



County of Fairfax, Virginia

MEMORANDUM

DATE: 12/19/2022

TO: Board of Supervisors

FROM: Stella Koch, Chairman
Stella M. Koch
Environmental Quality Advisory Council

SUBJECT: Tree Conservation Code's Exemption of Linear Projects

The Environmental Quality Advisory Council (EQAC) share the concerns regarding loss of tree canopy due to linear projects as highlighted in the Tree Commission's memo to the Board of Supervisors on December 14, 2022 (attached).

EQAC supports the requests that advise:

1. That the Board of Supervisors direct the County Attorney to reexamine the exemption of linear projects from Chapter 122 of the Tree Conservation code and whether that is required by Virginia code.
2. If, as expected, the exemption is not legislatively mandated by Virginia code, that relevant agencies be directed to include in linear project planning an accounting of the mature trees that could be affected by the project, to what extent they can and will be protected and whether new trees plantings will be feasible and included, and if not, to require payment into the Tree Fund.

We look forward to learning more about this important issue.

Attachment: Memorandum from Fairfax County's Tree Commission, Tree Conservation Code's Exemption of Linear Projects

cc: Cindy Speas, Tree Commission Chair
Fairfax County Planning Commission
Department of Planning and Development
Urban Forestry Management Division, DPWES
Barbara Byron, staff support to Chairman McKay
Camela Speer, staff support to Supervisor Storck



The Fairfax County Tree Commission
12055 Government Center Parkway, Suite 518
Fairfax, Virginia 22035
703.324.1770

December 14, 2022

Jeffrey McKay, Chairman
Dan Storck, Environmental Committee Chairman
Members, Fairfax County Board of Supervisors
12000 Government Center Parkway
Fairfax, VA 22035

Sent by email to: clerktothebos@fairfaxcounty.gov

Tree Conservation Code's Exemption of Linear Projects

Dear Chairman McKay, Supervisor Storck, and members of the Fairfax County Board of Supervisors:

One of the biggest issues to come before the Tree Commission recently has been the deep dismay expressed by county residents who have watched mature trees in their neighborhoods be clear-cut for various development projects. Some of these are by right infill projects, but a fair number are defined as linear projects, or those that involve roads (VDOT and FDOT), trails or non-county stream restoration work. The Tree Conservation [Chapter 122-2-1\(b\)](#) of the county code states that "... land development **does not include** ... construction of trails, sidewalks, sanitary sewers, storm sewers, and other public improvements of a linear nature not included as part of a larger common plan of development; and, other land disturbing activities that present a minor threat to existing tree resources as determined by the Director."

The Tree Commission has assumed that eliminating such linear projects from the Tree Conservation Code mirrors a requirement in Chapter 15 of the Virginia state code on tree Conservation. If true, this would bring up Dillon rule issues and require a legislative solution to the problem. However, we have recently been advised that [Section 15.2-961.1](#) does not contain a specific exemption for linear projects. Thus, it seems this may be a topic that can and should be discussed at a county level for possible change, without having to ask the General Assembly for permission. Since the Tree Commission does not provide legal advice, it asks that the County Attorney review and confirm whether or not this exemption can be amended or removed by the Board of Supervisors.

Additionally, the [Public Facilities Manual's section 12-303.1A](#) reflects the code with the following language:

Grading plans associated with ... minor site plans and public improvement plans for trails, sidewalks, sanitary and stormwater pipes installation, or other development scenarios that

present a minor threat to existing tree resources, or other public improvement **projects of a linear nature are not required to include an Existing Vegetation Map, Tree Preservation Target Calculations and Narrative, 10-year Tree Canopy calculations, Tree Inventory and**

Condition Analysis, and Tree preservation plan and narrative. A. All minor land development scenarios and public improvement plans of a linear nature must address applicable submission requirements of § [12-0304](#) and § [12-0305](#). [Sections 12-0304 and 12-0305 have to do with Site Engineering and Erosion and Sediment Control.] At a minimum these plans must take reasonable steps to maximize the preservation of existing vegetation by addressing basic tree preservation plan elements and measures that include: minimizing soil disturbance to only that necessary to construct the project; providing proposed limits of clearing; providing an accurate treeline; and providing tree protection devices at the limits of clearing.

These PFM requirements are the same as for any development project—once there is an approved design, then 12-0304 and 12-0305 requirements must be followed. But it is clear that for any linear project, there is no requirement for a Tree Conservation plan.

In the past few years, the Tree Commission has been contacted by residents about the impact of various linear projects on our urban forest. Supervisors often hear these same concerns from their constituents. Here is a partial list of residents’ concerns in various districts that have come to our attention:

- Cinder Bed Bike Trail, Franconia District;
- VDOT multi-modal transportation project, Braddock Road, Braddock District;
- Removal of mature trees in the VDOT right of way by developers along Georgetown Pike, Dranesville District;
- Upgrade of utilities and road straightening at Old Courthouse Road, Hunter Mill District;
- Shirley Gate Road extension, Braddock District;
- Removal of healthy neighborhood street trees, Dranesville District;
- Omission of significant street tree planting as part of the Embark revitalization project, Mt. Vernon District;
- Rt. 7 road widening from Tysons to Leesburg, Dranesville and Sully Districts; and
- Excessive tree removal for a stream bed restoration project on Little Pimmit Run, Dranesville District.

Although all of these linear projects are/were under the purview of different county agencies, state agencies, or public utilities, they all have the following in common—the wholesale loss of mature trees, the widespread visibility of that loss to the public, and the fact that there is no ordinance that


requires the tree canopy losses to be replaced, either on site, on another site, or with a payment into the Tree Fund.

Recommendations: In this era where it is critically important to preserve mature trees in our urban forest to mitigate climate change and help residents adapt to its effects, we must take every opportunity to stop doing business as usual and find as many ways as possible to protect our environment, our ecosystems, and our residents' quality of life. The Tree Commission understands that it may not be feasible to protect mature trees or include new tree plantings in every linear project. However, completely exempting agencies from even having to consider how to protect mature trees and whether to plant new trees in linear projects is not in the county's best interests. Accordingly, we advise:

1. That the Board of Supervisors direct the County Attorney to reexamine the exemption of linear projects from Chapter 122 of the Tree Conservation code and whether that is required by Virginia code.
2. If, as expected, the exemption is not legislatively mandated by Virginia code, that relevant agencies be directed to include in linear project planning an accounting of the mature trees that could be affected by the project, to what extent they can and will be protected and whether new trees plantings will be feasible and included, and if not, to require payment into the Tree Fund. We look forward to your feedback on this issue.

Thank you for your consideration of our recommendations and your support of our urban forest.

Sincerely,

DocuSigned by:

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Cindy Speas, Tree Commission Chair

cc: Stella Koch, Environmental Quality Advisory Council Chair
Fairfax County Planning Commission
Department of Planning and Development
Urban Forestry Management Division, DPWES
Barbara Byron, staff support to Chairman McKay
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