

MEMORANDUM

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: ~~K~~ Michael Faden, Senior Legislative Attorney
~~J~~ Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: **Worksession:** Expedited Bill 21-13, Forest Conservation Law - Enforcement

Expedited Bill 21-13, Forest Conservation Law - Enforcement, sponsored by the Council President at the request of the Montgomery County Planning Board, was introduced on July 9, 2013. A public hearing is scheduled for July 23 at 1:30 p.m.

Bill 21-13 would clarify the Planning Board's authority to enforce the forest conservation law, and more specifically to enforce easements previously granted.

Council staff recommendation: enact as introduced.

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Expedited Bill No. 21-13
Concerning: Forest Conservation -
Enforcement
Revised: 7-1-2013 Draft No. 1
Introduced: July 9, 2013
Expires: January 9, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President on behalf of the Montgomery County Planning Board

AN EXPEDITED ACT to:

- (1) clarify the enforcement authority of the Planning Board in the forest conservation law; and
- (2) generally amend the law governing the enforcement of forest conservation requirements.

By amending

Montgomery County Code
Chapter 22, Forest Conservation
Article III, Enforcement, Appeals, and Variances
Sections 19-21, and 19-22A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

28 penalty imposed by the Planning Board. This administrative civil
29 penalty must not exceed the rate set by the County Council by
30 law or resolution, except as provided in paragraph (3), but must
31 not be less than the amount specified in Section 5-1608(c) of the
32 Natural Resources Article of the Maryland Code. Each day a
33 violation is not corrected is a separate violation.

34 * * *

35 **22A-20. Hearings and appeals**

36 * * *

37 (d) *Administrative enforcement process.*

38 * * *

39 (2) *Hearing.*

40 * * *

41 (C) The Planning Board may designate a hearing officer,
42 including a Hearing examiner from the Office of Zoning
43 and Administrative Hearings, to conduct a hearing and
44 submit a report and recommendation on any alleged
45 violation of this Chapter. The hearing officer must submit
46 the required report and recommendation to the Board not
47 later than [60] 30 days after the hearing record closes. The
48 hearing officer may extend the time to file the report by
49 notifying all parties.

50 * * *

51 **Sec. 2. Expedited Effective Date.**

52 (a) The Council declares that this legislation is necessary for the immediate
53 protection of the public interest. This Act takes effect on the date when
54 it becomes law.

55 (b) Any amendment to County Code Chapter 22A made by Section 1 of
56 this Act applies to any enforcement action that the Planning Board takes
57 after this Act takes effect, regardless of whether the alleged violation to
58 which the enforcement action applies was committed before or after this
59 Act took effect.

60 *Approved:*

61

Nancy Navarro, President, County Council Date

62 *Approved:*

63

Isiah Leggett, County Executive Date

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

65

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 21-13
Forest Conservation Law - Enforcement

DESCRIPTION: Would clarify that the Planning Board can enforce easements granted under the forest conservation law.

PROBLEM: The Planning Board's authority to enforce the forest conservation law, and specifically easements granted under that law, has been challenged in pending litigation.

GOALS AND OBJECTIVES: To clarify the enforcement authority of the Planning Board in the forest conservation law.

COORDINATION: Planning Board, Department of Permitting Services

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Christina Sorrento, Attorney, Planning Board, 301-495-4646;
Michael Faden, Senior Legislative Attorney, 240-777-7905

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Class A

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

OFFICE OF THE CHAIR

June 28, 2013

The Honorable Nancy Navarro
President, Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Ms. Navarro:

On June 27, 2013, the Montgomery County Planning Board recommended transmittal of an Expedited Bill to the County Council pertaining to the enforcement section of the Forest Conservation Law (Montgomery County Code Chapter 22A). The proposed Bill does not expand the Forest Conservation Law, but rather clarifies the Planning Board's existing enforcement authority.¹

The revisions to Section 22A-16 clarify the Planning Board's enforcement authority, which includes ordering corrective actions and imposing administrative civil penalties for forest conservation easement violations. The proposed revision to Section 22A-20 provides the hearing officer 30 days after the hearing record closes to provide its written recommendation to the Planning Board, instead of the current 60 day deadline stated in the law. This change eliminates the disparity between the time period stated in the Forest Conservation Law and the Montgomery County Planning Board Enforcement Rules, each of which governs enforcement proceedings in front of a hearing officer and the Planning Board.

Members of the Planning Board and Staff of The Maryland-National Capital Park & Planning Commission are available to assist the Council in its review of the proposed legislation, and extend their thanks to Council Staff for assisting in moving the Bill forward in an expedited manner.

Sincerely,

Françoise M. Carrier
Chair

cc: Michael Faden

¹ The Planning Board's enforcement authority has been challenged in recent cases. The proposed Bill seeks to clarify the enforcement authority granted to the Board, and eliminate confusion in the future.