

MEMORANDUM

TO: County Council

FROM: ~~JS~~ Michael Faden, Senior Legislative Attorney
~~JL~~ Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: **Introduction:** 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, is scheduled to be introduced on July 9, 2013. A public hearing is tentatively scheduled for July 23 at 1:30 p.m., and a Transportation, Infrastructure, Energy, and Environment Committee worksession is tentatively scheduled for July 22 at 9:30 a.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.

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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:

Sec. 1. Sections 22A-16 and Section 22A-20 are amended as follows:

22A-16. Penalties and other remedies.

* * *

(b) ***Enforcement authority.*** The Planning Board has primary enforcement authority under this Chapter. The Board's enforcement authority includes holding enforcement hearings, imposing administrative civil penalties, ordering corrective actions, ordering the payment of civil fines, ordering compliance with corrective action orders, and any other action authorized by law. [Administrative enforcement actions may be initiated by the] The Planning Director may initiate an administrative enforcement action under this Article.

(c) ***Civil actions.*** The Board may bring any civil action authorized by law that the County may bring under [Sections] Section 1-18, 1-19, [and] or 1-20 to enforce this Chapter or any regulation adopted under it. The Board may also bring a civil action to enforce:

(1) a forest conservation plan and any associated [agreements, easement, and restrictions,] agreement or restriction, including any easement; or

(2) [to enforce] an administrative order.

These remedies are in addition to any remedy that the Board or the County may initiate under state or County law to enforce the terms of a regulatory approval which incorporates a forest conservation plan.

(d) *Administrative civil penalty.*

(1) In addition to any other remedy under this Article, a person who violates this Chapter, any regulation adopted under it, a forest conservation plan, or any associated agreement or restriction, including any easement, is liable for an administrative civil

penalty imposed by the Planning Board. This administrative civil penalty 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 a violation is not corrected is a separate violation.

* * *

22A-20. Hearings and appeals

* * *

(d) *Administrative enforcement process.*

* * *

(2) *Hearing.*

* * *

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

* * *

Sec. 2. Expedited Effective Date.

(a) The Council declares that this legislation 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 the Planning Board takes after this Act takes effect, regardless of whether the alleged violation to which the enforcement action applies was committed before or after this Act took effect.

Approved:

Nancy Navarro, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

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

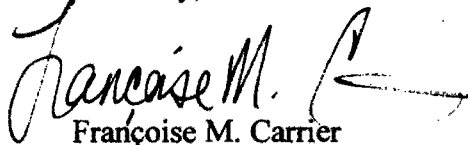
Dear Ms. Navarro:

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.