

**MEMORANDUM**

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Action:** Bill 34-09, Forest Conservation - Enforcement

**Transportation, Infrastructure, Energy and Environment Committee recommendation: enact with amendments (2-0, Councilmember Berliner absent).**

Bill 34-09, Forest Conservation - Enforcement, sponsored by the Council President at the request of the Planning Board, was introduced on October 6, 2009. Bill 34-09 would amend the forest conservation law to modify the number of required inspections and the pre-inspection notice period. It would also revise the notice and hearing procedures for violations of the law.

A public hearing was held on this Bill on November 24, along with the companion Zoning Text Amendment 09-09 and Subdivision Regulation Amendment 09-03. The only speakers were Planning Board Chair Royce Hanson and attorney David Brown, who both supported this Bill, and civic activist Judith Koenick, who questioned certain activities of the Planning staff. Former County Sierra Club chair Anne Ambler also supported the Bill (see her email on ©31). A Transportation, Infrastructure, Energy and Environment Committee worksession was held on January 14.

**Background/Summary**

The Regional District Act (Maryland Code, Article 28, §7-111(h)(1), shown on ©32) authorizes the Planning Board, “to the extent authorized by county law, ordinance, or resolution”, to “administer and enforce any adopted ... forest conservation program.” Another provision of the Regional District Act (Article 28 §7-116(h)(5), shown on ©33) specifies that violations of the County forest conservation law must be enforced “in accordance with” the state and County forest conservation laws, rather than under the procedures used to enforce County zoning and subdivision laws.<sup>1</sup>

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<sup>1</sup>Procedures to enforce the zoning and subdivision laws are the subject of pending Subdivision Regulation Amendment 09-03 and Zoning Text Amendment 09-09, described in the Planning Board testimony on ©21-24.

The primary enforcement provision of the state forest conservation law (Maryland Code, Natural Resources Article, §5-1612, shown on ©34-35) authorizes the County, “in addition to any enforcement provisions available to the” County, to revoke approved forest conservation plans, issue stop work orders, or impose “a penalty not exceeding \$1000 which may be recovered in a civil action brought by” the County (including the Planning Board acting on behalf of the County). “The court” (presumably the court hearing the civil action) may also “issue an injunction requiring the person to cease the violation and take corrective action to restore or reforest an area.” A different provision (Natural Resources Article, §5-1608(c)) directs the County to assess a penalty of 30¢/square foot of the area in noncompliance with applicable forest conservation laws and standards, to be paid into the County forest conservation fund.<sup>2</sup>

Finally, the state forest conservation law<sup>3</sup> directs counties to adopt forest conservation programs that meet or are “more stringent than” the state law’s “requirements and standards”.

The current County forest conservation law, which the state Department of Natural Resources (DNR) has accepted as conforming to the state law, includes provisions that:

- impose civil and criminal penalties for violations of the law, with a maximum fine of \$1000 (see ©4, lines 72-76);
- allow the Planning Board to impose an administrative civil penalty up to an amount set by County law or Council resolution (see ©7-8, lines 159-180);
- let the Planning Board bring a civil or criminal court action to enforce the law (see ©5, lines 82-91);
- authorize the Planning Board to issue stop-work and corrective orders (see ©11-12, lines 254-269); and
- authorize the Planning Board to initiate and hear administrative enforcement actions (see ©13-15, lines 313-357).

### **Issues/Committee recommendations**

#### **1) Would the supplemental enforcement process envisioned in this Bill conflict with state enabling laws?**

The basic question regarding the state enabling laws (the Regional District Act and the state forest conservation law, both summarized above) is whether they authorize the County, in enacting and amending a “more stringent” County forest conservation law, to use other enforcement procedures besides those specified or referred to in the state forest conservation law.

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While the procedures proposed in the companion SRA and ZTA are similar to those proposed in this Bill, the legal issues are not identical because the relevant state enabling laws are different.

<sup>2</sup>The Council by resolution has set higher penalty amounts – \$9/square foot penalty for violations of the law, and 30¢/square foot for the fee in lieu of reforestation. See Council Resolution 15-1271 (adopted December 13, 2005).

<sup>3</sup>See Maryland Code, Natural Resources Article, §§5-1603(a)(2), 5-1603(c).

At the public hearing neither the County Executive nor the County Attorney testified, but in an earlier memo (see ©26-27) the County Attorney's Office questioned whether some elements of the Bill are consistent with state enabling laws. Planning Board legal staff responded to the County Attorney (see ©28-30) by explaining the Bill's goals but did not directly address the state law issues the County Attorney raised, preferring to do so at the Committee worksession.

Council staff concluded that the issues raised by the County Attorney, articulated in the memo from Associate County Attorney Spicer on ©26-27, are logical but don't take into account the authority given the County in the state forest conservation law to adopt a "more stringent" enforcement program. The state DNR's approval of the current County forest conservation law, which goes further than the barebones state enforcement process in several respects, indicates that the enforcement provisions in the state law are intended to be a starting point, rather than a straight-jacket. The County Attorney's concerns can be ameliorated if relevant parts of this Bill are clarified to differentiate the proposed notice of violation, citation, and hearing process from the customary civil and criminal citation process referred to in County Code §§1-18 through 1-20. In particular, the term "citation" could be distinguished from the kind of citation that is normally heard in District Court by calling it an "administrative citation". As the Committee authorized, Council staff worked with Planning legal staff to draft these clarifying and organizational amendments, which are incorporated in the attached Committee redraft.

## **2) Should enforcement of the County forest conservation law be centered in the Planning Board, rather than the District Court?**

The primary purpose of this Bill is to create a new notice, citation, and hearing process that would shift the hearing of violations of the forest conservation law from the District Court to the Planning Board or a hearing officer designated by the Board (see ©8-11, lines 182-251; ©14-15, lines 328-357). For the Board's reasons to propose this change, see their testimony on ©21-24 and the Planning legal staff's memo on ©28-30.<sup>4</sup> Briefly, the Board argued that, where the District Court can only impose a fine, the Planning Board can resolve all issues related to the violation by working out a compliance program, modifying the underlying plan, or otherwise dealing directly with the merits of the situation. In addition, the Planning Board hearing process would be more transparent because other affected parties besides the alleged violator would be entitled to notice of the proceeding and could testify or comment on the proposed penalties and solutions.

Council staff concurred that this jurisdictional shift is worth trying. We agree with the Planning Board that the ultimate hearing held in District Court is less likely to be sufficiently focused on the substance of the violations and how the respondent can best achieve compliance with the purposes of the law; the Board may be a better forum for both these issues. Because the process proposed in this Bill would supplement, rather than replace, the current enforcement scheme, the Board and County would be free to return to the current procedures if the revised process does not achieve these goals or turns out to have unintended consequences. **Committee recommendation:** approve the Planning Board-centered enforcement process.

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<sup>4</sup>OMB's fiscal impact statement, shown on ©25, estimates an added annual cost of \$36,000 because of sending about 20 more cases to the Hearing Examiner.

This packet contains:

	<u>Circle #</u>
Bill 34-09 with Committee amendments	1
Legislative Request Report	18
Memo from Planning Board	19
Planning Board testimony	21
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Expedited Bill No. 34-09  
Concerning: Forest Conservation - Enforcement  
Revised: 3-11-10 Draft No. 3  
Introduced: October 6, 2009  
Expires: April 6, 2011  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the Planning Board

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**AN EXPEDITED ACT** to:

- (1) amend the forest conservation law to modify the number of required inspections and the notification period for inspections;
- (2) specify the penalty procedures for violations of the forest conservation law;
- (3) modify the hearing procedures for violations of the forest conservation law; and
- (4) generally amend the forest conservation law.

