



Committee: TE
Committee Review: Completed
Staff: Christine Wellons, Senior Legislative Attorney
Purpose: Final action – vote expected

AGENDA ITEM# 11A
January 16, 2024
Action

SUBJECT

Bill 40-23, Tree Canopy and Roadside Tree Requirements – Fee Revisions

Lead Sponsors: Then Council Vice-President Friedson and then Council President Glass

Co-Sponsors: Councilmember Sayles, Council President Stewart, Councilmembers Luedtke, Alborno, Katz, Balcombe, Mink, Fani-González, and Jawando.

EXPECTED ATTENDEES

N/A

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

Whether to enact Bill 40-23, as recommended unanimously by the Transportation and Environment Committee.

DESCRIPTION/ISSUE

Bill 40-23 would:

- (1) amend fees payable to the Tree Canopy Conservation Account;
- (2) amend fees payable to the Street Tree Planting Fund; and
- (3) generally amend the laws regarding tree canopy requirements and roadside tree work.

SUMMARY OF KEY DISCUSSION POINTS

The TE Committee recommended enactment of Bill 40-23 as introduced.

This report contains:

| | |
|---|-----------|
| Staff Report | Pages 1-6 |
| Bill 40-23 | © 1 |
| Racial Equity and Social Justice Impact Statement | © 5 |
| Climate Assessment | © 12 |
| Economic Impact Statement | © 18 |
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Maryland Building Industry Association
Anne Coventry
Status of Tree Canopy Conservation Account
Tree Canopy Law FY22 Annual Report

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M E M O R A N D U M

January 11, 2024

TO: County Council

FROM: Christine Wellons, Senior Legislative Attorney

SUBJECT: Bill 40-23, Tree Canopy and Roadside Tree Requirements – Fee Revisions

PURPOSE: Final Action – roll call vote expected

| |
|--|
| <p>Transportation and Environment Committee Recommendation: Enact (3-0)</p> |
|--|

Bill 40-23, Tree Canopy and Roadside Tree Requirements – Fee Revisions, sponsored by Lead Sponsors then Council Vice-President Friedson and then Council President Glass and Co-sponsors Councilmembers Sayles, Stewart, Luedtke, Alborno, Katz, Balcombe, Mink, Fani-Gonzalez, and Jawando, was introduced on November 7, 2023. A public hearing occurred on November 28, 2023.

On December 11, 2023, the Transportation and Environment Committee held a worksession on the Bill, unanimously recommending the bill for enactment.

Bill 40-23 would:

- (1) amend fees payable to the Tree Canopy Conservation Account;
- (2) amend fees payable to the Street Tree Planting Fund; and
- (3) generally amend the laws regarding tree canopy requirements and roadside tree work.

BACKGROUND

Under the County's roadside tree law, a permittee who removes a tree in the County's right of way generally must pay a fee into the Street Tree Planting Fund maintained by MCDOT. Similarly, under the County's sediment control laws, an applicant for a sediment control permit generally pays a fee into the Tree Canopy Conservation Account.

The current structure for each of the fees has been insufficient to reflect actual costs of tree planting and maintenance, and it does not rise with inflation. The purpose of the bill is to provide for a fee structure that is commensurate with costs.

BILL DESCRIPTION

Bill 40-23 would set the fee payable to the Street Tree Planting Fund at \$450 per tree, with a biannual increase based upon inflation. The bill would set the fee payable to the Tree Canopy Conservation Account at \$470 per tree, with a biannual increase based upon inflation.

The base fees for the two funds – \$450 and \$470, respectively – would differ from each other because the costs to replace the roadside trees are generally less than the costs related to tree planting and maintenance under the Tree Canopy Law.

SUMMARY OF IMPACT STATEMENTS

Racial Equity and Social Justice. The Office of Legislative Oversight (OLO) found that the impact of the bill upon racial equity and social justice outcomes is indeterminate. OLO offered no amendments to the bill, but included the following policy option for consideration:

- “Request comprehensive strategy for tree planting in BIPOC communities with regular progress report. Existing tree planting programs in the County are siloed and their progress is not reported consistently. For instance, while the Tree Montgomery Program provides an annual report documenting their tree planting activity, the DOT street tree planting program does not. Further, there are several other tree planting initiatives outside of these programs that are funded by general operating and grant funds that are documented to varying degrees. To improve RESJ in tree planting programs, the Council could request County departments and offices that are operating tree planting programs to develop a comprehensive strategy and goals for tree planting in BIPOC communities that include consistent metrics and data collection. This could be accompanied by an on-going report demonstrating tree planting progress in BIPOC communities and how each program is contributing to overarching goals.”

Climate Assessment. OLO “anticipates Bill 40-23 will have a positive impact on the County’s contribution to addressing climate change, including community resilience. Changing the fee structure for the impacted tree planting programs to better reflect the costs associated with planting and maintenance, would likely increase the capacity of the programs to plant more trees. Currently, the Tree Montgomery program does not have funds necessary to plant trees earmarked by the sediment control permits. The Street Tree Planting Fund also has a backlog of trees to be planted and the fee is not sufficient to cover the costs of planting replacement trees. Increasing the fees would allow for more funding, which would likely increase the number of trees planted. Trees have many benefits to both environmental and human health.”

Economic Impact. OLO “anticipates that enacting Bill 40-23 would have a negative impact on economic conditions in the County in terms of the Council’s priority economic indicators. The Bill would primarily impact property owners and developers who remove roadside trees in the County’s right-of-way or receive a sediment control permit. By increasing the fees for

the County's Roadside Tree Law and Tree Canopy Law, the Bill would increase operating expenses and lower business income for property owners and developers, holding all else equal. Moreover, the Bill would increase the total cost of complying with existing County regulations for businesses engaging in development activity. By doing so, the change in law may undermine the County's reputation as a 'business-friendly' jurisdiction."

Fiscal Impact. According to the Office of Management and Budget, "The bill is expected to increase County revenues by \$604,000 to \$656,000 per year. Expenditures for both the Street Tree Planting Fund and the Tree Canopy Conservation Account are expected to increase as the dedicated revenues for those funds increase. However, as there is typically a lag in expenditures in those programs to when revenues accrue, it is difficult to project when those expenditures will take place, but it is expected that expenditures would be fully offset by the revenues generated. For illustrative purposes, it is assumed that expenditures as a result of the increased revenues would take place one fiscal year later."

SUMMARY OF PUBLIC TESTIMONY

Numerous organizations and individuals testified in favor of Bill 40-23. Two organizations – the Maryland Building Industry Association and the League of Women Voters – suggested potential amendments. Highlights of the testimony include:

- **The MoCo Forest Coalition:** "A recent study published by the Harry R. Hughes Center for Agro-Ecology found that Maryland experienced a net statewide forest loss of more than 19,000 acres from 2013 through 2018. Tree canopy loss to development and forest fragmentation - particularly in growing suburban counties, including Montgomery County - remain significant. But while there is still much work to be done, increasing fees to cover the actual costs of replanting and maintaining trees is a timely, meaningful action the County Council can take that is rooted in common sense."
- **Nature Forward:** "We thank the County Council for the opportunity to provide testimony on Bill 40-23 which seeks to update the county's current tree planting fee to \$450 per tree which more accurately aligns with the current cost of planting a tree in the county plus takes into consideration future inflation increases. This fee has not been raised in 10 years, the time to raise the tree planting fee is now and should not be delayed anymore."
- **Maryland Building Industry Association (MBIA):** "The industry appreciates the intent of the legislation and acknowledges the changing market since the program's inception. It is a great program that the county offers, which many of our members and clients take advantage of and we want to make sure it is able to continue in a sufficient manor. However, we do have concerns about the increase amount proposed. This is a major increase for most builders who cannot meet the required planting ratio based on square footage. Most already pencil in the max fee in lieu (FIL) cost which is \$3,700 and this is not including street trees, the new figure is now \$7,400 to the cost of a home. We are proposing the below amendments to Bill 40-23: - \$350 for the first year and then \$450 for

the second year - Followed by subsequent increases based on the lower of the CPI index vs a competitive rebid”.

- **Friends of Sligo Creek:** “The cost of new trees has increased. The old fixed charge was \$250. Now you can’t buy a 2” caliper tree for less than about \$450-475. This bill would raise the fee from \$250 to \$450 or \$475 with an inflation upgrade. This would cover the actual cost of purchase and delivery of a tree.”
- **Climate Coalition:** “Updating the fee for removing trees on roadsides and County right of ways to reflect their current replacement cost is needed to support the County’s Climate Action Plan.”
- **League of Women Voters:** “[W]e do have a recommendation we hope the Council will consider before acting on this bill. We propose that a statement be added to this legislation establishing a timetable for how often the tree replacement rate should be reviewed. Considering this bill comes a decade after the original fee agreement was made, we believe including a timetable will ensure prompter reevaluations of the Street Tree Planting Fund and the Tree Canopy Conservation Account in the future.”

SUMMARY OF THE COMMITTEE WORKSESSION

The Committee considered the following issues in connection with Bill 40-23.

1. Prior Use of the Funds

The Montgomery County Department of Transportation (MCDOT) has provided the following information about the prior use of the Street Tree Planting Fund:

MCDOT Tree Bill Revenue and Balances (in Dollars) by Fiscal Year

| | FY18 | FY19 | FY20 | FY21 | FY22 | FY23 | Total |
|--|--------|---------|---------|---------|---------|---------|---------|
| Funds Encumbered | 95,850 | 148,176 | 173,145 | 147,501 | 268,483 | 135,750 | 968,905 |
| Funds Spent by Tree Maintenance | 95,850 | 148,176 | 129,193 | 191,453 | 268,483 | 135,750 | 968,905 |
| End of FY balance | - | - | 43,952 | - | - | - | |
| Trees Planted | 281 | 422 | 345 | 525 | 670 | 300 | 2,543 |

*COVID-19 pandemic caused disruptions to MCDOT's planting capacity in FY20.

The Department of Environmental Protection (DEP) provided a chart regarding the status of the Tree Canopy Conservation Account at © 33. The Tree Canopy Conservation Account for

several years was carrying a large unspent balance. In most of those years there was more revenue collected than spent. But in the past 18 months DEP hired another staffer to help speed up planting, and the balance has come down significantly. DEP will have another additional staffer starting in early 2024. DEP estimates that the balance will be reduced to near \$0 (that is, the backlog of revenue will be spent or encumbered) by sometime in 2025.

2. Potential Amendment – Phase-in Fee Increases

The Committee considered MBIA’s request to phase-in the fee increases under the bill. Councilmember Balcombe moved phasing in the increase as follows. The fees would be \$350 immediately upon the act’s effective date, on or about April 2024. In December 2024, the fees would increase to the amounts contemplated under the bill (\$450 and \$470 for the respective programs). The TE Committee voted (2-1) against the amendment. Councilmember Balcombe, a bill co-sponsor, reiterated her strong support for the bill and the goal of having the fee amounts reflect actual costs.

3. Potential Amendment – Periodic Reporting

The Committee considered a recommendation by the League of Women Voters “that a statement be added to this legislation establishing a timetable for how often the tree replacement rate should be reviewed.”

Council staff noted that the bill as originally drafted allows for the Council, by resolution, to adjust the fees based upon actual costs. *See* Bill 40-23, Lines 29-31 and 58-60. The ability to raise the rates by resolution provides an opportunity to increase fees if tree planting and maintenance costs exceed inflation. Existing law also contains a general reporting requirement regarding the tree canopy program, which could include an evaluation of fees:

“On or before March 1 of each year, the Directors of Permitting Services and Environmental Protection must jointly submit an annual report on the County shade tree planting program to the County Council and County Executive.” County Code § 55-9.

The Committee asked, and MCDOT confirmed, that the department will include detailed information about the Street Tree Planting Fund in the course of annual budget deliberations.

Regarding the Tree Canopy Conservation Account, the Committee asked staff to confirm with DEP that the existing annual report on the tree canopy law has sufficient data, including about fund balances. DEP has confirmed its annual report (© 34) contains the requested data.

