



June 2, 2006

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Faroll Hamer, Acting Director, *FH*
Department of Park and Planning

Rose Krasnow, Chief *RK*
Development Review Division

Michael Ma, Supervisor *Ma*
Development Review Division

Gwen Wright, Acting Chief *GW*
Countywide Planning Division

Jorge A. Valladares, P.E., Chief *JAV*
Environmental Planning, Countywide Planning

Steve Federline, Supervisor *SF*
Environmental Planning, Countywide Planning Division

FROM: Doug Johnsen, Planner Coordinator
Development Review Division (301) 495-4571

Candy Bunnag, Planner Coordinator, Environmental Planning
Countywide Planning Division (301) 495-4543

SUBJECT: Hearing on civil citation #DRD0000003, administrative civil penalty # 05-02 and administrative order in accordance with Chapter 22A of the Montgomery County Code (Forest Conservation Law) for:
Mr. Anthony Mereos; 17900 Trundle Road, Dickerson, MD 20842
(Parcel P120)

RECOMMENDATION

A civil penalty be imposed on Mr. Anthony Mereos, in accordance with Section 22A-16(d) of the Montgomery County Code (administrative civil penalty under the Forest

Conservation Law), for **clearing approximately 83,000 square feet (1.9 acre) of forest, on 17900 Trundle Road, Dickerson, MD without an approved forest conservation plan or exemption from the forest conservation plan requirements.** M-NCPPC staff identified the violation in September 2005 when the civil administrative penalty rates for the County Forest Conservation Law ranged from \$0.30 to \$1.00 per square foot of forest cleared.¹ **Using these penalty rates, staff recommends that the penalty be set at \$1.00 per square foot of forest cleared. Based on staff's measurement of the cleared area, the recommended penalty would be \$83,000.**

BACKGROUND

SUBJECT SITE

The property that is the subject of the Forest Conservation Law violation, 17900 Trundle Road, Poolesville, MD covers 1.79 acres (Attachment 1), all of which was forested. It lies within the Broad Run watershed (Class I/I-P) of the Potomac River.

COMPLAINT OF TREE CLEARING

On August 29, 2005, the Montgomery County Department of Permitting Services (DPS) received two (2) calls regarding trees being cut down at the subject property. A DPS inspector visited the site on August 29th and 30th and observed land clearing of roughly an acre or more in size. The DPS inspector met with Mr. Anthony Mereos, the property owner, and issued a notice of violation and two (2) civil citations, which Mr. Mereos refused to take or sign.

FIELD INSPECTIONS

The DPS inspector notified Maryland-National Capital Park and Planning Commission (M-NCPPC) inspection staff of tree clearing, on August 31, 2005. To follow up on this notification the M-NCPPC inspector verified on September 1, 2005 the recent clearing of forest of approximately 83,000 square feet (1.9 acres) on the subject property. A measuring wheel was used to measure the dimensions of the cleared area. Staff measured 345 feet along the front property line and 241 feet from the front property line back to the furthest edge of the clearing near the rear of the property. The clearing appeared to roughly follow property lines with some clearing appearing to occur off-site at the rear of the property. Staff believes that a portion of the forest clearing extends beyond the property lines of this site. Our records indicate that the forest clearing was not part of an approved forest conservation plan ("FCP") or forest conservation exemption as required by Montgomery County Code ("Code"), Chapter 22A ("Forest Conservation Law" or "FCL"). The approximate limits of the forest clearing activity are shown in Attachment 2. A chronology of events related to the illegal clearing activity is found in Attachment 3.

¹ The maximum administrative civil penalty under the County Forest Conservation Law was raised to \$9.00 per square foot of forest cleared on December 13, 2005.

ISSUANCE OF CIVIL CITATION

On October 4, 2005, the M-NCPPC inspector met Mr. Mereos at the subject property and issued a civil citation for One Thousand Dollars (\$1000), in accordance with § 22A-16(a) of the County Forest Conservation Law. During this field meeting Mr. Mereos stated that he was aware of the Forest Conservation Law due to a tree clearing action at his previous address of 14503 Golden Eagle Court, Burtonsville, MD 20866.

MEETING WITH MR. MEREOS

On October 7, 2005, M-NCPPC staff met with Mr. Mereos at M-NCPPC offices. During this meeting the forest clearing action was outlined and it was explained that this unauthorized clearing activity is a violation of the Forest Conservation Law. Additionally, possible corrective actions to remediate the site were discussed. In this meeting Mr. Mereos claimed that he did not clear the forest, but that he was only cutting up the trees that were cleared by the previous owner. Later in the meeting, Mr. Mereos indicated that he had cut seven or eight trees, but not the entire forested property. During this meeting Mr. Mereos elected to challenge the October 4th civil citation. On October 13, 2005 Mr. Mereos submitted a letter to the M-NCPPC Legal Department indicating that he wanted to contest the civil citation (Attachment 4).