By amending

Montgomery County Code  
Chapter 22A, Forest Conservation  
Sections 22A-15 through 22A-17 and 22A-19 through 22A-21

<b>Boldface</b>	<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:*

1           **Sec. 1. Sections 22A-15 through 22A-17 and 22A-19 through 22A-21 are**  
2 **amended as follows:**

3 **22A-15. Inspections and notification.**

4           (a) *Permission to gain access.* [Authorized representatives of]  
5           Representatives authorized by the Planning [Department] Director may  
6           enter properties subject to this Chapter for the purpose of inspection,  
7           review, and enforcement.

8           (b) *Plan to be on site; field markings.* A copy of the approved forest  
9           conservation plan must be available on the site for inspection by  
10           [authorized] representatives authorized by the Planning Director. Field  
11           markings must exist on site before and during installation of all  
12           protective devices, construction, or other land disturbing activities.

13           (c) *Required inspections.*

14           (1) The Planning Department [should] must conduct [at least 3] 6  
15           field inspections of a [tract subject to an approved forest  
16           conservation plan. The inspections should take place as follows:]  
17           site as specified in this subsection.

18           [(1) The first inspection should take place before any land disturbing  
19           activities (including clearing, grading, or stripping) occurs on the  
20           tract to determine if protective measures have been properly  
21           installed and conservation areas clearly marked;

22           (2) The second inspection should take place following completion of  
23           all land disturbing activities and afforestation or reforestation to  
24           determine the level of compliance with the forest conservation  
25           plan; and

26           (3) The third inspection should take place at the end of the  
27           maintenance agreement 2-year time period.]

28 (2) The Planning Director must [[conduct field inspection of a]]  
 29 inspect each site that is subject to an approved forest conservation  
 30 plan [[as follows]]:

31 (A) after the limits of disturbance have been staked and  
 32 flagged, but before any clearing or grading begins;

33 (B) after necessary stress reduction measures have been  
 34 completed and the protection measures have been  
 35 installed, but before any clearing or grading begins;

36 (C) after all construction activities are completed, to determine  
 37 the level of compliance with the forest conservation plan;

38 (D) before any required reforestation and afforestation planting  
 39 is started;

40 (E) after required reforestation and afforestation have been  
 41 completed, to verify the planting is acceptable and begin  
 42 the maintenance and management period; and

43 (F) at the end of the maintenance and management period, to  
 44 determine the level of compliance with the planting plan  
 45 and, if appropriate, authorize release of financial security.

46 (d) *Other inspections.* The Planning [Department] Director may [conduct  
 47 other] authorize additional inspections or meetings as necessary to  
 48 administer this Chapter], including an inspection to confirm a forest  
 49 stand delineation], including an inspection to confirm a natural resource  
 50 inventory and forest stand delineation.

51 (e) *[Required notifications] Scheduling requirements for forest*  
 52 *conservation and tree save plan inspections.* A person must request an  
 53 inspection by the Planning Director at least 7 days before the required  
 54 date of the inspection under subsection (c).

- 55 [(1) At least 2 working days before starting any land disturbing  
56 activities associated with the forest conservation plan, a person  
57 must notify the Planning Department. The Planning Department  
58 must coordinate its inspections, and any pre-construction  
59 conferences, with the Department of Permitting Services to avoid  
60 inconsistent directives in the field relating to the forest  
61 conservation plan and sediment control activities.
- 62 (2) At least 2 working days before completion of afforestation and  
63 reforestation plantings, a person must notify the Planning  
64 Department so that the Department may schedule the second  
65 inspection specified under paragraph (c)(2) of this Section.]
- 66 (f) Coordination. The Planning Department must coordinate its  
67 inspections, and any pre-construction conferences, with the  
68 Department of Permitting Services to avoid inconsistent activities  
69 relating to the forest conservation plan and sediment control  
70 reviews.

71 **22A-16. Penalties and other remedies.**

- 72 (a) *Class A violation.* [Violation] Any violation of this Chapter or any  
73 regulations adopted under it is a Class A civil [[or criminal]] violation.  
74 [Notwithstanding Section 1-19, the] The maximum civil fine is \$1,000.  
75 Each day a violation continues [is] may be treated as a separate  
76 violation under this Chapter.
- 77 (b) *Enforcement authority.* The [[Maryland-National Capital Park and]]  
78 Planning [[Commission]] Board has primary enforcement authority  
79 under this Chapter. Administrative enforcement actions [are to] may be  
80 initiated by the Planning Director [in accordance with] under this  
81 Article.

82 (c) *Civil ~~[[and criminal]]~~ actions.* The ~~[[Commission]]~~ Board may bring  
 83 any civil ~~[[or criminal]]~~ action authorized by law that the County may  
 84 bring under Sections 1-18, 1-19, and 1-20 to enforce this Chapter or any  
 85 regulation adopted under it. The ~~[[Commission]]~~ Board may also bring  
 86 a civil action to enforce a forest conservation plan and any associated  
 87 agreements, easements, and restrictions, or to enforce an administrative  
 88 order. These remedies are in addition to any remedy that the  
 89 ~~[[Commission]]~~ Board or County may initiate under state or County law  
 90 to enforce the terms of a regulatory approval which incorporates a forest  
 91 conservation plan.

92 [[1)] Notice of Violation.

93 (A) The Planning Director may issue a notice of violation to a  
 94 person believed to be in violation of this Chapter. The  
 95 Planning Director must retain a copy of the notice of  
 96 violation.

97 (B) A notice of violation issued under this Article must be  
 98 served on the alleged violator personally, on the violator's  
 99 agent at the activity site, or by certified mail to the  
 100 violator's last known address.

101 (C) The notice of violation must contain at least the following  
 102 information:

103 (i) the name and address of the person charged;

104 (ii) the nature of the violation;

105 (iii) the place where and the approximate date when  
 106 the violation occurred;

107 (iv) a statement advising the recipient of the corrective  
 108 or remedial action to be taken, which may include

109                   a meeting with Commission staff to develop a  
110                   compliance plan, and the date by which the  
111                   corrective or remedial action must be completed;  
112                   and  
113                   (v) a statement advising the recipient of the right to a  
114                   hearing before the Planning Board or the Board's  
115                   designee.

116                   (2) Citation.

117                   (A) The Planning Director may issue a citation to a person  
118                   believed to be in violation of this Chapter. The Planning  
119                   Director may use any citation consistent with this Section,  
120                   including the State of Maryland Uniform Civil Citation  
121                   form. The Planning Director must certify the truth of the  
122                   allegations in the citation. The Planning Director must  
123                   retain a copy of the citation.

124                   (B) A citation issued under this Article must be served on the  
125                   alleged violator personally, on the violator's agent at the  
126                   activity site, or by certified mail to the violator's last  
127                   known address.

128                   (C) The citation must contain at least the following  
129                   information:

130                   (i) the name and address of the person charged;

131                   (ii) the nature of the violation;

132                   (iii) the place where and the approximate date when the  
133                   violation occurred;

134                   (iv) the amount of the fine assessed;

135                   (v) the manner, location, and time in which the fine  
 136                   may be paid, and the party to whom the fine must be  
 137                   paid;

138                   (vi) the date by which the fine must be paid; and

139                   (vii) a statement advising the recipient of the right to a  
 140                   hearing before the Planning Board or the Board's  
 141                   designee.