This packet contains:

Bill 40-23

Racial Equity and Social Justice Impact Statement

Climate Assessment

Economic Impact Statement

Fiscal Impact Statement

Circle #

© 1

© 5

© 12

© 18

© 22

| | |
|---|------|
| Public Testimony | |
| Nature Forward | © 24 |
| Friends of Sligo Creek | © 25 |
| Climate Coalition, Montgomery County | © 26 |
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| Potomac Conservancy | © 30 |
| Maryland Building Industry Association | © 31 |
| Anne Coventry | © 32 |
| Status of Tree Canopy Conservation Account | © 33 |
| Tree Canopy Law FY22 Annual Report | © 34 |

Bill No. 40-23
Concerning: Tree Canopy and Roadside
Tree Requirements – Fee Revisions
Revised: 12/06/2023 Draft No. 4
Introduced: November 7, 2023
Expires: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: then Council Vice-President Friedson and then Council President Glass
Co-Sponsors: Councilmembers Sayles, Stewart, Luedtke, Albornoz, Katz, Balcombe, Mink, Fani-
Gonzalez, and Jawando

AN ACT to:

- (1) amend fees payable to the Tree Canopy Conservation Account;
- (2) amend fees payable to the Street Tree Planting Fund; and
- (3) generally amend the laws regarding tree canopy requirements and roadside tree work.

By amending

Montgomery County Code
Chapter 49, Streets and Roads
Section 49-36A

Chapter 55, Tree Canopy
Sections 55-5, 55-6, 55-9, and 55-10

| | |
|------------------------------|--|
| 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:

Sec. 1. Sections 49-36A, 55-5, 55-6, 55-9, and 55-10 are amended as follows:

49-36A. Roadside tree work.

* * *

(e) Tree replacement.

(1) Each permittee who removes a roadside tree in a County right-of-way must:

* * *

(B) pay an amount into a Street Tree Planting Fund maintained by the Department of Transportation, unless the Director waives this requirement because the removed tree was already dead or posed a danger to persons or property, at a rate set [by regulation] under paragraphs (C) or (D) that will allow the Department of Transportation to plant 2 more suitable replacement trees, or 3 more replacement trees if the Director has waived the on-site planting requirement because compliance at the particular site would not be feasible, at suitable locations in the right-of-way of a public road in the County.

(C) Except as provided under subparagraph (D), the rate to calculate the amount payable under subparagraph (B) equals \$450 per tree, as adjusted on July 1st of each odd numbered year by the percentage amount of the cumulative increase or decrease in the Consumer Price Index for all urban consumers in the Washington-

Baltimore metropolitan area, or any successor index, for the two most recent calendar years.

(D) By resolution after a public hearing, the Council may set the rate to calculate the amount payable per tree under subparagraph (B).

(E) The Director must:

(i) calculate an annual fee adjustment under subparagraph (C) to the nearest multiple of 5 cents; and

(ii) publish an amount of a fee adjustment under subparagraphs (C) or (D) not later than May 1st of each odd numbered year.

* * *

55-6. Shade Tree Planting.

* * *

(d) Fees.

(1) If the applicant concludes that any required shade tree cannot be planted on the affected property because sufficient open surface area is not available or for any other reason, the applicant must pay into the Tree Canopy Conservation Account a fee, at a rate set under paragraphs (2) or (3), for each required shade tree that is not planted on the affected property. [The fee must be equal to the applicable rate the Department sets for bonding trees in the right-of-way.]

(2) Except as provided under paragraph (3), the rate to calculate the amount payable under paragraph (1) equals \$470 per tree, as

adjusted on July 1st of each odd numbered year by the percentage amount of the cumulative increase or decrease in the Consumer Price Index for all urban consumers in the Washington-Baltimore metropolitan area, or any successor index, for the two most recent calendar years.

(3) By resolution after a public hearing, the Council may set the rate to calculate the amount payable per tree under paragraph (1).

(4) The Director must:

(A) calculate an annual fee adjustment under paragraph (2) to the nearest multiple of 5 cents; and

(B) publish an amount of a fee adjustment under paragraphs (2) or (3) not later than May 1st of each odd numbered year.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 40-23: TREE CANOPY AND ROADSIDE TREE REQUIREMENTS – FEE REVISIONS

SUMMARY

The Office of Legislative Oversight (OLO) finds the racial equity and social justice (RESJ) impact of Bill 40-23 is indeterminate as there are unknown factors related to the primary beneficiaries for each program affected by the Bill. OLO offers one policy option for Council consideration.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 40-23

The County charges permittees a fee for the removal of a tree in the County's right-of-way or for development requiring a sediment control permit.

Under the County's roadside tree law, permittees who remove a roadside tree – a tree located in the County's right-of-way – must pay a fee to the Street Tree Planting Fund, which is maintained by the Department of Transportation (DOT).³ Further, under the County's sediment control laws, any development activity that requires a property owner to acquire a sediment control permit must either plant new shade trees or pay a fee to the Tree Canopy Conservation Account.⁴ In general, a sediment control permit is required if an activity:⁵

- Disturbs more than 5,000 square feet of land including cutting trees;
- Constructs a new primary residential or commercial building; or
- Moves 100 cubic yards or more of earth on or off the property.

The purpose of Bill 40-23 is to change the fee structure for the Street Tree Planting Fund and the Tree Canopy Conservation Account, as the current fees do not adjust for inflation and have been insufficient to cover the actual costs of tree planting and maintenance. For the Street Tree Planting Fund, the proposed fee for removing a tree in the County's right-of-way is \$450 per tree, with a biannual increase based upon inflation. For the Tree Canopy Conservation Account, the proposed fee is \$470 per tree charged to applicants of the sediment control permit, with a biannual increase based upon inflation.⁶

Bill 40-23, Tree Canopy and Roadside Tree Requirements – Fee Revisions, was introduced by the Council on November 7, 2023.

RESJ Impact Statement

Bill 40-23

In October 2022, OLO published a RESJIS for Bill 25-22, Forest Conservation – Trees.⁷ This RESJIS builds on the analysis of the RESJIS for Bill 25-22. Please refer to the RESJIS for Bill 25-22 for more information on government policies and practices creating the climate gap and environmental risk of BIPOC and low-income communities.

TREE COVER AND RACIAL EQUITY

Climate change has far-reaching harmful consequences on public health, community assets, and the economy that will impact all community members in the County.⁸ However, as noted in the County’s Climate Action Plan, BIPOC community members, especially those who are low-income, are disproportionately harmed by climate change and have the fewest resources to respond and adapt to its consequences.⁹

The term “climate gap” refers to the unequal impact that climate change has on BIPOC and low-income communities. As noted by researchers at the University of Southern California, the climate gap means that BIPOC and low-income communities will experience more illness and deaths during extreme heat waves, breathe dirtier air, pay more for basic necessities, and likely have fewer job opportunities.¹⁰ Drivers of the climate gap include racial inequities in housing, education, employment, and healthcare.¹¹ As described in the RESJIS for Bill 25-22, racial inequities driving the climate gap originate from a legacy of government policies and practices – including land theft, slavery, and segregation – that structurally advantaged White people and structurally oppressed and disadvantaged BIPOC.¹²

In urban settings, tree cover plays an important role in mitigating and adapting to the effects of climate change.¹³ Trees also have proven benefits in many other areas, including health, economic development, and education.¹⁴ However research suggests that tree cover is not equitably distributed in BIPOC communities. For instance:

- A study published in 2017 analyzing 40 studies that considered the relationship between urban forest cover and race found evidence of significant race-based inequity in urban forest cover.¹⁵
- A study published in 2021 exploring the relationship between redlining and urban tree canopy in 37 metropolitan areas found that former “D” graded areas, which were mostly inhabited by BIPOC, had on average 23% tree canopy, half the amount of former “A” graded areas (43%), which were characterized by U.S.-born White residents.¹⁶

American Forests – a national non-profit focused on forest conservation – publishes Tree Equity Scores (TES) for 200,000 urban neighborhoods throughout the country.¹⁷ TES factor in the gap between existing tree canopy and the tree canopy goal in individual neighborhoods (Census block groups),¹⁸ and are weighted to prioritize the need for tree planting based on an index that includes the age dependency ratio, unemployment rate, health burden index, heat disparity, percent of people in poverty, linguistic isolation and percent of BIPOC community members in each neighborhood.¹⁹

As a part of the TES effort, American Forests produced data on tree canopy and the tree canopy gap for 166 of 657 neighborhoods in the County. Table 1 provides the average tree canopy and tree canopy gap by the percent of BIPOC community members in 158 of the neighborhoods that have a population greater than zero. The data suggests that, especially relative to neighborhoods where less than 25 percent of community members are BIPOC (or more than 75 percent are White), the majority of BIPOC communities have considerably less tree canopy. Further, in neighborhoods where more than 75 percent of community members are BIPOC, the tree canopy gap is more than two times the tree canopy gap in neighborhoods where more than 75 percent of community members are White.

RESJ Impact Statement

Bill 40-23

Table 1: Average Tree Canopy and Tree Canopy Gap by Percent of BIPOC Community Members in Neighborhoods

| Percent BIPOC | Number of Neighborhoods | Average Tree Canopy | Average Tree Canopy Gap |
|---------------|-------------------------|---------------------|-------------------------|
| Less than 25% | 28 | 48% | 6% |
| 25 to 49% | 60 | 40% | 8% |
| 50 to 74% | 48 | 40% | 9% |
| More than 75% | 22 | 32% | 14% |

Source: OLO Analysis of TES Data, American Forests.

American Forests calculates there are 76 neighborhoods in the County where the TES is less than 80. Table A in the Appendix summarizes the communities in which the neighborhoods are located and the average percent of BIPOC. American Forests estimates that 47,171 trees would need to be planted to get the TES of all neighborhoods in the County to at least an 80.²⁰ The TES County Report provides estimates for the benefits this level of tree planting would generate for carbon sequestration, stormwater runoff, and air quality in the County.

One climate change phenomenon worsened by inadequate tree canopy is extreme heat. The Climate Action Plan recognizes extreme heat as among the County's four largest and growing climate hazards.²¹ Exposure to extreme heat can lead to potentially deadly heat-related illnesses such as heat exhaustion or heat stroke.²² Indeed, heat is the leading cause of weather-related deaths in the U.S.²³ With the support of over 100 volunteers, the County carried out a community heat mapping initiative in August 2022 in coordination with the National Oceanic and Atmospheric Administration (NOAA) to understand where urban heat islands are located in the County.^{24,25} The campaign found that neighborhoods with higher concentrations of impervious surfaces and less green infrastructure – such as green spaces and trees – experienced temperatures up to 10 degrees higher. The campaign further found that BIPOC and low-income communities experienced higher temperatures than other communities the County.²⁶

ANTICIPATED RESJ IMPACTS

Through increasing fees to the Tree Canopy Conservation Account and Street Tree Planting Fund, Bill 40-23 is expected to increase the capacity of County tree planting programs supported through these funds.²⁷

To consider the anticipated impact of Bill 40-23 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

For the first question, OLO considered the various stakeholders that would be impacted by an increase in fees to the Tree Canopy Conservation Account and Street Tree Planting Fund:

- **Applicants to the Tree Montgomery Program,**²⁸ which is funded through the Tree Canopy Conservation Account, will benefit from increased capacity of the program to plant trees. The Tree Montgomery Program does not collect information on applicant race and ethnicity. However, the most recent annual report suggests homeowners are the primary beneficiaries of the program, with 87 percent of trees being planted at single family residences and homeowner's associations.²⁹ Compared to the County average of 66 percent, 75 percent of White households and 77 percent of Asian households are owner-occupied, compared to 52 percent of Latinx households and 46 percent of Black households.³⁰

RESJ Impact Statement

Bill 40-23

- **Community members living in neighborhoods where roadside trees are removed** will benefit from increased capacity for DOT to plant replacement trees within the neighborhood through the Street Tree Planting Fund. OLO was not able to obtain and analyze data on where replacement trees have been planted in the County to understand potential racial disproportionalities in neighborhood-level demographics in the timeframe required for this report.
- **Stakeholders obtaining a sediment control permit or a permit to remove trees in the County's right-of-way,** will face increased costs from higher fees to fund tree planting required in response to these activities. Developers will likely be among the primary stakeholders affected by higher fees. As approximated by business ownership in the construction sector, Census data in Table B (Appendix) suggests White people are largely overrepresented among developers in the DC metro region, while BIPOC are underrepresented.

