

Expedited Bill No. 27-05
Concerning: Forest Conservation -
[[Penalties]] Enforcement
Revised: 12-2-05 Draft No. 2
Introduced: September 20, 2005
Enacted: December 6, 2005
Executive: December 16, 2005
Effective: December 16, 2005
Sunset Date: None
Ch. 32, Laws of Mont. Co. 2005

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

| | |
|-------------------------------------|--|
| 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. Section 22A-16 is amended as follows:**

2 **22A-16. Penalties and other remedies.**

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

7 * * *

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

18 (d) *Administrative civil penalty.*

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

27 Resources Article of the Maryland Code. Each day ~~[[of]]~~ a
 28 violation is not corrected is a separate violation.

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

- 33 (A) the willfulness of the violations;
- 34 (B) the damage or injury to tree resources;
- 35 (C) the cost of corrective action or restoration;
- 36 (D) any adverse impact on water quality;
- 37 (E) the extent to which the current violation is part of a
 38 recurrent pattern of the same or similar type of violation
 39 committed by the violator;
- 40 (F) any economic benefit that accrued to the violator or any
 41 other person as a result of the violation;
- 42 (G) the violator's ability to pay; and
- 43 ~~[[F)]~~ (H) any other relevant factors.

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

48 (3) In addition to any amount set under paragraph (1), an
 49 administrative civil penalty imposed under this Section may also
 50 include an amount that equals the fair market value of any
 51 conservation easement needed to enforce any mitigation or
 52 restoration requirement under this Chapter in the area of the
 53 violation. The Planning Board may specify the acceptable

54 methods of calculating the fair market value of a conservation
55 easement by a regulation adopted under Section 22A-26(a).

56 ~~[[3]]~~ (4) The reasons for imposing a civil penalty must be provided in
57 a written opinion of the Planning Board and included in its
58 administrative order.

59 * * *

60 **Sec. ~~[[1]]~~ 2. Section 2 of Chapter 4 of the Laws of Montgomery County**
61 **1992 is ~~[[amended]]~~ repealed as follows:**

62 **~~[[Sec. 2. Setting of in lieu fees [and maximum administrative civil~~**
63 **~~penalty].~~**

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

68 **Sec. ~~[[2]]~~ 3. Expedited Effective Date.**

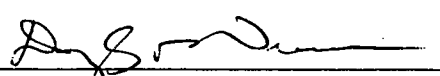
69 The Council declares that this legislation is necessary for the immediate
70 protection of the public interest. This Act takes effect on the date on which it
71 becomes law.

72 *Approved:*

73 

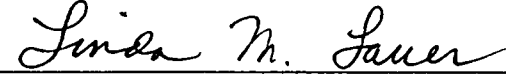
George L. Leventhal, President, County Council Date Dec. 8 2005

74 *Approved:*

75 

Douglas M. Duncan, County Executive Date 12/6/05

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

77 

Linda M. Lauer, Clerk of the Council Date 12/19/05