

Bill No. 34-09  
Concerning: Forest Conservation –  
Enforcement  
Revised: 10-01-09 Draft No. 1  
Introduced: October 6, 2009  
Expires: April 6, 2011  
Enacted: [date]  
Executive: [date signed]  
Effective: [date takes effect]  
Sunset Date: None  
Ch. [#], Laws of Mont. Co. [year]

## 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 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.

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 site  
 29           subject to an approved forest conservation plan as follows:

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

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

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

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

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

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

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

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

53       [(1) At least 2 working days before starting any land disturbing  
 54       activities associated with the forest conservation plan, a person

55 must notify the Planning Department. The Planning Department  
 56 must coordinate its inspections, and any pre-construction  
 57 conferences, with the Department of Permitting Services to avoid  
 58 inconsistent directives in the field relating to the forest  
 59 conservation plan and sediment control activities.

60 (2) At least 2 working days before completion of afforestation and  
 61 reforestation plantings, a person must notify the Planning  
 62 Department so that the Department may schedule the second  
 63 inspection specified under paragraph (c)(2) of this Section.]

64 **22A-16. Penalties and other remedies.**

65 (a) *Class A violation.* [Violation] Any violation of this Chapter or any  
 66 regulations adopted under it is a Class A civil or criminal violation.  
 67 [Notwithstanding Section 1-19, the] The maximum civil fine is \$1,000.  
 68 Each day a violation continues [is] may be treated as a separate  
 69 violation under this Chapter.

70 (b) *Enforcement authority.* The Maryland-National Capital Park and  
 71 Planning Commission has primary enforcement authority under this  
 72 Chapter. Administrative enforcement actions [are to] may be initiated  
 73 by the Planning Director [in accordance with] under this Article.

74 (c) *Civil and criminal actions.* The Commission may bring any civil or  
 75 criminal action authorized by law that the County may bring under  
 76 Sections 1-18, 1-19, and 1-20 to enforce this Chapter or any regulation  
 77 adopted under it. The Commission may also bring a civil action to  
 78 enforce a forest conservation plan and any associated agreements,  
 79 easements, and restrictions or to enforce an administrative order. These  
 80 remedies are in addition to any remedy that the Commission or County

81 may initiate under state or County law to enforce the terms of a  
82 regulatory approval which incorporates a forest conservation plan.

83 (1) Notice of Violation.

84 (A) The Planning Director may issue a notice of violation to a  
85 person believed to be in violation of this Chapter. The  
86 Planning Director must retain a copy of the notice of  
87 violation.

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

92 (C) The notice of violation must contain at least the following  
93 information:

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

95 (ii) the nature of the violation;

96 (iii) the place where and the approximate date when the  
97 violation occurred;

98 (iv) a statement advising the recipient of the corrective  
99 or remedial action to be taken, which may include a  
100 meeting with Commission staff to develop a  
101 compliance plan, and the date by which the  
102 corrective or remedial action must be completed;  
103 and

104 (v) a statement advising the recipient of the right to a  
105 hearing before the Planning Board or the Board's  
106 designee.

107 (2) Citation.

108                   (A) The Planning Director may issue a citation to a person  
109                   believed to be in violation of this Chapter. The Planning  
110                   Director may use any citation consistent with this Section,  
111                   including the State of Maryland Uniform Civil Citation  
112                   form. The Planning Director must certify the truth of the  
113                   allegations in the citation. The Planning Director must  
114                   retain a copy of the citation.

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

119                   (C) The citation must contain at least the following  
120                   information:

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

122                   (ii) the nature of the violation;

123                   (iii) the place where and the approximate date when the  
124                   violation occurred;

125                   (iv) the amount of the fine assessed;

126                   (v) the manner, location, and time in which the fine  
127                   may be paid, and the party to whom the fine must be  
128                   paid;

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

130                   (vii) a statement advising the recipient of the right to a  
131                   hearing before the Planning Board or the Board's  
132                   designee.

133                   (3) Notice of Hearing.

134 (A) The Planning Director may issue an administrative notice  
 135 that notifies an alleged violator of an enforcement hearing  
 136 to be held by the Planning Board or the Board's designee  
 137 to address the alleged violation.

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

142 (C) The notice of hearing must contain at least the following  
 143 information:

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

145 (ii) the nature of the violation;

146 (iii) the place where and the approximate date when the  
 147 violation occurred; and

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

150 (d) *Administrative civil penalty.*

151 (1) In addition to any other [remedies provided] remedy under this  
 152 Article, a person who violates this Chapter, any regulations  
 153 adopted under it, a forest conservation plan, or any associated  
 154 agreements or restrictions is liable for an administrative civil  
 155 penalty imposed by the Planning Board This administrative civil  
 156 penalty must not exceed the rate set by the County Council by  
 157 law or resolution, except as provided in paragraph (3), but must  
 158 not be less than the amount specified in Section 5-1608(c) of the  
 159 Natural Resources Article of the Maryland Code. Each day a  
 160 violation is not corrected is a separate violation.

161 (2) In determining the amount of the administrative civil penalty, or  
162 the extent of an administrative order issued by the Planning  
163 Director under Section 22A-17, the Planning Board or Planning  
164 Director must consider:

165 \* \* \*

166 (4) [The reasons for imposing a civil penalty must be provided in a  
167 written opinion of the Planning Board and included in its  
168 administrative order.] The Planning Board must include the  
169 reasons for imposing an administrative civil penalty in its  
170 resolution adopting the administrative order.