For the second question, OLO considered the effect this Bill could have on addressing racial disparities in tree cover. Increasing tree canopy in BIPOC communities could help mitigate the disproportionate impact of climate change on BIPOC communities and generate benefits in many other areas for BIPOC community members, including health, economic development, and education. Neither the Tree Montgomery Program nor the DOT street tree planting program considers RESJ metrics – such as neighborhood-level racial, ethnic, and socioeconomic demographics – to prioritize tree planting. Specifically:

- The Tree Montgomery Program plants trees in response to applications from community members and prioritizes tree planting in areas of the County with high development.³¹ Further, according to Tree Montgomery staff, the program is mainly promoted through word-of-mouth as there is not sufficient capacity for more proactive outreach. This could be generating racial disparities among program applicants.
- DOT's street tree planting program prioritizes tree planting in the immediate neighborhood where roadside trees are removed.

OLO finds the anticipated RESJ impact of Bill 40-23 is indeterminate. Available data suggests White and Asian homeowners may disproportionately benefit from tree planting through the Tree Montgomery Program. However, it is unknown to what degree this benefit will be offset by increased costs to developers, who are disproportionately White. Further, potential neighborhood-level racial disproportionalities within DOT's street tree planting program is unknown. Nonetheless, increased capacity to plant trees through either program affected by this Bill is unlikely to meaningfully address racial disparities in tree cover as they do not consider RESJ metrics in prioritizing tree planting.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.³² OLO finds the RESJ impact of Bill 40-23 is indeterminate. As such, OLO does not offer recommended amendments. However, should the Council seek to improve the RESJ impact of this Bill, OLO offers one policy option for discussion and consideration:

RESJ Impact Statement

Bill 40-23

- **Request comprehensive strategy for tree planting in BIPOC communities with regular progress report.** Existing tree planting programs in the County are siloed and their progress is not reported consistently. For instance, while the Tree Montgomery Program provides an annual report documenting their tree planting activity, the DOT street tree planting program does not. Further, there are several other tree planting initiatives outside of these programs that are funded by general operating and grant funds that are documented to varying degrees. To improve RESJ in tree planting programs, the Council could request County departments and offices that are operating tree planting programs to develop a comprehensive strategy and goals for tree planting in BIPOC communities that include consistent metrics and data collection. This could be accompanied by an on-going report demonstrating tree planting progress in BIPOC communities and how each program is contributing to overarching goals.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffer Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

RESJ Impact Statement

Bill 40-23

APPENDIX

Table A: County Communities containing Neighborhoods with Tree Equity Score of Less than 80

| Community | Number of Neighborhoods | Average Percent BIPOC |
|----------------------------|-------------------------|-----------------------|
| White Oak | 4 | 96.0% |
| Fairland | 1 | 89.7% |
| Montgomery Village | 2 | 83.6% |
| Germantown | 3 | 83.2% |
| Aspen Hill | 5 | 83.0% |
| Glenmont | 4 | 81.5% |
| Wheaton | 10 | 80.9% |
| Silver Spring | 7 | 79.6% |
| Forest Glen | 1 | 74.2% |
| Clarksburg | 4 | 69.9% |
| Gaithersburg | 12 | 69.4% |
| Redland | 1 | 62.2% |
| Potomac | 1 | 61.7% |
| No Census Designated Place | 3 | 60.3% |
| North Bethesda | 6 | 50.1% |
| Rockville | 11 | 46.3% |
| Four Corners | 1 | 43.6% |
| Grand Total | 76 | 70.3% |

Source: OLO Analysis of TES Data, American Forests.

Table B: Percent of Population and Construction Business Owners by Minority Business Status, Washington-Arlington-Alexandria, DC-VA-MD-WV Metro Area

| Minority Business Status | Population | Construction Business Owners (NAICS 23) |
|---|------------|---|
| Nonminority (White and non-Latinx) | 42.3 | 73.4 |
| Minority (any other race and ethnicity combination other than White and non-Latinx) | 57.7 | 26.0 |

Source: 2020 Decennial Census (Table DP1) and 2020 American Business Survey (Table AB2000CSA01), Census Bureau.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

² Ibid.

³ [Introduction Staff Report for Bill 40-23](#), Montgomery County Council, Introduced November 7, 2023.

⁴ [Montgomery County Tree Canopy Law FY22 Annual Report](#), Department of Permitting Services and Department of Environmental Protection.

⁵ [Tree Laws, Programs, and Committees](#), Department of Environmental Protection.

⁶ Introduction Staff Report for Bill 40-23

RESJ Impact Statement

Bill 40-23

⁷ [RESJ Impact Statement for Bill 25-22](#), Office of Legislative Oversight, October 4, 2022.

⁸ [Montgomery County Climate Action Plan](#), Department of Environmental Protection, June 2021.

⁹ Ibid.

¹⁰ Rachel Morello-Frosch, et. al., [The Climate Gap: Inequities in How Climate Change Hurts Americans and How to Close the Gap](#), Dornsife Center, University of Southern California, May 2009.

¹¹ Health Equity and Climate Change, [“Climate Change, Health, and Equity: A Guide for Local Health Departments,”](#) American Public Health Association, 2018.

¹² RESJ Impact Statement for Bill 25-22

¹³ Hannah Safford, et. al., [“Urban Forests and Climate Change,”](#) Climate Change Resource Center, U.S. Forest Service, United States Department of Agriculture, August 2013.

¹⁴ [Vibrant Cities Lab](#), USDA Forest Service, American Forests, and National Association of Regional Councils.

¹⁵ Shannon Lea Watkins and Ed Gerrish, [“The Relationship Between Urban Forests and Race: A Meta-Analysis,”](#) Journal of Environmental Management, February 2018.

¹⁶ Dexter H. Locke, et. al., [“Residential Housing Segregation and Urban Tree Canopy,”](#) NPJ Urban Sustainability, March 25, 2021.

¹⁷ [About Tree Equity Score](#), Tree Equity Score, American Forests.

¹⁸ *Tree canopy* refers to the footprint of existing tree canopy when viewed from above—the bird's eye view of tree crowns (leaves, branches and stems). *Tree canopy goal* refers to the minimum percentage of tree canopy required to deliver the requisite benefits of trees to a block group (neighborhood), based on natural biome and building density. *Tree canopy gap* refers to the percent area of a block group that could be planted to reach the neighborhood tree canopy goal. *Block group*, colloquially referred to as a neighborhood, refers to a small geographic area used in the United States Census. From Data Glossary, [Methods & Data](#), Tree Equity Score, American Forests.

¹⁹ Methods, Priority Index, [Methods & Data](#), Tree Equity Score, American Forests.

²⁰ [Tree Equity Score County Report: Montgomery County, MD](#), Tree Equity Score, American Forests.

²¹ Montgomery County Climate Action Plan

²² [Climate Change Indicators: Health Related Deaths](#), U.S. Environmental Protection Agency, Last Updated November 1, 2023.

²³ Nambi Ndugga and Samantha Artiga, [“Continued Rises in Extreme Heat and Implications for Health Disparities,”](#) KFF, August 24, 2023.

²⁴ [Community Heat Mapping in Montgomery County](#), Montgomery County, MD.

²⁵ *Urban heat islands* occur when cities replace natural land cover with dense concentrations of pavement, buildings, and other surfaces that absorb and retain heat. From [Reduce Urban Heat Island Effect](#), U.S. Environmental Protection Agency, Last Updated October 31, 2023.

²⁶ [“Results of 2022 Montgomery County ‘Urban Heat Island Mapping Campaign’ Document Extreme Heat Impacts on Areas with Less Green Infrastructure,”](#) Press Release, Montgomery County, MD, March 22, 2023.

²⁷ [Climate Assessment for Bill 40-23](#), Office of Legislative Oversight.

²⁸ [Tree Montgomery](#), Department of Environmental Protection.

²⁹ [Montgomery County Tree Canopy Law FY22 Annual Report](#), Department of Environmental Protection and Department of Permitting Services.

³⁰ Housing Tenure, [Table S0201](#), 2022 American Community Survey 1-Year Estimates, Census Bureau.

³¹ Montgomery County Tree Canopy Law FY22 Annual Report

³² Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

Climate Assessment

Office of Legislative Oversight

Bill 40-23: Tree Canopy and Roadside Tree Requirements – Fee Revisions

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 40-23 will have a positive impact on the County's contribution to addressing climate change. Adjusting the fee structure for trees removed would likely increase the capacity of tree planting programs in the County. Trees provide environmental benefits that are beneficial for both the County's climate goals and community resilience.

BACKGROUND AND PURPOSE OF BILL 40-23

The County charges permit applicants a fee for the removal of a tree in the County's right-of-way or for development requiring a sediment control permit.

Under the County's roadside tree law, permit applicants remove a roadside tree in the County's right-of-way must pay a fee to the Street Tree Planting Fund, which is maintained by the Department of Transportation (DOT).¹

Under the County's sediment control laws, any development activity that requires a property owner to acquire a sediment control permit must either plant new shade trees or pay a fee to the Tree Canopy Conservation Account.² In general, a sediment control permit is required if an activity:

- Disturbs more than 5,000 square feet of land including cutting trees;
- Constructs a new primary residential or commercial building; or
- Moves 100 cubic yards or more of earth on or off the property.³

The purpose of Bill 40-23 is to change the fee structures for the Street Tree Planting Fund and the Tree Canopy Conservation Account, as current fees do not adjust for inflation and have been insufficient to cover the actual costs of tree planting and maintenance. For the Street Tree Planting Fund, the proposed fee for removing a tree in the County's right-of-way is \$450 per tree, with a biannual increase based upon inflation. For the Tree Canopy Conservation Account, the proposed fee is \$470 per tree charged to applicants of the sediment control permit, with a biannual increase based upon inflation.⁴

Bill 40-23, Tree Canopy and Roadside Tree Requirements – Fee Revisions was introduced by the Council on November 7, 2023.

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

Methodology. OLO reviewed the County Code, County data on tree planting programs, and conducted a literature review of the impacts of tree planting upon climate change and community resilience.

Assumptions. OLO assumes the increased fee per tree for the Tree Canopy Conservation Account and Street Tree Planting Fund will increase the capacity of tree planting programs affected by this Bill and allow for more trees to be planted.

Uncertainties. The number of trees to be planted per year via these programs is difficult to predict as it depends on the removal of street trees and from developments large enough to require a sediment control permit. It is also dependent on the fees received from permittees.

COUNTY TREE PROGRAMS AND THE BENEFITS OF PLANTING SHADE TREES

There are two County programs which would be impacted by the change in fee structures: Tree Montgomery and the Street Tree Planting Fund.