NOTICE OF ADMINISTRATIVE ORDER

On March 2, 2006 a notice of Administrative Order for Corrective Action in accordance with the Forest Conservation Law was issued to Mr. Mereos (Attachment 5). The administrative order also included a staff recommendation for an administrative penalty. A Planning Board public hearing date of May 4, 2006 was set in the administrative order to consider the civil penalty, as well as the civil citation.

MR. MEREOS' POSITION

On March 10, 2006 M-NCPPC staff met with Mr. Mereos, his attorney, Mr. Shawn Whittaker, and Mr. Mereos' land surveyor. Once again the site violations and penalties were discussed. Remediation measures were discussed as per the Civil Administrative Order along with associated deadlines. Mr. Mereos indicated that it was his intent to repair the environmental damages on the site even though he did not clear the forest. Staff indicated that he should submit some information to staff to demonstrate that he was proceeding in good faith towards restoration of the site. Staff also indicated we would continue to recommend a civil penalty, but that the Planning Board would ultimately decide whether or not the civil penalty would be imposed and the amount of the penalty, if imposed.

On March 24, 2006, Mr. Whittaker submitted a letter (Attachment 6) indicating that Mr. Mereos would agree to have a wetland delineation and report done if a fine would not be imposed on him. Mr. Whittaker also requested copies of aerial photographs of the subject property prior to June 26, 2005 and indicated that he had an aerial photograph of

the site from April 7, 2002 showing the property as cleared. The April 7, 2002 photograph was not attached to his letter.

On March 30, 2006 staff responded to Mr. Whittaker (Attachment 7) summarizing the information that staff requested from Mr. Mereos at the March 10th meeting. Staff had requested an outline of items that would be needed to work towards restoration of the cleared area and an estimated schedule for completion of these items. The items include a plan showing what exists on the site and the forest cover that existed before the clearing activity along with a plan proposing restoration and reforestation. Staff's letter indicated that Mr. Whittaker's letter of March 24th did not provide this information. Staff's letter also reiterated our recommendation to proceed with a civil administrative penalty. Copies of the 2002 and 2004 aerial photographs from our Geographic Information System (GIS) database that show the property as completely forested were attached to the staff's letter.

Mr. Whittaker submitted a letter dated April 26, 2006 requesting postponement of the May 4th Planning Board public hearing (Attachment 8). He wanted to meet with staff again to better understand if Mr. Mereos could work with staff to resolve the issues without the application of administrative penalties. Staff met with Mr. Whittaker, Mr. Mereos and Mr. Raj Lal, P.E. (Mr. Mereos's consultant) on May 5, 2006. Mr. Mereos and Mr. Whittaker indicated that because staff would continue to recommend a civil penalty, no further information regarding site conditions or a restoration plan would be submitted to staff.

VIOLATION OF FOREST CONSERVATION LAW

Montgomery County Code, Chapter 19, requires that a property owner obtain a sediment and erosion control permit from DPS prior to commencing any disturbance of more than 5,000 square feet of land. Before DPS may issue a sediment and erosion control permit, the property owner must comply with the requirements of the Montgomery County Forest Conservation Law (Mont. Co. Code, Sections 19-3A, 22A-4(b), 22A-11(d)(3)). The Forest Conservation Law provides that, unless exempt, a property owner must receive review and approval of a forest stand delineation and a forest conservation plan, prior to undertaking the land-disturbing activity (Mont. Co. Code, Sections 22A-4, 22A-10, 22A-11(d)). Since it is believed Mr. Mereos' activity involved the clearing of approximately 83,000 square feet of forest, the activity without being part of any approved plans, staff alleges that a violation of the Montgomery County Forest Conservation Law has occurred and may be sanctioned accordingly.

The violations that have been issued under the County's sediment control law are under the jurisdiction of DPS. The Planning Board hearing covers those matters within the Board's jurisdiction, namely the violations associated with the Forest Conservation Law.

DISCUSSION

A. Identification of Responsible Parties for the Illegal Clearing Activity

When Mr. Mereos was issued a civil citation at the subject property on October 4, 2005 he did not state that others cleared the forest. Since the October 7th meeting with staff, he has stated that he did not clear the forest. He has stated that the previous owner cleared the forest and that when he took ownership of the property in July 2005, it was already cleared. He submitted statements signed by two individuals dated October 1, 2005 that state that the property "was cleared and many trees were removed prior to Anthony Mereos Purchasing the property". (Attachment 9).

Mr. Mereos entered into a contract to purchase the subject property on June 26, 2005. He has indicated that he purchased the property in mid July 2005. During the March 10, 2006 meeting this information was requested, but to date no confirmation has been received by this agency. However, Maryland Department of Assessments and Taxation Records show the purchase date for this property as July 22, 2005 (Attachment 10).

