COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Silverman, Denis, Floreen, Andrews, Praisner, and Subin

AN EXPEDITED ACT to:

(1) repeal a limit on certain penalties for noncompliance with the forest conservation law and certain fees payable under the forest conservation law; [[and]]
(2) clarify that criminal penalties may be applied to enforce the forest conservation law;
(3) further specify the basis of and criteria for setting an administrative civil penalty levied under the forest conservation law; and
(4) generally amend the enforcement provisions of the forest conservation law.

By amending
Montgomery County Code
Chapter 22A, Forest Conservation – Trees
Section 22A-16

By repealing
Laws of Montgomery County 1992
Chapter 4

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The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Section 22A-16 is amended as follows:

22A-16. Penalties and other remedies.

(a) Class A violation. Violation of this Chapter or any regulations adopted under it is a Class A civil or criminal violation. Notwithstanding Section 1-19, the maximum civil fine is $1,000. Each day a violation continues is a separate violation under this Chapter.

* * *

(c) Civil and criminal actions. The Commission may bring any civil or criminal action [[authorized to]] that the County may bring under [[Section]] Sections 1-18, 1-19, and 1-20 to enforce this Chapter or any regulation adopted under it. [[A]] The Commission may also bring a civil action [[may also be brought]] to enforce a forest conservation plan and any associated agreements and restrictions or to enforce an administrative order. These remedies are in addition to any [[remedies]] remedy that the Commission or County may initiate under state or [[local]] County law to enforce the terms of a regulatory approval which incorporates a forest conservation plan.

(d) Administrative civil penalty.

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

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

(A) the willfulness of the violations;
(B) the damage or injury to tree resources;
(C) the cost of corrective action or restoration;
(D) any adverse impact on water quality;
(E) the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator;
(F) any economic benefit that accrued to the violator or any other person as a result of the violation;
(G) the violator's ability to pay; and

[[F]][(H) any other relevant factors.

The Board or Director may treat any forest clearing in a steam buffer, wetland, or special protection area as creating a rebuttable presumption that the clearing had an adverse impact on water quality.

(3) In addition to any amount set under paragraph (1), an administrative civil penalty imposed under this Section may also include an amount that equals the fair market value of any conservation easement needed to enforce any mitigation or restoration requirement under this Chapter in the area of the violation. The Planning Board may specify the acceptable
methods of calculating the fair market value of a conservation
easement by a regulation adopted under Section 22A-26(a).

(4) The reasons for imposing a civil penalty must be provided in
a written opinion of the Planning Board and included in its
administrative order.

* * *

Sec. [2]. Section 2 of Chapter 4 of the Laws of Montgomery County
1992 is [amended] repealed as follows:

Sec. 2. Setting of in lieu fees [and maximum administrative civil
penalty].

Until altered by law or resolution, the fee in lieu of afforestation or
reforestation is 30 cents per square foot of the area of required planting [and the
maximum administrative civil penalty authorized is $1.00 per square foot of the area
found to be in noncompliance].]

Sec. [3]. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate
protection of the public interest. This Act takes effect on the date on which it
becomes law.

Approved:

George L. Leventhal, President, County Council

Approved:

Douglas M. Duncan, County Executive

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council