Tree Montgomery. Bill 35-12, Trees – Tree Canopy Conservation , enacted July 23, 2013, was intended to “provide for mitigation when tree canopy is lost or disturbed to offset the environmental impacts of development and address the loss of environmental resources, including trees and potential growing space for shade trees.”⁵ Montgomery County’s Tree Canopy Law also established the Tree Canopy Conservation Account, a dedicated fund that may be used exclusively to plant and establish shade trees through the Tree Montgomery program. Tree Montgomery is a program that plants shade trees for free on various properties, including private property, apartments, schools, congregations, and County facilities.⁶

Through the Tree Canopy Law, any development that requires a sediment control permit must either plant trees or pay for the planting of trees to the Tree Canopy Conservation Account, based on a formula that considers the square footage of area disturbed by development⁷ (see table below).

| Area of the Limits of Disturbance (Sq. Ft.) | Number of Shade Trees Required |
|---|--------------------------------|
| 1 – 6000 | 3 |
| 6001 – 8000 | 6 |
| 8,001 – 12,000 | 9 |
| 12,001 – 14,000 | 12 |
| 14,001 – 40,000 | 15 |

Source: [Bill 35-12 - Trees - Tree Canopy Conservation](#)

From FY14 through FY23, \$6,117,774 was paid to the Tree Canopy Account and 10,743 shade trees were planted by Tree Montgomery. According to the FY22 annual report, the average cost per shade tree for all years combined was \$436 and the fee collected per tree via the sediment control permit has remained at \$250 per tree since the law was enacted in 2013.⁸ Bill 40-23 would raise the fee to \$470 which would cover the average cost per shade tree and increase the funds available for planting trees. Executive Branch staff report the current fee does not cover the planting of trees. Since the law was enacted, approximately 24,000 trees have been earmarked for planting from the sediment control permit applications, however only 10,800 trees have been funded via the fee collections. Staff report they have been able to secure grants to fund trees to be planted, however grant funding will run out and it is not guaranteed more grants can be secured.⁹

Since 2014, the program has grown exponentially, from 47 trees planted by Tree Montgomery in FY14 to 3,663 trees planted in FY23. Executive staff report the demand for more shade trees has not slowed and intend to target areas in the County where there is little tree canopy and areas in need of additional shade.¹⁰

Street Tree Planting Fund. The other program that would be impacted by the Bill is the Street Tree Planting Fund. Under the County's roadside tree law, a permittee who removes a tree in the County's right-of-way generally must pay a fee to the Street Tree Planting Fund maintained by DOT.¹¹ For every street tree removed, three more trees are required to be planted. On average, the County plants about 2,000 trees per year through the Street Tree Planting Fund.¹²

DOT is also responsible for the maintenance of over 250,000 trees in the dedicated County right-of-way and conducts other activities such as tree stump removal, pruning and maintenance of street trees. Staff report there is a backlog for all activities the program conducts, especially for tree stump removal. Tree stumps often prevent trees from being planted around and near the stump.¹³

Fees collected by the Street Tree Planting Fund may only be used for planting new trees. However, the current fee of \$250 per tree does not cover the costs of planting the replacement trees. Funds from the general fund cover the costs of planting the tree, which reduces the funds available for maintenance of existing trees and stump removal. This underfunding ultimately impacts where trees can be planted and the health and stock of trees in the County.¹⁴ Increasing the fee to \$450 per tree would likely allow more trees to be planted and an increase in available funds for tree maintenance and stump removal.

Benefits of Planting Shade Trees. Trees provide many environmental benefits that improve local climate conditions and community resilience and the development of tree canopies can compound these benefits. For example:

- Tree canopies can substantially decrease daytime air temperature and reduce urban heat island effects;¹⁵
- Trees, specifically forests and dense clumps of trees, remove pollutants and sediments from rainfall and slowly release water back into the drinking water supply, including underground aquifers;¹⁶
- Trees can improve drainage in areas prone to flooding, especially during heavy rainfall as they absorb rainwater and slowly release the water back;¹⁷
- Trees absorb and store carbon dioxide, which can slow the CO2 buildup in the atmosphere. More mature and larger trees store more carbon than younger trees;¹⁸ and
- Research has shown associations between the presence of trees and greenspaces and improvements in mental and physical health.¹⁹

Planting more trees positively impacts the County's climate goals and increases community climate resilience. While these benefits depend on a tree's type, size, and maturity, the County tree programs impacted by this bill promote tree planting to provide shade and environmental benefits. Trees planted by Tree Montgomery are 10-12 feet tall at installation (and eventually reach 50 or more feet), provide shade, and are native to either the Mid-Atlantic region or the Southeastern region.²⁰

ANTICIPATED IMPACTS

OLO anticipates Bill 40-23 will have a positive impact on the County's contribution to addressing climate change, including community resilience. Changing the fee structure for the impacted tree planting programs to better reflect the costs associated with planting and maintenance, would likely increase the capacity of the programs to plant more trees. Currently, the Tree Montgomery program does not have funds necessary to plant trees earmarked by the sediment control permits. The Street Tree Planting Fund also has a backlog of trees to be planted and the fee is not sufficient to cover the costs of planting replacement trees. Increasing the fees would allow for more funding, which would likely increase the number of trees planted. Trees have many benefits to both environmental and human health.

Greenhouse Gas Emissions. Trees absorb and store carbon dioxide which can slow CO2 buildup in the atmosphere. However, the amount to which trees absorb and store CO2 depends on many factors, such as the density of tree planting, the type of tree, and the maturity of the tree.²¹

Community Resilience. Planting trees, especially with the intent to build tree canopy cover through these programs, can improve community resilience. Community resilience can be improved through environmental and human health conditions that trees provide such as:

- Building up tree canopy cover in areas with less coverage, daytime air temperature can be substantially reduced in these areas, which can alleviate human health issues associated with high temperatures;²²
- Trees can reduce flooding during heavy rainfall and improve stormwater management in urban settings²³; and
- Trees have also been shown to improve both physical and mental health as trees and greenspaces are strongly linked to reduced symptoms of depression and better reported moods.²⁴ The presence of trees and urban greenspaces is also associated with increased physical exercise.²⁵

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.²⁶ OLO does not offer recommendations or amendments as Bill 40-23 is likely to have a positive impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptative capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

¹ [Introduction Staff Report for Bill 40-23](#), Montgomery County Council, Introduced 11/07/2023

² [Montgomery County Tree Canopy Law Annual report - FY22](#), Tree Montgomery, March 2023

³ [Tree Laws and Programs](#), Department of Environmental Protection, Accessed 11/18/2023

⁴ [Introduction Staff Report for Bill 40-23](#), Montgomery County Council, Introduced 11/07/2023

⁵ [Bill 35-12 - Trees - Tree Canopy Conservation](#), Montgomery County Council, Signed into law 7/31/2023

⁶ [Montgomery County Tree Canopy Law Annual report - FY22](#), Tree Montgomery, March 2023

⁷ For development that exceeds 40,000 square feet of disturbance, the minimum number of shade trees required must be prorated using the ratio of 15 trees per 40,000 square feet.

⁸ [Montgomery County Tree Canopy Law Annual report - FY22](#), Tree Montgomery, March 2023

⁹ Feedback from County Staff

¹⁰ Feedback from County Staff

¹¹ [Introduction Staff Report for Bill 40-23](#), Montgomery County Council, Introduced 11/07/2023

¹² [Highway Services - Tree Maintenance](#), Montgomery County Department of Transportation, Accessed 11/18/2023

¹³ Feedback from County Staff

¹⁴ Feedback from County Staff

¹⁵ ["Scale-dependent interactions between tree canopy cover and impervious surfaces reduce daytime urban heat during summer"](#),

Ziter, C. D., et al., The Proceedings of the National Academy of Sciences (PNAS), 2/19/2019.

¹⁶ ["From Forests to Faucets: Where does your drinking water come from?"](#), U.S. Forest Service, 03/22/2022.

¹⁷ ["Forests for Flood Buffers"](#), Maryland Department of Natural Resources, Accessed 11/18/2023.

¹⁸ ["Brief Report: Tree planting has the potential to increase carbon sequestration capacity of forests in the United States"](#), Domke, G. M., et. al., The Proceedings of the National Academy of Sciences (PNAS), 10/06/2023; ["Carbon Storage by Urban Forests"](#), U.S. National Park Service, Accessed 11/18/2023.

¹⁹ ["The Benefits and Limits of Urban Tree Planting for Environmental and Human Health"](#), Pataki, D. E., et. al, Frontiers, April 8, 2021.; ["The social and economic value of cultural ecosystem services provided by urban forests in North America: A review and suggestions for future research"](#), Nesbitt, L., et. al., Urban Forestry and Urban Greening, July 2017.

²⁰ ["Tree Planting Locations | Open Data Portal"](#), dataMontgomery, Accessed 11/18/2023; ["Request County to Plant a Tree"](#), Montgomery County, MD 311, Accessed 11/18/2023

²¹ ["Brief Report: Tree planting has the potential to increase carbon sequestration capacity of forests in the United States"](#), Domke, G. M., et. al., The Proceedings of the National Academy of Sciences (PNAS), 10/06/2023; ["Carbon Storage by Urban Forests"](#), U.S. National Park Service, Accessed 11/18/2023.

²² ["Scale-dependent interactions between tree canopy cover and impervious surfaces reduce daytime urban heat during summer"](#), Ziter, C. D., et al., The Proceedings of the National Academy of Sciences (PNAS), 2/19/2019.

²³ ["NPDES: Stormwater Best Management Practice, Urban Forestry"](#), United States Environmental Protection Agency, Accessed 11/18/2023.

²⁴ ["The Benefits and Limits of Urban Tree Planting for Environmental and Human Health"](#), Pataki, D. E., et. al, Frontiers, April 8, 2021.

²⁵ ["The social and economic value of cultural ecosystem services provided by urban forests in North America: A review and suggestions for future research"](#), Nesbitt, L., et. al., Urban Forestry and Urban Greening, July 2017.

²⁶ Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022

Economic Impact Statement

Montgomery County, Maryland

Bill 40-23

Tree Canopy and Roadside Tree Requirements – Fee Revisions

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 40-23 would have a negative impact on economic conditions in the County in terms of the Council’s priority economic indicators. The Bill would primarily impact property owners and developers who remove roadside trees in the County’s right-of-way or receive a sediment control permit. By increasing the fees for the County’s Roadside Tree Law and Tree Canopy Law, the Bill would increase operating expenses and lower business income for property owners and developers, holding all else equal. Moreover, the Bill would increase the total cost of complying with existing County regulations for businesses engaging in development activity. By doing so, the change in law may undermine the County’s reputation as a “business-friendly” jurisdiction.

BACKGROUND AND PURPOSE OF BILL 40-23

The County charges permittees a fee for removing every tree in the County’s right-of-way or for development requiring a sediment control permit.

Under the County’s Roadside Tree Law, permittees who remove a roadside tree in the County’s right-of-way must pay a fee in the Street Tree Planting Fund, which is maintained by the Department of Transportation (DOT).¹ As of September 2013, the rate is \$250 per tree.

Under the Tree Canopy Law, any development activity that requires a property owner to acquire a sediment control permit and removes one or more trees must either plant new shade trees or pay a fee into the Tree Canopy Conservation Account.² In general, a sediment control permit is required if an activity:

- Disturbs more than 5,000 square feet of land including cutting trees;
- Constructs a new primary residential or commercial building; or
- Moves 100 cubic yards or more of earth on or off the property.³

The purpose of Bill 40-23 is to change the fee structures for the Street Tree Planting Fund and the Tree Canopy Conservation Account, as current fees do not rise with inflation and have been insufficient to cover the actual costs of tree planting and maintenance. For the Street Tree Planting Fund, the proposed fee for removing a tree in the County’s right-of-way is \$450 per tree, with a biannual increase based upon inflation. For the Tree Canopy Conservation Account, the

¹ “Introduction Staff Report on Bill 40-23, Tree Canopy and Roadside Tree Requirements – Fee Revisions.”

² “Tree Canopy Law FY22 Annual Report.”

³ “Tree Laws, Programs and Committees.”

proposed fee is \$470 per tree charged to applicants of the sediment control permit, with a biannual increase based upon inflation.⁴

The Council introduced Bill 40-23, Tree Canopy and Roadside Tree Requirements – Fee Revisions, on November 7, 2023.

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess, both, the impacts of Bill 40-23 on residents and private organizations in terms of the Council's priority economic indicators and whether the Bill would have a net positive or negative impact on overall economic conditions in the County.⁵

This statement relies on the following sources of information:

- Climate Assessment for Bill 40-23
- Bill 35-12, Trees – Tree Canopy Conservation
- Montgomery County Tree Canopy Law, FY22 Annual Report

VARIABLES

The primary variables that would affect the economic impacts of enacting Bill 40-23 are the following:

- Total area disturbed per year; and
- Total number of roadside trees removed.