171 \* \* \*

172 **22A-17. Corrective actions.**

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

- 177 (1) stop the violation;
- 178 (2) stabilize the site to comply with a reforestation plan;
- 179 (3) stop all work at the site;
- 180 (4) restore or reforest unlawfully cleared areas;
- 181 (5) submit a forest conservation plan for the property;
- 182 (6) place forested or reforested land under long-term protection by a  
183 conservation easement, deed restriction, covenant, or other  
184 appropriate legal instrument; or
- 185 (7) submit a written report or plan concerning the violation.

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

188 **22A-19. Noncompliance with exemption conditions.**

189 \* \* \*

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

- 193 (1) [meet the forest conservation threshold as would have been  
 194 required] prepare, submit, and implement a forest conservation  
 195 plan;
- 196 (2) pay an administrative civil penalty under Section 22A-16(d) for  
 197 the area of forest cut or cleared under the exemption; or
- 198 (3) both.

199 **22A-20. [Notice, hearings,] Hearings and appeals.**

200 \* \* \*

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

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

209 [(2)] A person aggrieved by the decision of the District Council on the  
 210 approval, denial, or modification of a forest conservation plan  
 211 (including a request for a variance) proposed in conjunction with  
 212 a development plan may file a judicial appeal of the action on the  
 213 development plan in accordance with Division 59-H-8.]

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

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

221 (2) *Hearing; decision.* The Planning Board must hold a de novo  
 222 hearing on the appeal [and inform the applicant in writing of its  
 223 decision. The Board must consider the appeal de novo]. The  
 224 Board must adopt a written resolution explaining its decision.  
 225 For purposes of judicial review, the decision of the Planning  
 226 Board [constitutes] is the final agency action.

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

231 (d) *Administrative enforcement actions.*

232 (1) *Notice.* A complaint, order, citation, notice of violation, or other  
 233 administrative notice issued by the Planning Director under this  
 234 Article must be served on the alleged violator personally, on the  
 235 violator's agent at the activity site, or by certified mail to the  
 236 violator's last known address. The notice must identify the  
 237 alleged violator, the location of the violation, and the specific  
 238 facts of the violation, and must give the alleged violator the  
 239 opportunity [for] to request, within 15 days after receiving the  
 240 notice, a hearing before the Planning Board or the Board's

241 designee [within 10 working days of receipt of the notice. If an  
 242 administrative action under this Article can only be taken by the  
 243 Board, the notice must state the date on which the action is  
 244 scheduled to be considered by the Board].

245 (2) *Hearing.*

246 (A) If an alleged violator requests an opportunity for a hearing  
 247 [is requested], the matter must be expeditiously scheduled  
 248 on a Planning Board agenda unless the alleged violator  
 249 consents to a delay. The filing of a request for a hearing  
 250 does not stay an administrative order to stop work,  
 251 stabilized a site, or stop a violation.

252 (B) If the Planning Board or the Board's designee elects to  
 253 hold a hearing on an action under this Article, the Board  
 254 must issue a notice of the hearing date.

255 (C) The Planning Board may designate a hearing officer,  
 256 including a Hearing Examiner from the Office of Zoning  
 257 and Administrative Hearings, to conduct a hearing and  
 258 submit a report and recommendation on any alleged  
 259 violation of this Chapter. The hearing officer must submit  
 260 the required report and recommendation to the Board not  
 261 later than 60 days after the hearing record closes. The  
 262 hearing officer may extend the time to file the report by  
 263 providing notice of the delay to all parties.

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

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

272 **22A-21. Variance provisions.**

273 (a) *Written request.* [A person] An Applicant may request in writing a  
 274 variance from this Chapter or any regulation adopted under it if the  
 275 [person demonstrates] applicant shows that enforcement would result in  
 276 unwarranted hardship [to the person]. A request for a variance [waives]  
 277 suspends the time requirements in Section 22A-11 until the Planning  
 278 Board acts on the request.

279 (b) *Application requirements.* An applicant for a variance must:

- 280 (1) describe the special conditions peculiar to the property which  
 281 would cause the unwarranted hardship;
- 282 (2) describe how enforcement of [these rules] this Chapter will  
 283 deprive the landowner of rights commonly enjoyed by others in  
 284 similar areas;
- 285 (3) verify that State water quality standards will not be violated [or]  
 286 and that a measurable degradation in water quality will not occur  
 287 as a result of [the] granting [of] the variance; and
- 288 (4) provide any other information appropriate to support the request.

289 (c) *Referral to other agencies.* Before considering a variance, the Planning  
 290 Board must [refer] send a copy of each request to the County Arborist,  
 291 Planning [Department] Director, and any other appropriate [officials or  
 292 agencies] agency for a written recommendation before acting on the  
 293 request. [Recommendations must be] If a recommendation on the  
 294 variance is not submitted to the Planning Board within 30 days [from

295 the receipt by the official or agency of the request or] after the referral,  
296 the recommendation [should] must be presumed to be favorable.

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

300 (1) will confer on the applicant a special privilege that would be  
301 denied to other applicants;

302 (2) is based on conditions or circumstances which [are the] result [of  
303 the] from actions by the applicant;

304 (3) [arises from] is based on a condition relating to land or building  
305 use, either permitted or nonconforming, on a neighboring  
306 property; or

307 (4) will violate State water quality standards or cause measurable  
308 degradation in water quality.

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

315 \* \* \*

316 *Approved:*

317

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Philip M. Andrews, President, County Council

Date

318 *Approved:*

319

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Isiah Leggett, County Executive

Date

320 *This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date