Staff believes that Mr. Mereos is the responsible party for the illegal forest clearing activity on the subject site. This is based on the following information:

- Aerial photographs taken in 2002 and in 2004 of the property (from M-NCPPC GIS database) show the property entirely forested (Attachments 11 and 12). Staff recently obtained an aerial photograph of the property from a U.S. Department of Agriculture (USDA) database (with aerial photography taken in June 2005) showing the entire property in forest cover (Attachment 13). Although the exact date of the USDA photograph cannot be identified, it was taken in the same month that Mr. Mereos entered into a contract to purchase the property.
- Reports of tree clearing on the subject site were received by DPS at the end of August 2005 after Mr. Mereos became the owner of the property. Neither M-NCPPC nor DPS staff received reports of tree clearing on the site before these August 2005 phone calls to DPS. Since staff has an aerial photograph taken in June 2005 showing forest cover on the property, the forest clearing activity would have occurred sometime after the June 2005 photographs.
- The M-NCPPC inspector photographed site conditions when he conducted his initial investigation of the forest clearing activity on September 1, 2005. The photographs include freshly cut tree stumps and cut trees with most of the leaves still green and vibrant (Attachments 14). These photographs have also been reviewed by Mr. Brian Murphy, an M-NCPPC

Parks Department certified tree care expert who is also a licensed arborist and has 8 years experience in both tree care and tree cutting. Both the inspector and the Parks tree expert believe that the characteristics of the tree stumps and the cut trees indicate that the trees were cut within days of the photographs and not months before. There were many more freshly cut trees than the seven or eight trees that Mr. Mereos stated he cut.

- In conversations with the manager of the United Rentals store, Mr. Rick Thorne, in Gaithersburg, the M-NCPPC inspector has learned that Mr. Mereos leased backhoes and skid loaders for delivery to the subject property between the middle of August and September 2005. The manager remembers these dates because Mr. Mereos returned some of this equipment in a damaged condition. This type of equipment is typically used in land clearing and grading activities.

<u>Date</u>	<u>Equipment Delivered</u>
8/19/05	Backhoe & Skid Loader
8/23/05	Skid Loader
8/25/05	555 Tracked Backhoe
9/2/05	Backhoe

- The DPS inspector and M-NCPPC inspector have held conversations with six of the adjoining property owners. These owners indicate that the property was forested when Mr. Mereos took ownership of the property. They indicate that Mr. Mereos cleared the forest.
- Two of the adjoining property owners have told staff that Mr. Mereos has made veiled threats against them and their properties should anyone come forward and state that they observed him clearing forest on the subject property.
- There are also individuals who have told staff that Mr. Mereos has recently been canvassing the neighborhood inquiring into who “turned him in to the county”.

B. Penalties and Enforcement Actions under the Forest Conservation Law

As stated above, staff believes that Mr. Mereos is the responsible party for the illegal forest clearing activity. In addition, staff believes the forest clearing was large, occurred in an environmentally sensitive area and was egregious. **If the Planning Board finds that Mr. Mereos is the responsible party for this forest clearing, several penalties and enforcement actions may be imposed on the violator, in accordance with Sections 22A-16 and 22A-17 of the Forest Conservation Law.**

It should be noted that staff is applying the provisions of the Forest Conservation Law as it existed at the time (September 2005) that the violation was identified by the M-NCPPC inspector. The possible penalties and actions under the Forest Conservation Law in September 2005 are discussed below. Under the law, the Commission may impose both a civil fine under a Class A violation and an administrative civil penalty.

Collected fines are deposited into the forest conservation fund. The Forest Conservation Law states that the “money deposited in this fund may be used for purposes of implementing this Chapter” (i.e, the Forest Conservation Law).

Class A Violation

Under this violation, the maximum civil fine is \$1000. Typically, violators of the Forest Conservation Law are issued civil fines. It should be noted that M-NCPPC issues in the range of a dozen violations of the Forest Conservation Law a year, and a fine of \$1000 is not unusual.

Mr. Anthony Mereos was fined \$1000 on October 4, 2005. On October 13, 2005 Mr. Mereos filed a written challenge to the civil fine with the M-NCPPC Legal Department (Attachment 4).

Civil Action²

In September 2005, the Forest Conservation Law stated that a judicial civil action may be “brought to enforce a forest conservation plan and any associated agreements and restrictions or to enforce an administrative order” in Montgomery County Circuit Court. As of this date M-NCPPC has not brought civil action against Mr. Mereos.

Corrective Action

Section 22A-17 of the Forest Conservation Law states:

“At any time, including during an enforcement action, the Planning Director may issue an administrative order requiring the violator to take corrective action within a certain time period. The corrective action may include an order to:

- (1) stop the violation;
- (2) stabilize the site to comply with a reforestation plan;
- (3) stop all work at the site;
- (4) restore or reforest unlawfully cleared areas; or
- (5) submit a written report or plan concerning the violation.”