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

OLO anticipates Bill 40-23 would have negative impacts on certain private organizations in the County in terms of the Council's priority economic indicators.

The Bill would primarily impact property owners and developers who remove roadside trees in the County's right-of-way or receive a sediment control permit. The current fee for the Street Tree Planting Fund and the Tree Canopy Conservation Account is \$250 per tree. The Bill would increase the fees by \$200 for the former (from \$250 to \$450) and by \$220 for the latter (from \$250 to \$470).

The magnitude of the increase in operating expenses depends on the formulas for each program. To illustrate, for the Tree Canopy Law, any development that requires a sediment control permit must either plant trees or pay for the planting of trees to the Tree Canopy Conservation Account, based on a formula that considers the square footage of area disturbed

⁴ "Introduction Staff Report on Bill 40-23, Tree Canopy and Roadside Tree Requirements – Fee Revisions."

⁵ Montgomery County Code, Sec. 2-81B.

by development. As shown in **Table 1**, the Bill would increase the total fee from \$660 to \$3,300 based on the area disturbed.

Table 1. Difference in Fees for the Tree Canopy Law

| Area of the Limits of Disturbance (Sq. Ft.) | Number of Shade Trees Required | Current Fee Total (\$250) | Proposed Fee Total (\$470) | Difference |
|--|---------------------------------------|----------------------------------|-----------------------------------|-------------------|
| 1 – 6000 | 3 | \$750 | \$1,410 | \$660 |
| 6001 – 8000 | 6 | \$1,500 | \$2,820 | \$1,320 |
| 8,001 – 12,000 | 9 | \$2,250 | \$4,230 | \$1,980 |
| 12,001 – 14,000 | 12 | \$3,000 | \$5,640 | \$2,640 |
| 14,001 – 40,000 | 15 | \$3,750 | \$7,050 | \$3,300 |

Importantly, if the area in the limits of disturbance exceeds 40,000 sq. ft, then the minimum number of shade trees required must be prorated using the ratio of 15 trees per 40,000 sq. ft. Thus, the total fee can increase by multiples of \$3,300.

By increasing the total fee, the Bill would increase operating expenses and lower business income for property owners and developers, holding all else equal. However, it is possible that property owners and developers would pass a portion of the additional cost onto buyers or tenants, which would increase costs for these actors.

Beyond these potential impacts, OLO does not expect the Bill to affect private organizations in terms of the Council's other priority indicators.

Residents

OLO anticipates that Bill 40-23 would have insignificant impacts on certain residents in the County in terms of the Council's priority economic indicators.

Net Impact

OLO anticipates that Bill 40-23 would have an overall negative impact on economic conditions in the County in terms of the Council's priority economic indicators. By increasing the fees for the County's Roadside Tree Law and Tree Canopy Law, the Bill would increase operating expenses and lower business income for property owners and developers, holding all else equal. Moreover, the Bill would increase the total cost of complying with existing County regulations for businesses engaging in development activity. By doing so, the change in law may undermine the County's reputation as a "business-friendly" jurisdiction.

DISCUSSION ITEMS

Not applicable

WORKS CITED

[“Introduction Staff Report on Bill 40-23, Tree Canopy and Roadside Tree Requirements – Fee Revisions.”](#) Montgomery County Council, November 7, 2023.

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements](#).

Montgomery County Council. [Bill 35-12, Trees – Tree Canopy Conservation](#).

[“Montgomery County Tree Canopy Law FY22 Annual Report.”](#) Departments of Permitting Services and Environmental Protection, March 2023.

Office of Legislative Oversight. [Climate Assessment for Bill 40-21](#).

[“Tree Laws, Programs and Committees.”](#) Department of Environmental Protection. Accessed November 13, 2023.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO’s endorsement of, or objection to, the Bill under consideration.

AUTHOR

Stephen Roblin (OLO) prepared this report.



Fiscal Impact Statement

Office of Management and Budget

Bill 40-23 Tree Canopy and Roadside Tree Requirements - Fee Revisions

Bill Summary

Bill 40-23 increases the fee payable to the Street Tree Planting Fund from \$250 to \$450 per tree, with a biennial increase in odd-numbered years based upon inflation. The bill also increases the fee payable to the Tree Canopy Conservation Account from \$250 to \$470 per tree, with a biennial increase in odd-numbered years based upon inflation.

Fiscal Impact Summary

The bill is expected to increase County revenues by \$604,000 to \$656,000 per year. Expenditures for both the Street Tree Planting Fund and the Tree Canopy Conservation Account are expected to increase as the dedicated revenues for those funds increase. However, as there is typically a lag in expenditures in those programs to when revenues accrue, it is difficult to project when those expenditures will take place, but it is expected that expenditures would be fully offset by the revenues generated. For illustrative purposes, it is assumed that expenditures as a result of the increased revenues would take place one fiscal year later.

| Fiscal Year | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | Total |
|--------------------|-----------|-----------|-----------|-----------|-----------|-----------|-------------|
| Personnel Costs | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Operating Expenses | \$0 | \$603,747 | \$603,747 | \$629,748 | \$629,748 | \$656,270 | \$3,123,260 |
| Total Expenditures | \$0 | \$603,747 | \$603,747 | \$629,748 | \$629,748 | \$656,270 | \$3,123,260 |
| Revenues | \$603,747 | \$603,747 | \$629,748 | \$629,748 | \$656,270 | \$656,270 | \$3,779,530 |
| Total Impact | \$603,747 | \$0 | \$26,001 | \$0 | \$26,522 | \$0 | \$656,270 |
| FTE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | |

Street Tree Planting Fund:

Based on the average number of actual street tree plantings from FY21 to FY23, the Department of Transportation plants approximately 451 trees annually. Revenue to the Street Tree Planting Fund is estimated to increase between \$90,000 and \$98,000 annually. Increases to the base rate are calculated using a 2% biennial increase.

| Street Tree Planting Fund | Average # of Trees | Current Rate | Total Revenue | New Rates-2% Biennial Increase* | Total Revenue | Additional Revenue |
|---------------------------|--------------------|--------------|---------------|---------------------------------|---------------|--------------------|
| FY25 | 451 | \$ 250.00 | \$ 112,833.33 | \$ 450.00 | \$ 203,100.00 | \$ 90,266.67 |
| FY26 | 451 | \$ 250.00 | \$ 112,833.33 | \$ 450.00 | \$ 203,100.00 | \$ 90,266.67 |
| FY27 | 451 | \$ 250.00 | \$ 112,833.33 | \$ 459.00 | \$ 207,162.00 | \$ 94,328.67 |
| FY28 | 451 | \$ 250.00 | \$ 112,833.33 | \$ 459.00 | \$ 207,162.00 | \$ 94,328.67 |
| FY29 | 451 | \$ 250.00 | \$ 112,833.33 | \$ 468.18 | \$ 211,305.24 | \$ 98,471.91 |
| FY30 | 451 | \$ 250.00 | \$ 112,833.33 | \$ 468.18 | \$ 211,305.24 | \$ 98,471.91 |

*The proposed new base rate of \$450 reflects the current average cost for planting a street tree.

Fiscal Impact Analysis

Tree Canopy Conservation Account:

Based on the average number of actual street tree plantings from FY21 to FY23, the Department of Environmental Protection plants approximately 2,334 trees annually. Revenue to the Tree Canopy Conservation Account is estimated to increase between \$513,000 and \$558,000 annually. Increases to the base rate are calculated using a 2% biennial increase.

| Tree Canopy Conservation Account | Average # of Trees | Current Rate | Total Revenue | New Rates-2% Biennial Increase* | Total Revenue | Additional Revenue |
|----------------------------------|--------------------|--------------|---------------|---------------------------------|-----------------|--------------------|
| FY25 | 2,334 | \$ 250.00 | \$ 583,500 | \$ 470.00 | \$ 1,096,980.00 | \$ 513,480.00 |
| FY26 | 2,334 | \$ 250.00 | \$ 583,500 | \$ 470.00 | \$ 1,096,980.00 | \$ 513,480.00 |
| FY27 | 2,334 | \$ 250.00 | \$ 583,500 | \$ 479.40 | \$ 1,118,919.60 | \$ 535,419.60 |
| FY28 | 2,334 | \$ 250.00 | \$ 583,500 | \$ 479.40 | \$ 1,118,919.60 | \$ 535,419.60 |
| FY29 | 2,334 | \$ 250.00 | \$ 583,500 | \$ 488.99 | \$ 1,141,297.99 | \$ 557,797.99 |
| FY30 | 2,334 | \$ 250.00 | \$ 583,500 | \$ 488.99 | \$ 1,141,297.99 | \$ 557,797.99 |

*The average cost per tree is expected to increase to \$470 in FY24 due to a CPI associated with a newly executed contract.

Staff Impact

The bill is not expected to impact staff time or duties.



**Actuarial
Analysis**

The bill is not expected to impact retiree pension or group insurance costs.

**Information
Technology
Impact**

The bill is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.

Other Information

*Later actions
that may
impact
revenue or
expenditures
if future
spending is
projected*

The bill does not authorize future spending.

*Ranges of
revenue or
expenditures
that are
uncertain or
difficult to
project*

The proposed increase may incentivize developers to plant trees directly, which may limit the amount of revenue estimated to be received. In addition, for illustrative purposes this analysis assumes a constant inflation rate of two percent. To the extent that inflation is different from the rate assumed, revenues and consequently expenditures would adjust accordingly.

*Sources of
information*

U.S. Bureau of Labor Statistics

Contributors

Brett Linkletter, Department of Transportation
Laura Miller, Department of Environmental Protection
Rich Harris, Office of Management and Budget
Greg Bruno, Office of Management and Budget



November 28th, 2023

Written testimony for Bill 40-23, Tree Canopy and Roadside Tree Requirements
– Fee Revisions.¹



Dear Montgomery County Council,

Nature Forward is the oldest independent environmental organization in the DC metro region. Our mission is to inspire residents of the greater Washington, DC, region to appreciate, understand, and protect their natural environment through outdoor experiences, education, and advocacy. We thank the County Council for the opportunity to provide testimony on Bill 40-23 which seeks to update the county's current tree planting fee to \$450 per tree which more accurately aligns with the current cost of planting a tree in the county plus takes into consideration future inflation increases. This fee has not been raised in 10 years, the time to raise the tree planting fee is now and should not be delayed anymore.

Earlier this year the Montgomery County Council updated and unanimously approved the updated Bill 25-22E – Forest Conservation Trees² which expanded protections to priority forests, increased replanting ratios, aligned with the MD state's recent forest law updates, and made technical clarifications.³ This was a great step forward towards the protection of forests in the county (along with the state's forest conservation law updates). It is also one which aligns with the Hughes Center Report on Maryland's Forests found that, "Montgomery and Prince George's counties accounted for more than 44% of the state's total tree canopy loss."⁴ Forests and trees are critical natural infrastructure that purify our air, water, reduce urban heat, serve as habitats for wildlife, reduce stormwater run-off, reduce stress levels, connect communities, and more. On behalf of Nature Forward and our 28,000 members and supporters, we recommend that the County Council supports moves forward now on Bill 40-23 and does not delay any more.