142                   (3) *Notice of Hearing.*

143                   (A) The Planning Director may issue an administrative notice  
 144                   that notifies an alleged violator of an enforcement hearing  
 145                   to be held by the Planning Board or the Board's designee  
 146                   to address the alleged violation.

147                   (B) A notice of hearing issued under this Article must be  
 148                   served on the alleged violator personally, on the violator's  
 149                   agent at the activity site, or by certified mail to the  
 150                   violator's last known address.

151                   (C) The notice of hearing must contain at least the following  
 152                   information:

153                   (i) the name and address of the person charged;

154                   (ii) the nature of the violation;

155                   (iii) the place where and the approximate date when the  
 156                   violation occurred; and

157                   (iv) a statement advising the recipient of the date, time,  
 158                   and location of the hearing.]]

159                   (d) *Administrative civil penalty.*

160                   (1) In addition to any other [remedies provided] remedy under this  
 161                   Article, a person who violates this Chapter, any [[regulations]]

162 regulation adopted under it, a forest conservation plan, or any  
 163 associated ~~[[agreements or restrictions]]~~ agreement or restriction,  
 164 is liable for an administrative civil penalty imposed by the  
 165 Planning Board. This administrative civil penalty must not  
 166 exceed the rate set by the County Council by law or resolution,  
 167 except as provided in paragraph (3), but must not be less than the  
 168 amount specified in Section 5-1608(c) of the Natural Resources  
 169 Article of the Maryland Code. Each day a violation is not  
 170 corrected is a separate violation.

- 171 (2) In determining the amount of the administrative civil penalty, or  
 172 the extent of an administrative order issued by the Planning  
 173 Director under Section 22A-17, the Planning Board or Planning  
 174 Director must consider:

175 \* \* \*

- 176 (4) [The reasons for imposing a civil penalty must be provided in a  
 177 written opinion of the Planning Board and included in its  
 178 administrative order.] The Planning Board must include the  
 179 reasons for imposing an administrative civil penalty in its  
 180 resolution adopting the administrative order.

181 ~~[[\* \* \*]]~~

- 182 (e) Enforcement Notices. The Planning Director may issue one or more of  
 183 the following notices to enforce any provision of this Chapter. The  
 184 issuance of a notice under this subsection does not require the previous  
 185 issuance of any other notice.

- 186 (1) Notice of Violation.

187                    (A) The Director may issue a notice of violation to a person  
 188                    who the Director believes has violated or is violating this  
 189                    Chapter. The Director must retain a copy of each notice.

190                    (B) A notice of violation issued under this Article must be  
 191                    served on the alleged violator personally, on the alleged  
 192                    violator's agent at the activity site, or by certified mail to  
 193                    the alleged violator's last known address.

194                    (C) The notice of violation must contain at least the following  
 195                    information:

196                    (i) the name and address of the person charged with a  
 197                    violation;

198                    (ii) the nature of the violation;

199                    (iii) the place where and the approximate date when the  
 200                    violation occurred;

201                    (iv) a statement advising the recipient of the corrective  
 202                    or remedial action to be taken, which may include a  
 203                    meeting with Planning staff to develop a compliance  
 204                    plan, and the date by which any corrective or  
 205                    remedial action must be completed; and

206                    (v) a statement advising the recipient of the right to a  
 207                    hearing before the Planning Board or the Board's  
 208                    designee.

209                    (2) Administrative Citation.

210                    (A) The Director may issue an administrative citation to a  
 211                    person who the Director believes has violated or is  
 212                    violating this Chapter. The Director may use any citation  
 213                    consistent with this Section, including the State of

214 Maryland Uniform Civil Citation form. The Director must  
 215 certify the truth of the allegations in the citation. The  
 216 Director must retain a copy of each citation.

217 (B) An administrative citation issued under this Article must  
 218 be served on the alleged violator personally, on the alleged  
 219 violator's agent at the activity site, or by certified mail to  
 220 the alleged violator's last known address.

221 (C) The administrative citation must contain at least the  
 222 following information:

223 (i) the name and address of the person charged with a  
 224 violation;

225 (ii) the nature of the violation;

226 (iii) the place where and the approximate date when the  
 227 violation occurred;

228 (iv) the amount of the fine assessed;

229 (v) how, when, where, and to whom the fine may be  
 230 paid; and

231 (vi) a statement advising the recipient of the right to a  
 232 hearing before the Planning Board or the Board's  
 233 designee.

234 (3) Notice of Hearing.

235 (A) The Director may issue an administrative notice which  
 236 informs an alleged violator of an enforcement hearing to  
 237 be held by the Planning Board or the Board's designee to  
 238 address an alleged violation.

239 (B) A notice of hearing issued under this Article must be  
 240 served on the alleged violator personally, on the alleged

241 violator's agent at the activity site, or by certified mail to  
 242 the alleged violator's last known address.

243 (C) The notice of hearing must contain at least the following  
 244 information:

245 (i) the name and address of the person charged with a  
 246 violation;

247 (ii) the nature of the violation;

248 (iii) the place where and the approximate date when the  
 249 violation occurred; and

250 (iv) a statement advising the recipient of the date, time,  
 251 and location of the hearing.

252 ~~[(e)]~~ (f) *Fund.* Money collected under this Section must be deposited into the  
 253 forest conservation fund.

254 **22A-17. Corrective actions.**

255 (a) *Administrative order.* At any time, including during an enforcement  
 256 action, the Planning Director may issue an administrative order  
 257 requiring the violator to take one or more of the following actions  
 258 within a certain time period specified by the Planning Director:

259 (1) stop the violation;

260 (2) stabilize the site to comply with a reforestation plan;

261 (3) stop all work at the site;

262 (4) restore or reforest unlawfully cleared areas;

263 (5) submit a forest conservation plan for the property;

264 (6) place forested or reforested land under long-term protection by a  
 265 conservation easement, deed restriction, covenant, or other  
 266 appropriate legal instrument; or

267 (7) submit a written report or plan concerning the violation.

268 (b) *Effectiveness of order.* An order issued under this Section is effective,  
 269 according to its terms, when it is served.

270 **22A-19. Noncompliance with conditions of exemption [[conditions]].**

271 \* \* \*

272 (b) *Penalties for noncompliance.* In addition to any other [remedies]  
 273 remedy under this Chapter, the Planning Board may require a person in  
 274 noncompliance to:

275 (1) [meet the forest conservation threshold as would have been  
 276 required] prepare, submit, and implement a forest conservation  
 277 plan;

278 (2) pay an administrative civil penalty under Section 22A-16(d) for  
 279 the area of forest cut or cleared under the exemption; or

280 (3) both.

281 **22A-20. [Notice, hearings,] Hearings and appeals.**

282 \* \* \*

283 (b) *Forest conservation plans and variances approved by the Planning*  
 284 *Board [or District Council].*

285 [(1)] A person aggrieved by the decision of the Planning Board on the  
 286 approval, denial, or modification of a forest conservation plan  
 287 (including a request for a variance) may [file a judicial] appeal  
 288 [of] the final administrative action on the development approval  
 289 [in accordance with Subtitle B of] under the Maryland Rules of  
 290 Procedure and any other law applicable to the proceeding.

