislation is based upon, definitions had to be created or updated to facilitate an understanding of what would be the requirements of this Bill.

Sec. 25-119 is Applicability of the Subtitle, and includes proposed permit application exemptions from this division, including agricultural activity, forest management, and *modified exemptions*, a new term created to describe certain mandated exceptions required from the State law. There are additional proposed exceptions prescribed for Transit-Oriented Center projects and public utility projects. Plan Review and Conformance revisions include language that will provide increased protection for specimen, champion, and historic trees by preservation of such trees being identified. This division also proposes additional notification for clearing of woodlands, including written notice mailed to abutting and adjacent property owners of the affected property. The Division proposal changes also includes applications for a Tree Conservation 2 (*TCP2*- the Plan that comes to fruition after the conceptual or preliminary plan is submitted) that are submitted *after* July 1st, 2024, will be valid only five years after date of approval.

Variance proposal revisions in this division further protect specimen, champion, and historic trees and rare plants by requiring a variance when these type of trees or plants are impacted or removed, when not doing so would result in an unwarranted hardship during the development process. Replacement also requires use of the more stringent procedures outlined in The Woodland and Wildlife Habitat Conservation Technical Manual (henceforth called the "Technical Manual").

Government Projects includes proposed changes that will now require State and federal development to be reviewed and enforced by the Maryland Department of Natural Resources (DNR). The DNR reviews also applies to some public utility projects such as Washington Suburban Sanitary Commission (WSSC). Additionally, maintenance and retrofitting of stormwater management structures is clarified in this part of the Division.

Grandfathering proposals were extensively revised with this piece of legislation: Tree Conservation Plans (TCP) approved before September 12th, 2010, without an approved grading permit will be considered expired. TCP's approved on or after this date but before July 1 2024 will be grandfathered and subject to the regulations at the time of approval; however, these plans will expire July 1st, 2028 without an approved grading permit at that point. Additionally, applications for Woodland Conservation Banks (these are areas set up to mitigate tree loss through development in other areas) submitted before December 31st, 2020, will be honored and grandfathered in.

Sec. 25-120 is the Administration of the Division. Proposed changes include appeals of decisions made by the Planning Director (which by definition include staff of the Maryland National Capital Park & Planning Commission) (M-NCPPC) will go to the Planning Board within thirty days of the decision; this decision can also be judicially reviewed by the Prince George's County Circuit Court (by petition of the applicant).

The enforcement section proposes revisions to protect understory trees and flora (tree and plant life living beneath the higher tree canopy) through prohibition of such, and curtails construction activity like placing sheds within protected woodlands.

Sec. 25-121 proposes additional protection for regulated streams and their buffers, and also clarifies forest removal and replacement within transit-oriented centers. Table 1 in this section contains woodland conservation and afforestation threshold requirements by zone, and adds proposed changes and additions specific to transit-oriented center based-zones and development zones, as well as mixed use zones, adding the Legacy Mixed-Use Commercial zone to the chart. Table 2 contains summaries of woodland conservation calculations and replacements, and adds clearing ratios for projects inside and outside transit-oriented centers, as well as government and linear projects (linear projects are utility or public service projects like train or gas lines).

Sec. 25-122 contains proposed methods for meeting the woodland and wildlife conservation requirements, and includes design criteria such as distance of trees from building footprints and other structures. It also proposes reducing minimum woodland conservation areas within transit-oriented centers from 10,000 square feet to 5,000 square feet, as well as woodland conservation areas outside these centers to a minimum of 10,000 square feet. Listed are conservation method

priorities, of which onsite preservation and conservation of stream buffers has been added as the first priority method. This list also clarifies street trees (in rights-of-way) as an option for woodlands credit and security. This section also contains proposals to change credits and security for onsite preservation of woodlands (of the developed parcel): the proposal changes length of time the woods were harvested (in other words, how mature the trees are) from four years to five years; it also adds that the amount of invasive species and exotic plants be limited to 15% or less (per the Technical Manual guidelines). Security requirements within this section also propose permanent protection by recording this in land records.

Fee-in-lieu rates are addressed and proposed to include rate adjustments to reflect inflation increases based on current rates. Outside of designated Priority Funding Areas, the rates have been adjusted to 120% of the base rate (within designated Priority Funding Areas). Proposals for Woodland Conservation Banks refine their allowed use, which include these Banks meeting up to 60% of replacement requirements, and are granted a ratio of 2:1 acre replacement (two acres required *preserved* for each acre required on-site); *planted* requirements are defined at a 1:1 ratio. This section also proposes more stringent woodland protections through the bonding process, which would include on-site plantings or regeneration placed in permanent protection by recorded land records, and bonded at amounts calculated by the Technical Manual.

CB-021-2024 proposes changes to the Tree Canopy Coverage Ordinance in Subtitle 25 of the County Code. Under Division 3, Applicability, building and grading permit compliance has been proposed at 2,500 square feet, lowered from 5,000 square feet (gross floor area of disturbance).

For grandfathering purposes, Sec. 25-127 (a) (4) text was added to allow for clarification of plans that had already been approved but still needed permits, or permits that had been pulled but were vested.

One exception in this Division that has been proposed to be clarified was specific to agricultural activities and agricultural support structures. The text replaces the three zones that are currently in the list of exceptions.

Sec. 25-128 covers tree canopy coverage regulations, and provides for more stringent tree coverage in terms of development project boundaries. The term "net tract" has replaced "gross tract". This change requires the applicant utilize the land outside of the floodplain to meet the tree canopy requirements (since the flood plain areas are already technically protected). This will increase the tree canopy within the actual development envelope of projects, assuming there is tree canopy located in the floodplain.