Sincerely,

Denisse Guitarra, MD Conservation Advocate at Nature Forward

Debra Street, Conservation Volunteer at Nature Forward

¹ Bill 40-23, Tree Canopy and Roadside Tree Requirements – Fee Revisions. Available at: https://montgomerycountymd.granicus.com/Viewer.php?view_id=169&event_id=15959&meta_id=166986

² Bill 25-22E – Forest Conservation Trees. Available at: https://apps.montgomerycountymd.gov/ccclims/DownloadFilePage?FileName=2766_1_24907_Bill_25-22E_Signed_20230403.pdf

³ Maryland & Montgomery County Forest Wins. Nature Forward. May 2023. <https://natureforward.org/maryland-montgomery-county-forest-wins/>

⁴ Maryland Forest Technical Study. Nov 2022. Available at: <https://www.chesapeakeconservancy.org/mdforeststudy2022>



TO:
Montgomery County Council
Montgomery County Maryland

22 November 2023

FROM:
Friends of Sligo Creek

RE: CB 40-23
Supporting: Tree Canopy and Roadside Tree Requirements – Fee Revision

This is the simplest of bills, but important in many ways. Trees are crucial to the county (and the world) – even though we’re losing total canopy. Especially when trees are intentionally removed, they must be replaced. The people who have them removed must pay for the actual cost of replacement.

The cost of new trees has increased. The old fixed charge was \$250. Now you can’t buy a 2” caliper tree for less than about \$450-475. This bill would raise the fee from \$250 to \$450 or \$475 with an inflation upgrade. This would cover the actual cost of purchase and delivery of a tree.

It is clear. It makes sense – in fact it’s critical.

Friends of Sligo Creek is a mostly volunteer nonprofit dedicated to the appreciation, protection and improvement of Sligo Creek Park and its watershed. This bill affects us and the entire county.

Thank you for your support of this important measure.

Kit Gage

Kit Gage
Advocacy Director
Friends of Sligo Creek
PO Box 11572
Takoma Park MD 20913
Advocacy@fosc.org
www.friendsofsligocreek.org



CLIMATE COALITION

Montgomery County, MD

To: Montgomery County Council

From: Climate Coalition, Montgomery County

Re: Supporting passage of Bill 40-23, Tree Canopy and Roadside Tree Requirements

The Climate Coalition, Montgomery County is comprised of 20 organizations committed to making change happen with urgency for a livable climate for all. We applaud Council President Glass and Vice President Friedson and Council for introducing Bill 40-23, Tree Canopy and Roadside Tree Requirements. As stated so well in the County's press release about this bill, "Trees are one of the most important natural resources and one of the few truly renewable resources. Tree canopies play a pivotal role in enhancing quality of life and contributing to the well being of residents. A thriving tree canopy reduces air, water and noise pollution, alleviates heat stress and reduces heat islands, and positively impacts physical and mental health outcomes, among other benefits. Protecting the tree canopy will help mitigate climate effects and help Montgomery County reach its ambitious climate goals." Updating the fee for removing trees on roadsides and County right of ways to reflect their current replacement cost is needed to support the County's Climate Action Plan.

Climate Coalition, Montgomery County, MD respectfully requests the Montgomery County Council vote YES for Bill 40-23.

Member organizations include:

350 Montgomery County
ACQ Climate (Ask the Climate Question)
Bethesda Green
Biodiversity for a Livable Climate
Chesapeake Climate Action Network
Elders Climate Action
Environmental Justice Ministry Cedar Lane Unitarian Universalist
Church Environmental Study Group
Friends of Sligo Creek
Glen Echo Heights Mobilization
Green Sanctuary Committee of the Unitarian-Universalist Church of Silver Spring
Montgomery Countryside Alliance
Montgomery County Faith Alliance for Climate Solutions
One Montgomery Green
Poolesville Green
Safe Healthy Playing Fields
Sugarloaf Citizens' Association
Transit Alternatives to Mid-County Highway Extended/M-83 (TAME)
The Climate Mobilization Montgomery County
Takoma Park Mobilization Environment Committee (TPMEC)
Zero Waste Montgomery County

November 27, 2023

Letter to the Montgomery County Council

Re: Bill 40-23, Tree Canopy and Roadside Tree Requirements - Fee Revisions

Dear Council Members:

The League of Women Voters of Montgomery County, Maryland, (LWVMC) would like to express **our support for Bill 40-23, Tree Canopy and Roadside Tree Requirements - Fee Revisions**. We support the bill's proposed rate increase for tree replacement fees paid to the Street Tree Planting Fund and to the Tree Canopy Conservation Account to reflect inflation.

These programs are important for the county's tree conservation efforts, to help maintain a healthy supply of trees and forests, and to meet Montgomery County's broader environmental goals. Trees are important not just aesthetically but to help fight climate change and create livable, healthy communities. The League of Women Voters of the United States believes that as citizens of the world, we must protect our planet from the physical, economic, and public health effects of climate change while also providing pathways to economic prosperity.

However, we do have a recommendation we hope the Council will consider before acting on this bill. **We propose that a statement be added to this legislation establishing a timetable for how often the tree replacement rate should be reviewed.** Considering this bill comes a decade after the original fee agreement was made, we believe including a timetable will ensure prompter reevaluations of the Street Tree Planting Fund and the Tree Canopy Conservation Account in the future.

Thank you for providing the public with this opportunity to give input on this bill and for using the tools of county enforcement programs to promote environmental sustainability.

Susan Albertaine
President



Position: SUPPORT

Date: November 28, 2023

Contact: Anna Mudd, Potomac Conservancy

Earlier this year, the Montgomery County Council unanimously voted to strengthen its Forest Conservation Law ([Bill 25-22](#)), which will guarantee that more forests are protected in Montgomery County. That historic legislation helped to not only further protect our forests, but in doing so, also supports clean air, wildlife habitat, responsible climate preparedness, and safe streams and drinking water for the citizens of Montgomery County. Now the County Council has a chance to reaffirm its commitment to protecting the County's tree canopy by supporting Council [Bill 40-23](#), which will revise the required fees associated with the replanting of trees under the Roadside Tree Protection Law and the Tree Canopy Law.

Under the County's current Roadside Tree Protection Law, a permittee who removes a tree in the County's right of way generally must replant and/or pay a fee into the Street Tree Planting Fund. Similarly, under the County's Tree Canopy Law, an applicant for a sediment control permit must plant shade trees and/or pay a fee into the Tree Canopy Conservation Account. The fees associated with these laws were last set approximately ten years ago and have not been updated since that time. The current structure for each of the fees is woefully inadequate and does not reflect the actual costs of tree purchasing, planting, and maintenance. The structure also does not currently adjust for the cost of inflation. The purpose of the bill is to provide for a fee structure that is equal to the cost of purchasing, planting, and maintaining new trees and to provide for biannual cost updates based on inflation.

A recent study published by the Harry R. Hughes Center for Agro-Ecology found that [Maryland experienced a net statewide forest loss of more than 19,000 acres from 2013 through 2018](#). Tree canopy loss to development and forest fragmentation - particularly in growing suburban counties, including Montgomery County - remain significant. But while there is still much work to be done, increasing fees to cover the actual costs of replanting and maintaining trees is a timely, meaningful action the County Council can take that is rooted in common sense.

The Montgomery County Forest Coalition is comprised of many organizations who have partnered together with a goal of supporting the County's Forest ecosystems and tree canopy. We applaud Council Vice President Friedson and Council President Glass for introducing this bill and the members of the County Council for unanimously co-sponsoring this bill. As stated so well in the bill press release, "Trees are one of the most important natural resources and one of the few truly renewable resources. Tree canopies play a pivotal role in enhancing quality of life and contributing to the well being of residents. A thriving tree canopy reduces air, water and noise pollution, alleviates heat stress and reduces heat islands, and positively impacts physical

and mental health outcomes, among other benefits. Protecting the tree canopy will help mitigate climate effects and help Montgomery County reach its ambitious climate goals.”

For these reasons, **we respectfully request the Montgomery County Council vote YES for Bill 40-23.**

Amanda Farber
Advocacy Committee
Conservation Montgomery

Jeanne Braha
Executive Director
Rock Creek Conservancy

Anna Mudd
Senior Director of Policy
Potomac Conservancy

Caroline Taylor
Executive Director
Montgomery Countryside Alliance

Denisse Guitarra
MD Conservation Advocate
Nature Forward

Theodore L. Garrett
President
Bannockburn Citizens Association

Matt Stegman
MD Staff Attorney
Chesapeake Bay Foundation

Linda Schade
Montgomery County Executive Committee
Sierra Club

Kim Coble
Executive Director
Maryland League of Conservation Voters

Doug Boucher
Board Member
Poolesville Green

Kit Gage
Board Member
Friends of Sligo Creek

***The MoCo Forest Coalition is made up of the following member organizations:**

[Nature Forward](#), [Potomac Conservancy](#), [Chesapeake Bay Foundation](#), [Friends of Sligo Creek](#), [Conservation Montgomery](#), [Sierra Club Montgomery County](#), [Defensores de la Cuenca](#), [Friends of Ten Mile Creek & Little Seneca Reservoir](#), [Montgomery Countryside Alliance](#), [Rock Creek Conservancy](#), and [MoCo Stormwater Partners Network](#)

November 27, 2023

Hon. Evan Glass
President, Montgomery County Council
100 Maryland Ave
Rockville, MD 20850

Re: Bill 40-23, Tree Canopy and Roadside Tree Requirements - Fee Revisions – Support with Amendments

Dear President Glass and Council Members:

The Maryland Building Industry Association (MBIA) is submitting testimony in response to Bill 40-23, which seeks to adjust the current fee for removing roadside county trees to reflect the cost of the tree as well as the environmental impact of the removal. The industry appreciates the intent of the legislation and acknowledges the changing market since the program's inception. It is a great program that the county offers, which many of our members and clients take advantage of and we want to make sure it is able to continue in a sufficient manor.

However, we do have concerns about the increase amount proposed. This is a major increase for most builders who cannot meet the required planting ratio based on square footage. Most already pencil in the max fee in lieu (FIL) cost which is \$3,700 and this is not including street trees, the new figure is now \$7,400 to the cost of a home.

We are proposing the below amendments to Bill 40-23:

- \$350 for the first year and then \$450 for the second year
- Followed by subsequent increases based on the lower of the CPI index vs a competitive rebid

This is necessary since many builders already have signed contracts under the existing fee over the next twelve months, also easing the burden of the fee increase and allowing builders/applicants to prepare.

The industry appreciates the opportunity to provide feedback on Bill 40-23 and would ask respectfully that the council consider these amendments to the proposal. Should you have any questions, please do not hesitate to reach out with any questions or concerns.

Sincerely,

Griffin Benton

To: Members of the County Council

From: Anne W. Coventry

Date: November 27, 2023

Re: Bill 40-23, Tree Canopy and Roadside Tree Requirements - Fee Revisions

Many thanks to Council Vice President Friedson and Council President Glass for introducing Bill 40-23 in recognition of the importance of our tree canopy and the need to adjust the fees for removing or failing to plant shade trees. I understand that the bill proposes to increase the fees commensurate with the actual cost of purchasing, planting, and maintenance, and that it will include an inflation adjustment.

I am in favor of this adjustment, and I hope you will vote in favor of it. However, it does not nearly go far enough, and the work on this issue will not be finished when you pass this bill.

The absence of a tree, where there ought to be a tree, is vastly more expensive to our community, collectively, than just those dollars that it would have cost to buy, plant, and maintain that absent tree. As you know, the loss of our canopy has dire consequences--urban heat island effect; health detriments; climate change; etc. Obviously, this is why you're considering fee adjustments. A few hundred dollars, however, is inadequate deterrent to alter the behavior of those who stand to profit--exponentially--from the absence or removal of the trees.

I live in the historic Wyngate neighborhood, in a home built in 1957, one of many very similar to it, all originally with healthy-sized front and back yards. I'm told that the first owner of my home, DC Superior Court Judge Joseph M. Hannon (a veteran of WWII and the Korean War), may be credited for arranging to have all the (now quite mature) cherry trees put in that line my street and many others in my neighborhood, which make the area look like a fairy land each spring. Unfortunately, we routinely see these family homes with healthy yards knocked down by developers, to be replaced with much larger homes, each with a footprint too big for its property--eating up the yard and leaving no room for healthy root systems of shade trees. They're required to plant or preserve trees, but they don't--instead, they simply pay a few extra dollars. Why? Because they can sell unnecessarily large homes for hundreds of thousands of dollars more than they could a home that's more reasonably sized for the lot (one that would have allowed room for the healthy root systems of shade trees). Unless the fines for failure to plant or preserve shade trees are sufficiently painful to deter this behavior, we will lose our canopy in Wyngate; it's just a question of how soon. The only thing we'll have to compensate our community for it is the few extra dollars in the Tree Canopy Conservation Account. That's better than not having the dollars, but it really won't suffice.