291 [(2)] A person aggrieved by the decision of the District Council on the  
 292 approval, denial, or modification of a forest conservation plan  
 293 (including a request for a variance) proposed in conjunction with

294 a development plan may file a judicial appeal of the action on the  
 295 development plan in accordance with Division 59-H-8.]

296 (c) *Forest stand delineations and forest conservation plans approved by the*  
 297 *Planning Director.*

298 (1) *Appeal to Planning Board.* [Upon receipt of] After the Planning  
 299 [Director's] Director issues a written decision on a natural  
 300 resource inventory/forest stand delineation or forest conservation  
 301 plan, an applicant [has 30 days in which to] may appeal the  
 302 decision to the Planning Board within 30 days.

303 (2) *Hearing; decision.* The Planning Board must hold a de novo  
 304 hearing on the appeal [and inform the applicant in writing of its  
 305 decision. The Board must consider the appeal de novo]. The  
 306 Board must adopt a written resolution explaining its decision.  
 307 For purposes of judicial review, the decision of the Planning  
 308 Board [constitutes] is the final agency action.

309 (3) *Appeal.* [Upon receipt of] After receiving the Planning Board's  
 310 decision, an applicant [has 30 days in which to] may appeal the  
 311 decision within 30 days under [in accordance with Subtitle B of]  
 312 the Maryland Rules of Procedure.

313 (d) *Administrative enforcement ~~[[actions]] process.~~*

314 (1) *Notice.* A ~~[[complaint, order,]]~~ citation, notice of violation, or  
 315 other administrative notice issued by the Planning Director under  
 316 ~~[[this Article must be served on the alleged violator personally,~~  
 317 on the violator's agent at the activity site, or by certified mail to  
 318 the violator's last known address. The notice must identify the  
 319 alleged violator, the location of the violation, and the specific  
 320 facts of the violation, and]] Section 22A-16(e) or an order issued

321 under Section 22A-17 must give the [[alleged violator]] recipient  
322 the [[opportunity]] right [for] to request, within 15 days after  
323 receiving the notice, a hearing before the Planning Board or the  
324 Board's designee [within 10 working days of receipt of the  
325 notice. If an administrative action under this Article can only be  
326 taken by the Board, the notice must state the date on which the  
327 action is scheduled to be considered by the Board].

328 (2) *Hearing.*

329 (A) If [[an alleged violator]] the recipient of a notice or order  
330 requests an opportunity for a hearing [is requested], the  
331 [[matter]] Board or its designee must [[be expeditiously  
332 scheduled on a Planning Board agenda]] promptly  
333 schedule a hearing unless the [[alleged violator]] recipient  
334 consents to a delay. The filing of a request for a hearing  
335 does not stay an administrative order to stop work,  
336 stabilized a site, or stop a violation.

337 (B) If the Planning Board or the Board's designee [[elects to  
338 hold]] holds a hearing [[on an action]] under this Article,  
339 the Board or its designee must issue a notice of the hearing  
340 date.

341 (C) The Planning Board may designate a hearing officer,  
342 including a Hearing Examiner from the Office of Zoning  
343 and Administrative Hearings, to conduct a hearing and  
344 submit a report and recommendation on any alleged  
345 violation of this Chapter. The hearing officer must submit  
346 the required report and recommendation to the Board not  
347 later than 60 days after the hearing record closes. The

348 hearing officer may extend the time to file the report by  
 349 [[providing notice of the delay to]] notifying all parties.

350 (3) *Decision.* The Planning Board must inform the [[alleged  
 351 violator]] recipient in writing of its decision on an administrative  
 352 enforcement action. The Board's decision [constitutes] is the  
 353 final agency action for all purposes [of judicial review].

354 (4) *Appeal.* [Upon receipt of] After receiving the Planning Board's  
 355 decision, an aggrieved person [has 30 days in which to] may  
 356 appeal the Board's action [in accordance with Subtitle B of]  
 357 within 30 days under the Maryland Rules of Procedure.

358 **22A-21. Variance [[provisions]].**

359 (a) *Written request.* [A person] An applicant may request in writing a  
 360 variance from this Chapter or any regulation adopted under it if the  
 361 [person demonstrates] applicant shows that enforcement would result in  
 362 unwarranted hardship [to the person]. A request for a variance [waives]  
 363 suspends the time requirements in Section 22A-11 until the Planning  
 364 Board acts on the request.

365 (b) *Application requirements.* An applicant for a variance must:  
 366 (1) describe the special conditions peculiar to the property which  
 367 would cause the unwarranted hardship;  
 368 (2) describe how enforcement of [these rules] this Chapter will  
 369 deprive the landowner of rights commonly enjoyed by others in  
 370 similar areas;  
 371 (3) verify that State water quality standards will not be violated [or]  
 372 and that a measurable degradation in water quality will not occur  
 373 as a result of [the] granting [of] the variance; and  
 374 (4) provide any other information appropriate to support the request.

375 (c) *Referral to other agencies.* Before considering a variance, the Planning  
 376 Board must [refer] send a copy of each request to the County Arborist,  
 377 Planning [Department] Director, and any other appropriate [officials or  
 378 agencies] agency for a written recommendation before acting on the  
 379 request. [Recommendations must be] If a recommendation on the  
 380 variance is not submitted to the Planning Board within 30 days [from  
 381 the receipt by the official or agency of the request or] after the referral,  
 382 the recommendation [should] must be presumed to be favorable.

383 (d) *Minimum criteria.* A variance [must not] may only be granted if it meets  
 384 the criteria in subsection (a). However, a variance must not be granted  
 385 if granting the request:

- 386 (1) will confer on the applicant a special privilege that would be  
 387 denied to other applicants;
- 388 (2) is based on conditions or circumstances which [are the] result [of  
 389 the] from actions by the applicant;
- 390 (3) [arises from] is based on a condition relating to land or building  
 391 use, either permitted or nonconforming, on a neighboring  
 392 property; or
- 393 (4) will violate State water quality standards or cause measurable  
 394 degradation in water quality.

395 (e) *Approval procedures; Conditions.* The Planning Board[, or the District  
 396 Council on a development plan,] must [make findings] find that the  
 397 applicant has met all requirements of this Section before granting a  
 398 variance. [Appropriate] The Board may impose appropriate conditions  
 399 [may be imposed] to promote the objectives of this Chapter and protect  
 400 the public interest.

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**Sec. 2. Expedited effective date; applicability.**

- (a) The Council declares that this Act is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.
- (b) Any amendment to County Code Chapter 22A made by Section 1 of this Act applies to any enforcement action that begins after this Act takes effect even if the alleged violation on which the enforcement action is based was committed before this Act took effect.

*Approved:*

---

Nancy Floreen, President, County Council Date

*Approved:*

---

Isiah Leggett, County Executive Date

*This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council Date

## LEGISLATIVE REQUEST REPORT

### Bill 34-09, *Forest Conservation - Enforcement*

**DESCRIPTION:** Bill 34-09 would amend the forest conservation law to modify the number of required inspections and the notification period for inspections. This bill would also specify the penalty procedures and modify the hearing procedures for violations of the forest conservation law.