Table 1 outlines the minimum tree canopy coverage for specific zoning, and proposes increases for each category (residential, commercial/industrial), the exception being agricultural zones ROS, AG, and AR; legacy zone thresholds are specific to prior zoning of the property.

Under Sec. 25-129, Credit & Security, expanded bonding requirements are outlined to ensure any applications prior to permit issuance are covered for tree protection.

Sec. 25-130, Waivers, adds the Planning Director (which includes Planning Staff) as an authorized person(s) who can approve waiver requests for applications heard by them.

CB-022-2024 proposes changes to Subtitle 24. The Bill is specific to Sec. 2300 (Definitions), and deletes the definition of Environmental Strategy Areas, as well amends Section 24-4303, Stream, Wetland, and Water Quality Protection and Stormwater Management. The associated Table 24-4303 (c), Regulated Stream Buffers, also deletes the text "…in Environmental Strategy Areas" and increases the location text to only include within or outside of Transit-Oriented Centers. The proposed amendments are based on the stream buffers pertinent to the new Transit-Oriented Center definition proposed in CB-020. The Environmental Strategy Areas designations follow the old General Plan development tiers; the current proposal bases the stream buffers on Transit-Oriented Development/Transit-Oriented Centers designations, which is more in keeping with the County's current General Plan.

Current Law/Background:

These three Bills were initiated by State legislation that passed in the General Assembly in 2023. They, as proposed, are intended to directly address compliance with revised program requirements outlined in HB 723/ SB 526-2023 that have an effective date of July 1, 2024. These Bills are essential for continued program compliance with revised program requirements with the State Forest Conservation Act. CB-020-2024 is based on the Woodland and Wildlife Conservation Ordinance, Subtitle 25, Division 2; CB-021-2024 is based on the County's Tree Canopy Cover Ordinance, Subtitle 25, Division 3; and CB-022-2024 is based on Stream, Wetland, and Water Quality Protection and Stormwater Management, Subtitle 24, Section 24 of the County Code.

Resource Personnel:

- M-NCPPC Staff: Megan Reiser, Tom Burke, Marian Honeczy, Kim Finch, and Marc Juba

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Discussion/Policy Analysis:

The County's Tree Ordinance (see *Current Law*, above) has not been significantly updated for over ten years.[1] As noted, the General Assembly passed HB 723 and SB 526-2023 which revise the State Forest Conservation Act to protect and enhance the tree canopy throughout Maryland, and these three Bills are based on meeting those requirements. That being said, Prince George's County has faced its own tree canopy challenges which have not been fully addressed in this proposed set of legislation. For example, although the latest data from the Planning Department indicates that there was a slight increase of about two percent (2%) in *overall* tree canopy within the County from 2009-2020 [2], there was notable tree canopy loss in the urban areas, particularly

[1] Presentation to COW by the Planning Department, February 6th, 2024, page 3.
[2] 2009-2020 Tree Canopy Assessment Report, Prince George's County, University of Vermont, November 2023.

in Councilmanic Districts 2 and 5.[3] Additionally, the data tree canopy changes by sub-watershed clearly indicates the largest losses in this same timeframe have occurred in the County's more urban areas, much of it occurring within communities where the percentage of median income less than $25,000 is higher, and a higher percentage of non-white residents live.[4] Clearly these challenges need to be addressed, and this legislative package does not directly rectify the environmental injustice, in terms of tree canopy coverage and loss, that has occurred within our jurisdiction.

Related to that are the fee-in-lieu rates that are a valuable financial resource for tree plantings within the County. Our fee-in-lieu rates are notably lower than several neighboring jurisdictions (about 37% lower than Anne Arundel County, and about 50% lower than Montgomery County[5]), and have not kept pace with the higher inflation the economy has experienced within the past few years. Although the legislation proposes to allow for a trigger on inflation and adjust the rates accordingly, raising the base rates to be comparable with neighboring jurisdictions should be considered.

Finally, legislative text added towards the end of the amendment process of CB-020-2024 included conditions for approval of Tree Conservation Plans that may be included with the Planning Director approval to ensure compliance with the Division and specific provisions. It is unclear why this addition was deemed necessary to bring our Code in conformance with State laws.

Fiscal Impact:

- *Direct Impact*

Adoption of CB-020, CB-021, and CB-022-2024 will have a direct impact on the County, both positive and negative. Although data from M-NCPPC, and the Department of Permitting, Inspections and Enforcement as well as the Department of the Environment was not forthcoming, it can be expected that these pieces of legislation will increase the workload of all three agencies. However, because the proposed legislation will require more stringent permitting for development and disturbance of parcels in terms of requiring Tree Conservation Plans, the County can expect to have an increase in fee revenue related to this.

- *Indirect Impact*

Adoption of CB-020, CB-021, and CB-022-2024 would provide indirect positive fiscal impacts to the County in terms of additional tree canopy, water quality, and stormwater management. The requirements set forth by the State will increase our tree canopy in neighborhoods and communities, providing for mitigation of climate change, including urban heat zones, increased flood and stormwater mitigation, and carbon sequestration. Additionally, additional trees in communities increases the values of homes and residential/commercial structures, and provides increased aesthetics throughout the County.

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[3] IBID, page 18, figure 16.
[4] IBID, page 24.
[5] Maryland Forest Technical Study (corrected), November 2023, Hugh Center for Agro-Ecology.

Appropriated in the Current Fiscal Year Budget

No.

Effective Date of Proposed Legislation:

The legislation shall take place forty-five (45) calendar days after it becomes law.

If you require additional information, or have questions about this fiscal impact statement, please reach out to me via phone or email.