I do hope that you will pass the law, but more than that, I hope you won't think that passing this law resolves the problem.

Tree Canopy Conservation Account Revenues and Balance, and Tree Montgomery Expenditures and Plantings by Fiscal Year

| Fiscal Year | FY14* | FY15 | FY16 | FY17 | FY18 | FY19 | FY20 | FY21 | FY22** | FY23 | Total |
|----------------------------------|--------------|-------------|-------------|--------------|--------------|--------------|--------------|--------------|---------------|--------------|--------------|
| Fees Deposited as Mitigation | \$ 11,000 | \$ 509,250 | \$ 676,525 | \$ 703,249 | \$ 819,250 | \$ 847,000 | \$ 496,000 | \$ 594,000 | \$ 807,250 | \$ 654,250 | \$ 6,117,774 |
| Funds Spent by Tree Montgomery | - | \$ 27,096 | \$ 253,219 | \$ 379,655 | \$ 351,672 | \$ 243,697 | \$ 454,803 | \$ 776,548 | \$ 717,397 | \$ 1,496,766 | \$ 4,700,853 |
| Tree Canopy Account Balance | \$ 11,000 | \$ 493,154 | \$ 916,460 | \$ 1,240,054 | \$ 1,707,632 | \$ 2,310,935 | \$ 2,352,132 | \$ 2,169,584 | \$ 2,259,437 | \$ 1,416,921 | *** |
| Trees Planted by Tree Montgomery | - | 47 | 456 | 746 | 814 | 554 | 1,198 | 2,003 | 1,554 | 3,371 | 10,743 |

*FY14 data includes only after March 1, 2014, the effective date of the law.

**One FTE was hired in mid-year to increase capacity. And additional FTE was approved for FY24 and is expected to on-board in January.

*** Based on current rates for revenues and expenditures, we expect to exhaust the balance in the Tree Canopy Conservation Account by the end of FY25.



Montgomery County Tree Canopy Law FY22 Annual Report

This report is prepared pursuant to Section 55-9 of the Montgomery County Code which requires the Departments of Permitting Services (DPS) and Environmental Protection (DEP) to jointly submit an annual report on the “County shade tree planting program” established as required by the Montgomery County Tree Canopy Law. This FY22 report reflects activities and data from the effective date of the law on March 1, 2014 through June 30, 2022.

Background

The Tree Canopy Law applies to development activity subject to a sediment control permit from Montgomery County, Maryland. In general, activities regulated by the Tree Canopy Law are required to provide mitigation in the form of planting shade trees on the site where the disturbance occurs. Applicants may choose not to plant the required shade trees for any reason and instead pay fees into the Tree Canopy Conservation Account. The fee is \$250 per tree, equal to rate for bonding trees in the right-of-way. The account is a dedicated fund that can only be used to plant and establish shade trees. DPS is responsible for implementing the Tree Canopy Law and DEP is responsible for implementing tree planting utilizing the funds in the Tree Canopy Conservation Account, as well as outreach programs and staffing utilizing general funds. Exemptions from the Tree Canopy Law include activities required to mitigate under the Forest Conservation Law. The Cities of Rockville and Gaithersburg issue their own sediment control permits therefore are not subject to such County permits or the Tree Canopy Law. Only five other fourteen jurisdictions have adopted the Law.

Tree Montgomery Program

Tree Montgomery is a program to plant shade trees and raise awareness of environmental concerns. The program emphasizes the wide array of benefits of shade trees by installing them, for free, on private property, HOA lands, multifamily properties, congregations, businesses, public and private schools, and county facilities. This program meets the requirements of Section 55-10 of the County Code to utilize the funds in the dedicated Tree Canopy Conservation Account.

Analysis and Outcomes

Implementation of both the Tree Canopy Law and Tree Montgomery program continues as anticipated. Through the end of FY22, \$5,463,524 has been deposited cumulatively into the Tree Canopy Conservation Account, the total appropriation through the budget process was \$3,650,000, and the expenditures for shade trees installed by Tree Montgomery were \$3,204,088. The cost per shade tree includes the tree, installation, deer protection, and a 2-year aftercare package for about one-third of the trees. The average cost per shade tree for all years combined was \$436, while the fee paid for a mitigated tree remains at \$250. The program remains popular, and tremendous growth is anticipated for the next several years.

Summary

Through the end of FY22, Tree Montgomery has planted 7,372 shade trees. Evaluation of these plantings during the last eight years indicate the following facts.

- \$5,463,524 was paid into the Tree Canopy Account and \$3,204,088 of the Tree Canopy Account was spent on planting and establishing shade trees (Figure 1).
- 15.5% of trees planted are in Bethesda and Chevy Chase and 25.1% are in Silver Spring (Figure 4).
- Tree mortality remains low at 5.7% based on triennial inspections of all trees installed since 2015.
- 48 different tree species were planted, 96% were native to the mid-Atlantic or southeastern United States and 86% of those installed were native to Montgomery County.
- The most commonly planted species was red maple at 11%, the most commonly planted family was *Fagaceae* at 24% including both red and white oaks; widely accepted guidelines for taxonomic diversity of shade tree species were followed (Figure 5).
- Shade tree plantings through Tree Montgomery provided more than 56.53 acres of equivalent area credits toward the County's Municipal Separate Storm Sewer System (MS4) permit requirements.
- Two to four shade trees were typically installed at each single-family property.
- 54% of all applications received and processed result in at least one shade tree planting.
- By December 31, 2022, more than 6,383 applications had been received including 928 in FY22.
- As of December 31, 2022, 2,302 separate properties received at least one shade tree through the Tree Montgomery (Figure 7) with each property receiving several interactions with tree experts including on property visits, phone calls, and numerous emails throughout the process of receiving their trees.
- Equity target areas received a slightly greater percentage of tree plantings per county area (Figure 8).

Analysis of sediment control permits from FY14-FY22 indicate:

- Sediment control permits with limits of disturbance of up to 12,000 sq ft accounted for:
 - 63% of all SC permit applications.
 - 55% of all mitigation fees paid.
 - 51% of all mitigation required.
- 12% of all SC permits proposed to install at least one tree.
- At the time of application, applicants of SC permits proposed to install 13% of all mitigation trees required.

The first eight years of planting shade trees has allowed for many updates and improvements to the Tree Montgomery program. Some of the highlights include the following.

- As procedures by the DEP team, as well as the planting and inspecting contractors, continue to be refined for efficiency, and with the addition of a second program manager, the capacity of the Tree Montgomery program has expanded to installing double the number of trees compared to last year.
- Outreach and education are conducted on a one-to-one basis as applicants are given the time and assistance needed to make thoughtful decisions about tree placement and species.
- Efforts continue to foster a close working relationship with the tree planting and inspecting contractors to ensure high quality trees, installations, and interactions with applicants receiving trees.
- The backlog of applications was resolved. All applications are processed within 6 to 12 months of receipt. Given the seasonal nature of planting and sites visits, this is the targeted timeframe.
- Two grants were received for FY23 plantings through Tree Montgomery to supplement the efforts to increase canopy. Two additional grant applications were submitted to supplement FY24's efforts.
- The overall Tree Montgomery program will expand beyond the minimum requirements of the Tree Canopy Law in FY23.

Figure 1. Sediment Control Permits Subject to the Tree Canopy Law, Funds Spent, and Trees Planted

| | FY14* | FY15 | FY16 | FY17 | FY18 | FY19 | FY20 | FY21 | FY22 | Total |
|--|--------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Approved Permits | 178 | 501 | 525 | 479 | 351 | 337 | 261 | 282 | 376 | 3,290 |
| Approved Permits Subject to Mitigation | 13 | 211 | 292 | 366 | 262 | 250 | 194 | 192 | 257 | 2,037 |
| Trees, Total Required as Mitigation | 106 | 2,291 | 3,383 | 4,162 | 3,598 | 3,463 | 2,399 | 2,131 | 3,155 | 24,688 |
| Trees, Planted as Mitigation | 44 | 196 | 487 | 520 | 433 | 467 | 408 | 259 | 482 | 3,296 |
| Trees for which Fees were Paid as Mitigation | 62 | 2,095 | 2,896 | 3,642 | 3,165 | 2,996 | 1,991 | 1,872 | 2,673 | 21,392 |
| Value of Fees Paid as Mitigation | \$15,500 | \$523,750 | \$724,000 | \$910,500 | \$791,250 | \$749,000 | \$497,750 | \$468,000 | \$668,250 | \$5,348,000 |
| Fees Deposited as Mitigation | \$11,000 | \$509,250 | \$676,525 | \$703,249 | \$819,250 | \$847,000 | \$496,000 | \$594,000 | \$807,250 | \$5,463,524 |
| Funds Spent by Tree Montgomery | - | \$27,096 | \$253,219 | \$379,655 | \$351,672 | \$243,697 | \$454,803 | \$776,548** | \$717,397 | \$3,214,960 |
| Trees Planted by Tree Montgomery | - | 47 | 456 | 746 | 814 | 554 | 1,198 | 2,003 | 1,554 | 7,372 |

*FY14 data includes only after March 1, 2014, the effective date of the law.

**Corrected from prior year.

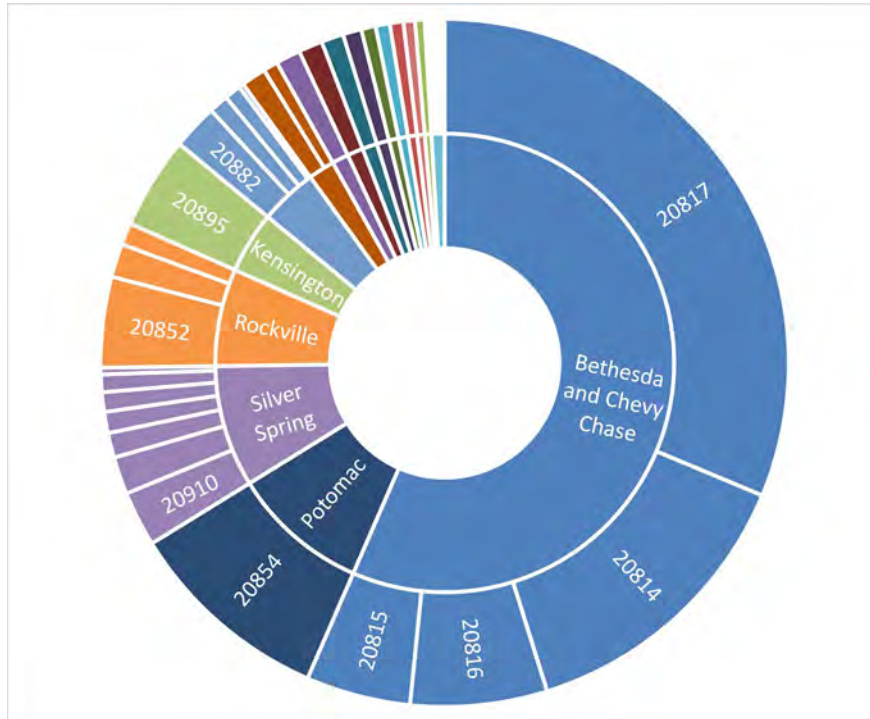
Figure 2. Trees Planted by Applicants and Fee Payments by Area of Disturbance FY14– FY22

| Limit of Disturbance (sq. ft.)* | Permits Subject to Mitigation | Mitigation Required (Total Trees) | Applicants Who Planted Trees | Number of Trees Planted by Applicants** | Applicants Paying Fees | Trees for Which Fees Were Paid | Fee Payments |
|--|--------------------------------------|--|-------------------------------------|--|-------------------------------|---------------------------------------|---------------------|
| 0-6,000 | 257 | 4,311 | 33 | 618 | 250 | 3,693 | \$923,250 |
| 6,001-8,000 | 375 | 2,288 | 17 | 55 | 373 | 2,233 | \$558,250 |
| 8,001-12,000 | 654 | 5,873 | 32 | 116 | 652 | 5,757 | \$1,439,250 |
| 12,001-14,000 | 148 | 1,758 | 12 | 88 | 145 | 1,670 | \$417,500 |
| 14,001-40,000 | 476 | 7,119 | 93 | 1,065 | 427 | 6,054 | \$1,513,500 |
| >40,000 | 127 | 3,339 | 67 | 1,354 | 84 | 1,985 | \$496,250 |
| Total | 2,037 | 24,688 | 254 | 3,296 | 1,931 | 21,392 | \$5,348,000 |

*Limit of disturbance data is from approved Sediment Control Permits. Categories of area of limit of disturbance correspond with those outlined in the Tree Canopy Law.