**PROBLEM:** Need for more proactive enforcement of the forest conservation law.

**GOALS AND OBJECTIVES:** To provide earlier notice of potential violations of the forest conservation law and clarify the procedures to address violations

**COORDINATION:** Department of Permitting Services; Planning Department

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Michael Faden, Senior Legislative Attorney, 240-777-7905

**APPLICATION WITHIN MUNICIPALITIES:** To be determined.

**PENALTIES:** See County Code §22A-16.

LU & ZONING  
ANNOUNCING

**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

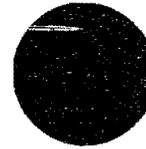
OFFICE OF THE CHAIRMAN

JZ  
CC  
SBF  
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MH  
SF

July 17, 2009

The Honorable Phil Andrews, President  
Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

050600



JUL 21 11 20 09

Re: Planning Board Recommendation on Transmittal to County Council for Introduction and Review of a comprehensive package of County Code revisions to Chapters 22, 50 and 59 pertaining to Planning Board Enforcement Processes and Actions

Dear Mr. Andrews and Councilmembers:

On July 2, 2009, in an effort to advance the Commission's efforts and ability to enforce violations of its own previously approved actions, the Planning Board recommended that a comprehensive legislative package that includes revisions to the Forest Conservation Law, the Subdivision Regulations, and the Zoning Ordinance, as well as proposed Enforcement Rules for the Planning Board be transmitted to the County Council for introduction and review.

This comprehensive Enforcement Package develops a clear process for enforcement hearings, assures due process to alleged violators, and ensures that the Planning Board has the necessary authority and appropriate means to enforce its own previously approved actions. Furthermore, the processes that will be codified in the law will be substantially similar to the processes under which the Board operates in the approval and defense of its initial actions.

This comprehensive Enforcement Package also addresses difficulties and conflicts in current law that has limited the effectiveness of the Planning Board's enforcement actions. County residents have expressed concerns with the enforcement process and want assurance that violations will be pursued and corrected. This Enforcement Package will provide the Planning Board with the proper tools to efficiently and effectively address violations. Comprehensive legislative changes are essential to ensure that approved plans that the Board granted with public participation and input are upheld.

Included in this package are proposed revisions to Chapter 50, the Subdivision Regulations, Chapter 59, the Zoning Ordinance, and Chapter 22A, the Forest Conservation Law of the County Code as well as an updated version of Enforcement Rules for the Planning Board. Please note that the Planning Board's proposed revision to

The Honorable Phil Andrews

July 17, 2009

Page 2

Section 59-A-1.3 is consistent with the Council Staff's recommended revision to that same section with regard to ZTA 09-03 presented to the PHED Committee at their work session on July 13, 2009. The Planning Board submitted proposed Enforcement Rules to the County Council last year, but they were returned pending the outcome of state legislation to grant limited subpoena power to the Board. The proposed changes to the law and the proposed Enforcement Rules are all interconnected, and if they are implemented together will be the most effective means of addressing the previous difficulties with enforcement.

Members of the Planning Board and staff of the Department of Park and Planning are available to assist the Council in the review of the proposed legislation.

Sincerely,



Royce Hanson  
Chairman

RH:gr  
Attachments

cc: Planning Board  
Rollin Stanley

**Testimony of Royce Hanson, Chairman of the Montgomery County  
Planning Board  
Public Hearing November 24, 2009  
Bill 34-09 Forest Conservation- Enforcement  
ZTA 09-09 Planning Board Enforcement  
SRA 09-03 Enforcement- Amendments**

Good Afternoon,

For the record, I am Royce Hanson, Chairman of the Montgomery County Planning Board. I want to thank the County Council for sponsoring Bill 34-09, ZTA 09-09, and SRA 09-03 and considering the package in a timely fashion. Proposed Enforcement Rules that develop a clear process for enforcement hearings before a hearing officer and/or the Planning Board were also included in the transmittal of the package to the County Council, but they are not before you today.

This comprehensive legislative package will provide the necessary support for an effective enforcement program to assure the public that project plans, preliminary plans, site plans, water quality plans, forest conservations plans, and all other Planning Board approved plans will be implemented as intended. Together with the proposed Enforcement Rules, the Planning Board will have the tools necessary to see proposed development through to proper implementation in an efficient and consistent manner, and with the transparency that the public expects and deserves.

This comprehensive enforcement legislation provides consistency in the manner that the Planning Board enforces all of its actions and thereby increases the efficiency and effectiveness of the enforcement program. The legislation ensures that the Planning Board has the necessary authority and appropriate means to enforce plans it previously approved after public hearings in which both the applicant and the interested public had full opportunity to be heard. It assures due process to alleged violators and maintains a level of transparency not necessarily available through District Court review by providing notice to the public of the hearings and an opportunity for interested parties to be heard before compliance requirements are instituted by the Board.

This legislative package also addresses difficulties with and conflicts in current law that have limited the effectiveness of the Planning Board's enforcement program. County residents have expressed concerns with the enforcement process and want

assurance that violations will be actively pursued and corrected. This legislation will provide the Planning Board with the proper tools to efficiently and effectively address violations. Comprehensive legislative changes are essential to ensure that approved plans that the Board granted with public participation and input are upheld. The proposed changes to the law and the proposed Enforcement Rules are all interconnected, and if they are implemented together, will be the most effective means of addressing the previous difficulties with enforcement.

SRA 09-03 proposes changes to Section 50-41 of the County Code, which applies to enforcement of all Planning Board Actions including, but not limited to project plans, preliminary plans, site plans, and water quality plans. It does not apply to forest conservation plans and other decisions made under Chapter 22A, as they are addressed in Bill 34-09, which is part of this comprehensive package. SRA 09-03 ensures consistency in the way the Board enforces all of its approvals by using the Forest Conservation Law enforcement process as a model; it increases clarity in the enforcement process for both the alleged violator and the interested public; and it provides the necessary structure to give alleged violators ample opportunity to correct violations before a hearing while the Planning Board can remain firm in its compliance requirements. The legislation establishes reasonable bases for penalties after input from the public while protecting the due process rights of alleged violators.

SRA 09-03 would amend the Subdivision Regulations to:

- Allow for an Administrative Civil Penalty to be assessed at an enforcement hearing with established factors for the Planning Board to consider in a fair and systematic way when imposing such a penalty.
- Appeals of Citations will be decided by the Planning Board, which is the appropriate venue for these enforcement actions because the Planning Board has the authority to make decisions on all aspects of the case at one sitting. This structure will also allow alleged violators an opportunity to be heard in an informal proceeding that will save both public and private resources and will provide the public an opportunity to be heard on any proposed compliance

plan much the same as it was heard in the original action for which the violation is alleged.

- Add Notices of Violation as another enforcement tool to give an alleged violator the opportunity to correct a violation before a civil fine is issued or a hearing occurs.
- Allow the Planning Board to designate a Hearing Officer with subpoena power to hold a full adjudicatory hearing and submit a recommendation to the Board based upon its the findings of fact and application of the law. The Board retains the ultimate responsibility to make the final decision and determine whether, in the event that the respondent is found in violation, and after input from the community, an Administrative Civil Penalty, civil fine, compliance plan, or other remedy as provided by law is appropriate. As in all other Planning Board actions, their decision is appealable to the Circuit Court for review.

ZTA 09-09 would amend the Zoning Ordinance to streamline the enforcement process by separating the enforcement of Planning Board Actions from other enforcement measures by the Department of Permitting Services under Chapter 59. DPS would continue to enforce zoning violations in the same manner as it does currently. But the Planning Board would have original jurisdiction over the enforcement of approved project plans, preliminary plans, site plans, and other plans previously approved by the Board.

