

Expedited Bill No. 34-09
Concerning: Forest Conservation –
Enforcement
Revised: 3-11-10 Draft No. 3
Introduced: October 6, 2009
Enacted: March 16, 2010
Executive: March 26, 2010
Effective: March 26, 2010
Sunset Date: None
Ch. 6, Laws of Mont. Co. 2010

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the Planning Board

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

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:

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.

* * *

401

402

Sec. 2. Expedited effective date; applicability.

403

(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.

404

405

406

(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.

407

408

409

410 *Approved:*

411

412

Nancy Floreen

Nancy Floreen, President, County Council

3/17/10

Date

413 *Approved:*

414

415

Isiah Leggett

Isiah Leggett, County Executive

3/26/10

Date

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

417

418

Linda M. Lauer

Linda M. Lauer, Clerk of the Council

3/29/10

Date