**The number of applicants planting trees plus the number of applicants paying fees may exceed the number of applicants subject to the law because some applicants satisfy their mitigation requirement through a combination of planting and paying the fee.

Figure 3. Fees Paid by Zip Code, FY14 – FY22



Redevelopment of small lots down county was a significant portion of the sediment control permits requiring mitigation. Total applications for sediment control permits with small disturbances, or those less than 12,000 sq ft of disturbance, accounted for 66% of all permit applications and 55% of all mitigation required.

Figure 4. Trees Planted by Tree Montgomery by Zip Code, FY15 – FY22



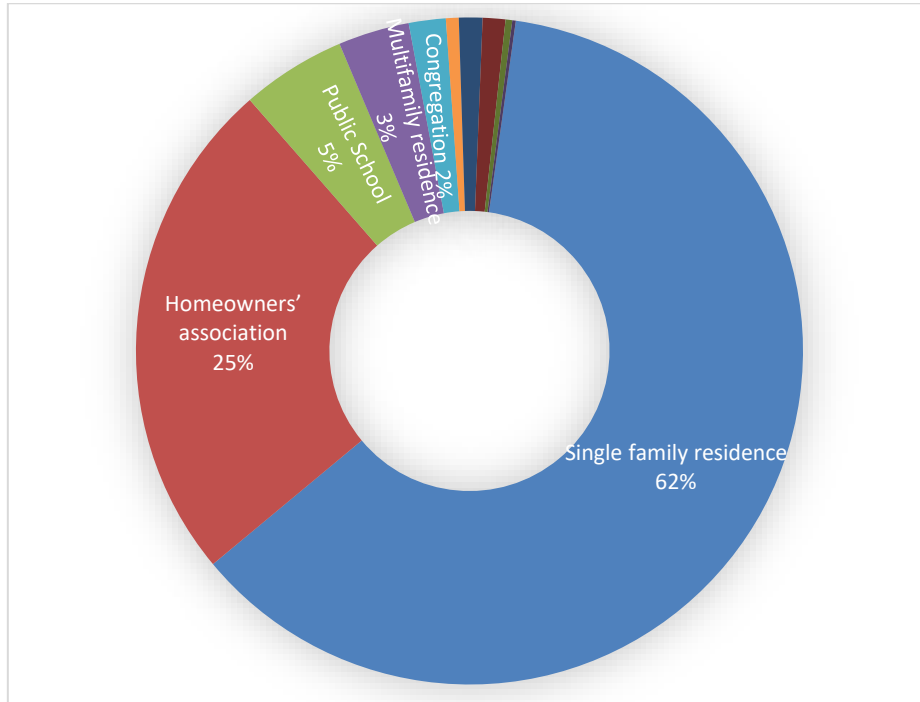
The Tree Canopy Law requires prioritizing planting efforts in areas where development occurs. Therefore, 10% of the trees planted by Tree Montgomery are in the two zip codes with the most development activity. They are 20814 and 20817.

Figure 5. Tree Species and Families Planted by Tree Montgomery in FY15 – FY22



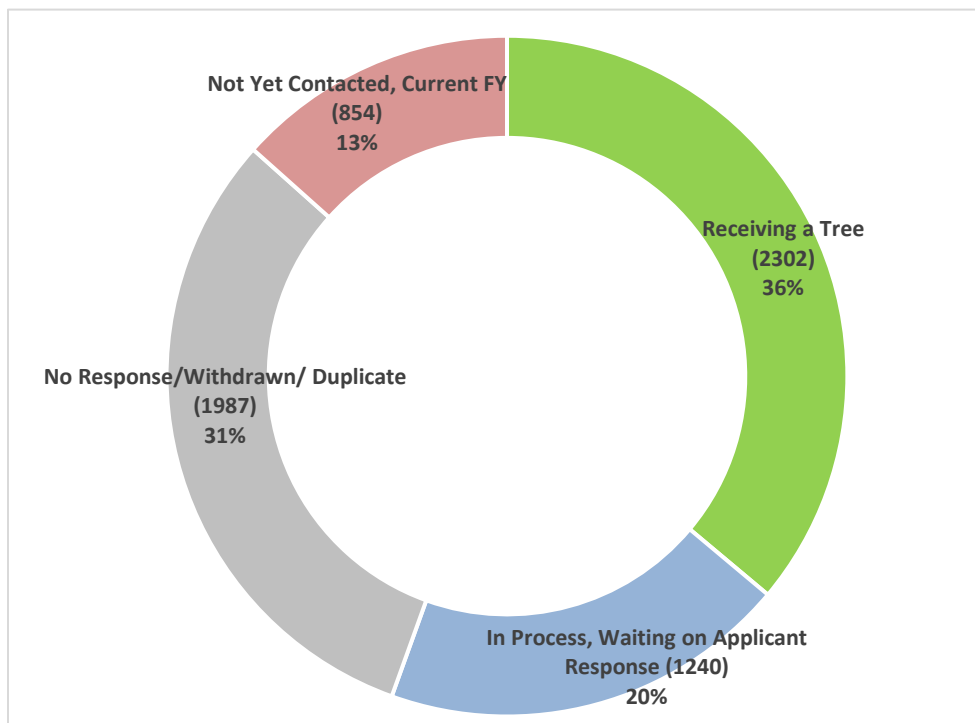
To maintain a diverse population of tree species, widely accepted industry guidelines suggest that no more than 30% of new plantings should be in the same taxonomic family, no more than 20% in the same genus, and no more than 10% in any one species. The most commonly planted family was *Fagaceae* (oaks and beech) at 24%, the genus was *Quercus* (oaks) at 24%, and the species was red maple at 11%. Additionally, only 4% of the trees planting were not native to the mid-Atlantic or southeastern United States.

Figure 6. Trees Planted by Tree Montgomery by Property Type, FY15 – FY22



Tree Montgomery's goals include establishing canopy on private property. 93% of all shade trees planted were installed on residential land. Given the number of multifamily residences and HOA lands receiving trees, the plantings will provide benefits to many families in these communities.

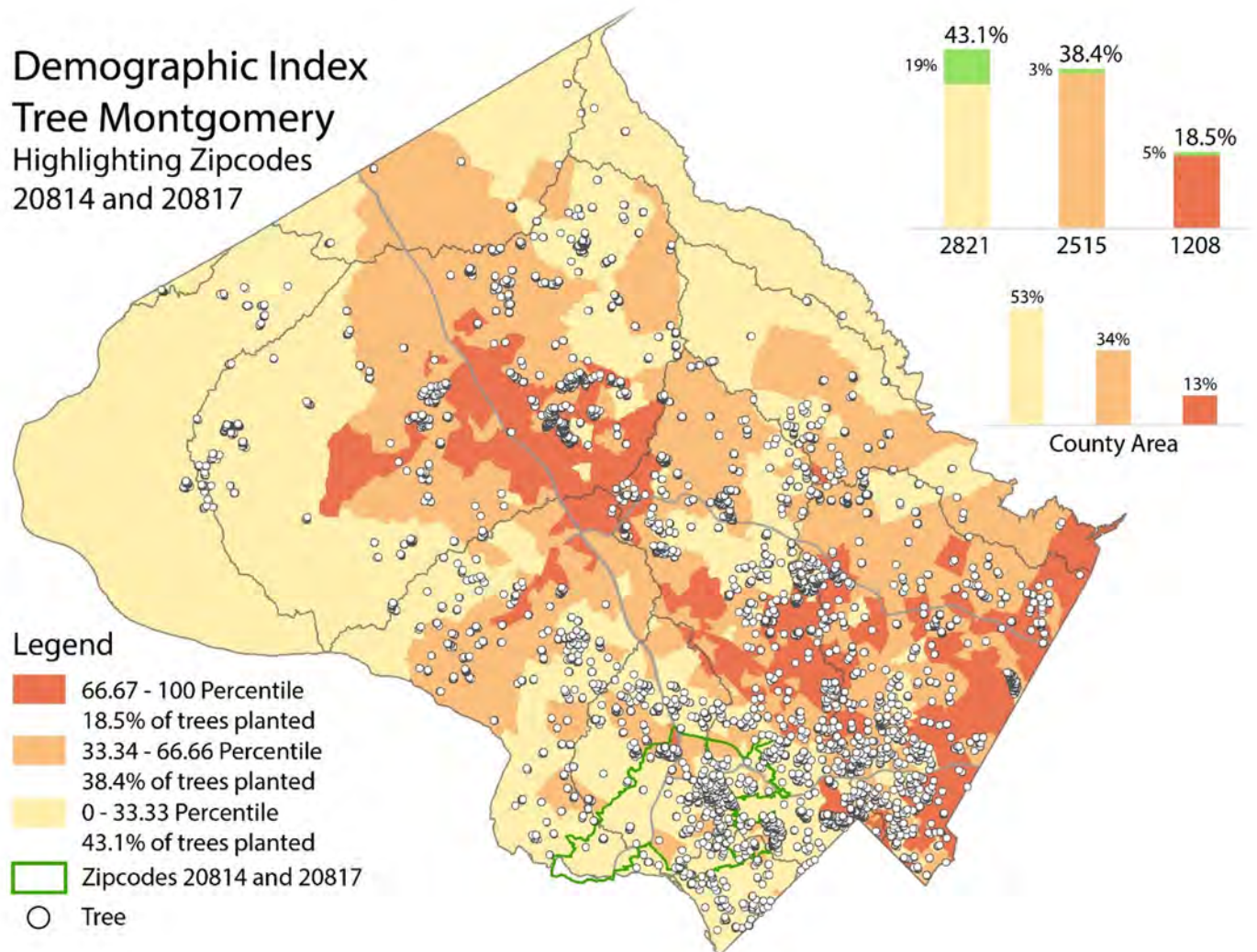
Figure 7. Total Applications Received, by Status, as of Dec 31, 2022



In the last year, the percentage of total applications not yet contacted decreased from 19% to 13% and the wait list was eliminated. Applicants are typically contacted within 6 to 9 months from the time they apply and are able to receive trees during the next planting season.

A total of 2,302 unique properties have received at least 1 shade tree, including 352 unique properties in FY22.

Figure 8. Demographic Index Showing all Trees Planted, FY15 – FY22



The shade tree plantings by Tree Montgomery closely align with the demographic index. Approximately 13% of the Montgomery County was in the 0—33 percentile and 18.5% of the trees planted were in these areas. Likewise, 34% of the County was in the second percentile with 38.4% of all trees planted were in these areas. Two zip codes, 20814 and 20817 (outlined in green), were prioritized for plantings due to requirements in the Tree Canopy Law. Figure 4 shows that 10% of all trees planted were in these two zip codes which is largely in the 66—100 percentile. The equity map and additional information index is available here: <https://mcgov-gis.maps.arcgis.com/apps/webappviewer/index.html?id=b91f22ed03e044bd9489e64d9bcc1471>.