Bill 34-09 would amend Chapter 22A to ensure consistency in the enforcement process for all Planning Board Actions. The changes provide the right for the Planning Director to issue Notices of Violation and Citations that are appealable to the Planning Board and to allow the Planning Board to designate a Hearing Officer for its enforcement cases. The Bill also clarifies some of the ambiguities in the law and creates consistency between the law and the administrative process as set forth in the Forest Conservation Regulations that have already been reviewed and approved by the County Council, the process that is being followed today.

In closing, this comprehensive enforcement legislation is tailored to increase the efficiency and effectiveness of the Board's enforcement of those matters within its jurisdiction and ensure greater transparency to the public of the enforcement program. Over the past 5 years, the community has expressed concern about loopholes in the Board's enforcement processes. They have raised concerns that it is easier for violators to ask forgiveness rather than permission to violate Planning Board approved plans. The proposed enforcement legislation successfully addresses the loopholes that exist in the current enforcement provisions, and it allows for public participation as plans previously approved are enforced and considered for revision. The passage of this comprehensive enforcement legislation will shore up the enforcement process in a way that is fair to alleged violators and answers the needs expressed by the community.

The Planning Board looks forward to working with you in passing this important legislative package. Thank you.



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

November 18, 2009

TO: Phil Andrews, President, County Council  
FROM: Joseph F. Beach, Director  
SUBJECT: Council Bill 34-09, Forest Conservation - Enforcement

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

2009 NOV 25 AM 8:15

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

**LEGISLATION SUMMARY**

The Bill would amend the forest conservation law to modify the number of required inspections and the notification period for inspections. The Bill also specifies the penalty procedures and modifies the hearing procedures for violations of the forest conservation law. The proposed changes align Chapter 22A Enforcement with Section 50-41 Enforcement, clarifies some of the ambiguities in the law, and makes it consistent with the Forest Conservation Regulations.

**FISCAL AND ECONOMIC SUMMARY**

The Maryland-National Capital Park and Planning Commission (M-NCPPC) indicated that there would be a fiscal impact of \$36,000 the first year. As a result of the changes in the law, the M-NCPPC anticipates hearing up to 20 additional cases the first year. The cost is based on 8 hours per case for hearing and report writing at the Hearing Examiner's rate of \$225 per hour. The M-NCPPC already conducts six inspections pursuant to the Forest Conservation Regulations, so there would be no additional costs associated with increasing the number of inspections from three to six.

The Departments of Permitting Services (DPS), Environmental Protection (DEP), and the Department of Finance indicated Bill 34-09 has no fiscal or economic impact on the County Government.

The following contributed to and concurred with this analysis: Amy Wilson, Office of Management and Budget; Alicia Thomas, DPS; Stan Edwards, DEP; Mike Coveyou, Department of Finance; and Holly Sun, M-NCPPC.

JFB:aw

c: Kathleen Boucher, Assistant Chief Administrative Officer  
Dee Gonzalez, Offices of the County Executive  
Royce Hanson, Chairman, Montgomery County Planning Board  
Amy Wilson, Office of Management and Budget  
John Cuff, Office of Management and Budget  
Office of the Director

25



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett  
*County Executive*

Leon Rodriguez  
*County Attorney*

**MEMORANDUM**

To: Stan Edwards  
Department of Environmental Protection

FROM: Malcolm Spicer  
Associate County Attorney

VIA: Marc P. Hansen  
Deputy County Attorney

DATE: November 10, 2009

RE: Bill 34-09 Forest Conservation – Enforcement

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Bill 34-09 proposes revisions to the Forest Conservation Law, Chapter 22A of the County Code.

First, the Bill increases the number of field inspections of a site subject to an approved forest conservation plan from three (3) to six (6). It is not clear why inspections three (3) and four (4) (lines 35-38, page 3) are listed as separate inspections. They could be combined into one. The Bill also mandates a seven (7) day notice to the Planning Director before the third inspection takes place after all construction activities are completed.

Next, the Bill provides new procedures for issuing notices of violations and citations by the Planning Director. These new procedures begin on page 5.

Existing County law (Section 22A-16) allows the Maryland-National Capital Park and Planning Commission to bring a civil or criminal action under Section 1-18, 1-19, and 1-20 of the County Code. Actions brought under Section 1-18 would most likely be civil citations processed in the District Court of Maryland where a defendant accused of a violation could elect to stand trial before a District Court judge.

The Bill is adding additional enforcement procedures. First, it allows for the Planning Director to issue a “notice of violation” advising the violator of the nature of the violation, the date and place of the violation, and the corrective action required. The notice of violation also notified the violator of a right to a hearing before the Planning Board or the Board’s designee. The Bill does not specify what authority the Planning Board has with respect to the notice of violation. We would recommend that the provisions for contested hearings and appeals of notices of violation be eliminated as that merely serves to prolong the enforcement process without achieving a resolution.

In addition, the Bill creates an additional citation procedure which apparently is not the same procedure as set-forth in Section 1-18 of the County Code. The Bill allows the Planning Director to issue a citation to a violator and impose a fine. The amount of the fine is not provided. The violator can request before the Planning Board. Once again, the Bill does not specify the options of the Planning Board with respect to the citation.

These procedures for citations with fines and hearings before the Planning Board would appear to be in conflict with State law and specifically the Natural Resources Article, Section 5-1612 which allows for a penalty not to exceed \$1,000 which may be recovered in a civil action. We think that a civil action would be a court action in district court.

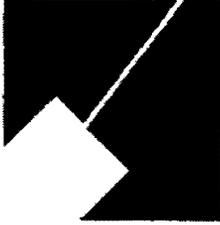
The Bill further establishes procedures for hearings before the Planning Board or Board’s designee. The Planning Board is also given the ability to designate a hearing officer to conduct a hearing and submit a report and recommendation to the Planning Board which would then make the final agency decision on the notices of violation or citations. As stated, these procedures would seem to conflict with State law requiring a “civil action” for collection of the civil penalty.

The procedures being established for notices of violation and citations appear to be rather cumbersome. Consideration should be given a more simplified process. Notices of violation should state that corrective action needs to be taken within a certain time frame and if not a citation will be issued. The established citation procedure set fort in Section 1-18 of the Code should be utilized as this will result in a hearing in District Court where a fine could be imposed as well as an order to correct the violation.

MS/vrp

A09-01978  
Edwards – Bill 34-09

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, [www.mncppc.org](http://www.mncppc.org)

OFFICE OF  
THE GENERAL COUNSEL

(301) 495-4646  
FAX (301) 495-2173

**MEMORANDUM**

**TO:** Michael Faden  
Montgomery County Council

**FROM:** Christina Sorrento  
Associate General Counsel

**VIA:** Carol Rubin  
Associate General Counsel

**DATE:** November 20, 2009

**RE:** Bill 34-09 Forest Conservation- Enforcement

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**I. Introduction**

The Montgomery County Planning Board would like to respond to the memorandum from Malcolm Spicer, Associate County Attorney, dated November 13, 2009. In the memorandum, Mr. Spicer raised questions about the increased number of field inspections, the purpose of adding notices of violation, and the proposed citation procedure. Each of these concerns is addressed below.

The Planning Board transmitted Bill 34-09 to the County Council for introduction as part of an overall enforcement package tailored to increase the efficiency and effectiveness of the Board's enforcement of those matters within its jurisdiction. The legislative package also creates greater transparency in compliance plans. Over the past 5 years, the community has expressed concern about the loopholes in the Board's enforcement program and concern that it is easier for violators to ask forgiveness rather than permission to violate Planning Board approved plans. The proposed enforcement legislation, including Bill 34-09, successfully increases efficiency and effectiveness of compliance, closes loopholes that exist in the current enforcement provisions, and allows for public participation as plans previously approved with public participation are enforced and considered for revision.

## **II. Field Inspections**

The changes to the inspection process and the number of inspections are proposed to create consistency between the law and the administrative process as set forth in Section 110 of the Forest Conservation Regulations that were reviewed and approved by the County Council. In addition, the Bill provides the limited inspection staff with adequate notice so inspectors can be available for meetings with the property owners in a reasonable and timely fashion.

## **III. Notices of Violation**

The Planning Board's primary focus with the enforcement program is to ensure compliance with the Forest Conservation Law and approved forest conservation plans. The Bill adds a process that allows the inspectors to issue notices of violation (NOVs) in order to give an alleged violator an appropriate amount of time to correct the violation without incurring a fine or an administrative civil penalty or requiring an appearance in court if the violation can be easily corrected. The NOV often requires the alleged violator to meet with Planning Board staff to determine how the violation can be rectified and encourages compliance. This process saves staff and the alleged violator time and resources and promptly resolves the violation. The ability to issue NOVs is an important tool to achieve compliance in an effective and efficient manner, and actually streamlines the process rather than extends it.

## **IV. Citation Procedure**

The additional citation procedure proposed in Bill 34-09<sup>1</sup> will streamline the enforcement process in a significant way by allowing for an enforcement hearing before the Planning Board or the Board's designee<sup>2</sup>. The alleged violator can pay the fine or have a hearing at the Planning Board just like citations that allow for the right to stand trial in District Court<sup>3</sup>. The District Court only has the ability to demand payment of the fine or absolute compliance with an existing plan. Only the Planning Board has the authority to approve a compliance plan, which may include planting, removal of encroachments from an easement, offsite mitigation, and/or a Forest Conservation Plan amendment. Therefore, the violator generally ends up in front of the Planning Board

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<sup>1</sup> The existing citation procedure that the County may bring under Sections 1-18, 1-19, and 1-20 have not been eliminated.

<sup>2</sup> This hearing is quasi-judicial in nature allowing for evidence to be presented in the same manner and will be handled by a Hearing Officer in most cases.

<sup>3</sup> This civil fine is in addition to the Administrative Civil Penalty that can be imposed by the Planning Board. Both the civil fine and the Administrative Civil Penalty already exist in the current law.

after the Court hearing to avoid further citations. This leads to confusion, duplication of effort, and a waste of both public and private resources.

Having citations directly appealable to the Planning Board eliminates this inefficiency and allows the case to be handled in front of the body that has the authority to make a decision on all aspects of the case. In addition, all Planning Board decisions are appealable to the Montgomery County Circuit Court. Under the proposed citation procedure the alleged violator maintains their due process rights and has the advantage of a more efficient and streamlined process. And the public who is interested in such compliance will have notice of the hearing and an opportunity to be heard.

#### **V. Conclusion**

Bill 34-09 will increase the efficiency and effectiveness of enforcement of the Forest Conservation Law. The passage of this Bill will shore up the enforcement process in a way that is fair to alleged violators and answers the needs expressed by the community. The Planning Board is happy to answer any other questions the County Council may have about this Bill during the upcoming committee meeting.

**Faden, Michael**

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**From:** Anne Ambler [anambler@gmail.com]  
**Sent:** Tuesday, November 24, 2009 3:08 PM  
**To:** Andrews' Office, Councilmember; Berliner's Office, Councilmember; Ervin's Office, Councilmember; Floreen's Office, Councilmember; Knapp's Office, Councilmember; Elrich's Office, Councilmember; Leventhal's Office, Councilmember; Trachtenberg's Office, Councilmember; Navarro's Office, Councilmember  
**Cc:** Faden, Michael  
**Subject:** Support for Bill 34-09, Forest Conservation Law Enforcement

Dear President Andrews and members of the County Council:

I am writing in support in support of Bill 34-09 (Forest Conservation Law Enforcement) and the associated zoning and subdivision amendments.

For a very long time we who are affectionately labeled "tree huggers" have railed against the lack of enforcement of our very convoluted forest conservation law. Bill 34-09, ZTA 09-09, and SRA 09-03 have a good chance of spurring better enforcement by providing a defined enforcement process. I commend Dr. Hanson for insisting on amendments to provide the Planning Board with the tools necessary to enforce this law which it has the responsibility to enforce. These tools are long overdue.

One question:

Is Bill 34-09 consistent with SRA 09-03 on the point of whether each day of violation will be treated as a separate violation? Line 61 of the bill as revised reads: "Each day a violation continues may be treated as a separate violation under this Chapter." Revised SRA 09-03, lines 113-116, reads: "Each day that a violation has not been corrected must be treated as a separate violation..." The SRA language should be the law.

I hope that the long-awaited comprehensive overhaul of Chapter 22A is not far behind this effort to improve enforcement. As you know very well, the stakes are high and they are expensive. The way in which we developed for many years without regard for what deforestation would do to our water resources is now costing us plenty. A strong forest conservation law and tree ordinance will complement our new storm water regulations and help us meet the requirements of our new MS4 stormwater permit. In just one watershed, the one in which I live and am active through the Neighbors of the Northwest Branch, the cost of restoration undoubtedly runs to billions of dollars, judging from the more than 600 projects proposed to us by the Army Corps of Engineers in connection with the Anacostia River Restoration Partnership.

Montgomery County had the foresight to make land surrounding our major streams into parkland. While this does help in protecting our water resources, it is clearly not enough. We need a forest conservation law that puts teeth into a county tree ethic. I urge passage of Bill 34-09 and the associated ZTA and SRA for starters.

Thank you for the opportunity to comment.

Anne Ambler  
12505 Kuhl Road  
Silver Spring, MD 20902  
301-946-5599

B. On June 30, 1996, the individual is a deputy director of planning or a deputy director of parks and recreation.

(3) (i) Subject to subparagraph (ii) of this paragraph, in Montgomery County, a director serves at the pleasure of the Montgomery County Planning Board.

(ii) Any individual who, on July 1, 1995, held a position affected by this paragraph may elect to remain in the merit system established under § 2-112 of this article.

(d) *Parks and park lands excepted.* — Nothing in this section may be deemed to affect powers and duties of the Commission with respect to parks and park lands. The Commission, however, may delegate to the respective planning boards such powers and duties with respect to parks and park lands as the Commission may, from time to time, determine. The Prince George's County Planning Board shall provide a program of recreation within Prince George's County, and coordinate the program with the Commission's park functions.

(e) *Expenses of local planning boards.* — The expenses of operation of the respective local planning boards shall be paid from the proceeds of the administrative tax collected for the Commission and from funds appropriated, in addition thereto, by the respective county governing bodies.

(f) *Allocation of other functions.* — Functions not specifically allocated in this section shall be assigned by resolution of the Commission with the approval of the respective county governing bodies either to the Commission itself or to one or both of the county planning boards, as the occasion may arise, so as to effectuate the concept that planning functions which are essentially local or intracounty should be performed by the county planning boards.

(g) *Compensation of local planning board members.* — (1) Notwithstanding other provisions of this article, funds may be included in the Commission's annual budget and appropriated by the respective county governing bodies to provide an annual salary for each planning board member, other than a full-time member, as compensation for the planning board member's services.

(2) The Montgomery County Council and the Prince George's County Council may each establish the salary for a planning board member from that county, other than a full-time member, by county law separate from budget action, after notice and public hearing.

(h) *Montgomery County.* — In Montgomery County, to the extent authorized by county law, ordinance, or resolution, the planning board may:

(1) Administer and enforce any adopted growth policy or forest conservation program; and

(2) Provide staffing assistance on matters relating to the promotion of historic preservation. (1975, ch. 892; 1979, ch. 60; 1982, ch. 220; 1983, ch. 57, § 1; 1987, ch. 11, § 1; ch. 691; 1990, ch. 191; 1991, ch. 554; 1992, ch. 643, § 1; 1996, chs. 484, 486; 2002, ch. 386.)

**Cross references.** — See Editor's note to § 7-105 of this article.

**Effect of amendments.** — Chapter 386, Acts 2002, effective June 1, 2002, deleted "of \$12,900" following "salary" in (g) (1); and added (g) (2).

**Editor's note.** — Section 2, ch. 386, Acts 2002, provides that "pursuant to Article III, § 35 of the Constitution of Maryland, this Act may not be construed to extend or apply to the salary or compensation of the part-time members of the Montgomery County planning board



§ 5-1610.2

NATURAL RESOURCES

establishment, or maintenance of a forest mitigation bank in accordance with regulations of the local forest conservation program. The Reforestation Fund may not be used to finance administrative activities associated with a mitigation bank and any credits created by the Reforestation Fund may not be sold to compensate for additional forest impacts.

(k) *Local forest conservation fund — Money deposited; rate.* — Money collected by the local authority under § 5-1608(c) of this subtitle for noncompliance with this subtitle or regulations or ordinances adopted under this subtitle for noncompliance with a forest conservation plan or the associated 2-year management agreement shall be deposited in the local fund. The rate shall be 30 cents per square foot of the area found to be in noncompliance with the required forest conservation.

(l) *Local forest conservation fund — Disposition of funds.* — Money deposited in a local forest conservation fund under subsection (k) of this section may be used by the local authority for purposes related to implementing this subtitle. (1991, ch. 255, § 1; 1993, ch. 489; 1997, ch. 14, § 1; ch. 559, § 2; 2002, ch. 225; 2004, ch. 550; 2009, ch. 298.)

**Effect of amendments.**

Chapter 298, Acts 2009, effective October 1, 2009, deleted "at a rate of 10 cents per square foot of the area of required planting" following "contribute money" in the introductory lan-

guage of (c); added (c)(1) and (c)(2); in (f)(1)(i) and (j)(1) added "maintenance of existing forests, and achieving urban canopy goals"; added the (h)(1) and (h)(2) designations; rewrote (h)(2); and made a related change.

§ 5-1610.2. Pilot Program for Forest Retention Banks.

Abrogated.

**Editor's note.** — Section 2, ch. 551, Acts 2002, provides that "this Act shall take effect July 1, 2002. It shall remain effective for a period of 3 years and, at the end of June 30, 2005, with no further action required by the

General Assembly, this Act shall be abrogated and of no further force and effect." Pursuant to § 2, ch. 551, Acts 2002, this section is deemed to have abrogated.

§ 5-1611. Variances.

**Effect of amendments.** — Chapter 298, Acts 2009, effective October 1, 2009, reenacted the section without change.

§ 5-1612. Enforcement.

(a) *In general.* — (1) The enforcement provisions in this section and § 5-1608 of this subtitle are in lieu of any other provision in this title.

(2) In addition to the enforcement authority granted the Department, the enforcement provisions of this section may be exercised by any local authority that has adopted a forest conservation program, in addition to any enforcement provisions available to the local authority.

(b) *Violation.* — The Department or a local authority may revoke an approved forest conservation plan for cause, including violation of conditions of the plan, obtaining a plan approval by misrepresentation, failing to disclose a relevant or material fact, or change in conditions. The Department or a local

ation bank in accordance with  
gram. The Reforestation Fund  
activities associated with a  
Reforestation Fund may not be

by deposited; rate. — Money  
(c) of this subtitle for noncom-  
dinances adopted under this  
vation plan or the associated  
ed in the local fund. The rate  
d to be in noncompliance with

on of funds. — Money deposi-  
section (k) of this section may  
related to implementing this  
ch. 14, § 1; ch. 559, § 2; 2002,

c); added (c)(1) and (c)(2); in (f)(1)(i)  
added "maintenance of existing for-  
chieving urban canopy goals"; added  
and (h)(2) designations; rewrote  
made a related change.

## Retention Banks.

sssembly, this Act shall be abrogated  
urther force and effect." Pursuant to  
1, Acts 2002, this section is deemed  
rogated.

visions in this section and  
provision in this title.

granted the Department, the  
rcised by any local authority  
, in addition to any enforce-

l authority may revoke an  
ding violation of conditions of  
entation, failing to disclose a  
s. The Department or a local

authority shall notify the violator in writing and provide an opportunity for a hearing.

(c) *Stop work order.* — The Department or a local authority may issue a stop work order against any person who violates any provision of this subtitle or any regulation, order, approved plan, or management agreement.

(d) *Penalties.* — (1) A person who violates any provision of this subtitle or any regulation, order, plan, or management agreement under this subtitle is liable for a penalty not exceeding \$1,000 which may be recovered in a civil action brought by the Department or a local authority. Each day a violation continues is a separate violation under this subtitle.

(2) The court may issue an injunction requiring the person to cease the violation and take corrective action to restore or reforest an area.

(e) *Local authority to provide notice to Department.* — A local authority conducting enforcement activity in accordance with this section or § 5-1608(c) of this subtitle shall give notice to the Department within 15 days after the commencement of the enforcement activity. (1991, ch. 255, § 1; 1993, ch. 489; 2008, ch. 104.)

**Effect of amendments.** — Chapter 104, Acts 2008, effective October 1, 2008, added (e).

## § 5-1613. Annual report.

On or before July 1 of each year, the Department shall submit, subject to § 2-1246 of the State Government Article, to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee a statewide report, compiled from local authorities' reports to the Department, on:

(1) The number, location, and type of projects subject to the provisions of this subtitle;

(2) The amount and location of acres cleared, conserved, and planted, including any areas which utilize forest mitigation bank credits or areas located in the 100 year floodplain, in connection with a development project;

(3) The amount of reforestation and afforestation fees and noncompliance penalties collected and expended;

(4) The costs of implementing the forest conservation program;

(5) The size, location, and protection of any local forest mitigation banks which are created under a local or State program;

(6) The number, location, and type of violations and type of enforcement activity conducted in accordance with this subtitle; and

(7) To the extent practicable, the size and location of all conserved and planted forest areas, submitted in an electronic geographic information system or computer aided design format. (1991, ch. 255, § 1; 1992, ch. 22, § 1; 1994, ch. 662, § 6; 1997, ch. 559, § 2; ch. 635, § 9; ch. 636, § 9; 2003, ch. 21, § 1; 2008, ch. 104.)

**Effect of amendments.** 2008, added "or areas located in the 100 year floodplain" in (2); and added (6) and (7).  
Chapter 104, Acts 2008, effective October 1,