² The County Forest Conservation Law was amended on December 13, 2005 to allow M-NCPPC to bring a civil or criminal action to enforce the Forest Conservation Law. Prior to this amendment, the law allowed for a civil action only.

An administrative order for corrective action was issued to Mr. Mereos on March 2, 2006, in conjunction with the notice for a hearing for an administrative civil penalty (Attachment 5). This corrective action consists of the following:

- Mr. Mereos would submit a natural resource inventory/forest stand delineation plan (NRI/FSD) for M-NCPPC review and approval. The NRI/FSD would show all streams, wetlands, seeps, associated environmental buffers and the extent of the forest on the property before any clearing activities.
- Mr. Mereos would submit a Forest Conservation Plan (FCP) for the subject property following M-NCPPC approval of the NRI/FSD. At a minimum the FCP must include a reforestation plan to cover any portion of the environmental buffers that were cleared.
- Mr. Mereos would also have to implement the FCP.
- At a minimum the environmental buffers on the property would be placed in a Category I Conservation Easement.

Administrative Civil Penalty

In addition to the civil fine of \$1000, the Planning Board may impose a civil penalty. In September 2005, the Forest Conservation Law set the amount of the penalty between a mandatory minimum penalty of \$0.30 per square foot to a statutory maximum of \$1.00 per square foot of forest cleared. Section 22A-16(d) of the Forest Conservation Law at the time the violation was identified stated the following:

“(2) In determining the amount of the civil penalty, the Planning Board must consider:

- (A) the willfulness of the violation;
- (B) the damage or injury to tree resources;
- (C) the cost of corrective action or restoration;
- (D) any adverse impacts 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; and
- (F) other relevant factors.

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

C. Recommended Planning Board Action

Staff recommends that the Planning Board impose an administrative civil penalty of \$1.00 a square foot of forest cleared, or, a total of \$83,000. The reasons are as follows:

A. "the willfulness of the violations"

- Based on conversations between Mr. Mereos and Mr. Mark Etheridge, a DPS Water Resources plan reviewer, on June 27 and 28, 2005 Mr. Mereos was told that the site was forested and that the entire property is a recorded Federal wetland. Mr. Mereos said that there must be some way to make it not a wetland. Additionally, Mr. Etheridge informed Mr. Mereos that he could not clear forest without checking with M-NCPPC regarding requirements and criteria related to forest clearing. These conversations occurred after Mr. Mereos put the property under contract, but before he took ownership of the property.
- In May 2006, Mr. Mereos ignored stop work orders issued by DPS, the Maryland Department of the Environment (MDE) (Attachment 18) and the U.S. Army Corps of Engineers (COE) (Attachment 19) by digging a series of trenches on the site with the intent to drain water from the wetlands.

B. "the damage or injury to tree resources"

- Staff believes the clearing of approximately 1.9 acres of forest is large. The cleared area was part of a larger forest stand that includes upland and stream valley features surrounding a headwater stream system.

C. "the cost of corrective action or restoration"

- Based on an approximate cost of restoration of \$0.90 per square foot of forest planting, the estimated cost to plant the cleared area would be about \$74,830. The restored area and thus the cost of restoration may be smaller than these estimates if Mr. Mereos can obtain all the necessary approvals to build a single-family residence on the property. According to the deed history provided to M-NCPPC staff, the property qualifies for an exception to the platting requirements and is eligible for construction of one single-family residence provided that all legal requirements are met (Attachment 17). Mr. Mereos has indicated that he plans to construct a single-family residence on the property. It would have to be served by a septic system. Given that preliminary information shows the entire property in a wetland, staff is not convinced at this time that a septic system could be approved on the property.

D. "any adverse impact on water quality"

- According to M-NCPPC GIS data, the entire property, and thus the forest clearing, lie within a wetland. Site evaluation by inspection staff of the Maryland Department of the Environment (MDE) on September 23, 2005 and November 17, 2005 indicate that the property is a state-regulated nontidal wetland (Attachment 18). A headwater tributary of Broad run (Use I stream system) traverses through the property and most, if not all, of the cleared area lies within its stream buffer. Clearing of forest in such an environmentally sensitive area can cause significant erosion and

sediment loadings into the stream and eliminate or severely damage stream and wetland habitats.

- To compound the damages to these environmentally sensitive areas, cut and grubbed trees were pushed and piled into the stream channel and the wetland area was graded. In January 2006, dirt was brought into the site and spread onto the wetland area. This is documented in an MDE field inspection report dated January 30, 2006 (Attachment 18). In addition, on May 12, 2006 a neighbor verified with M-NCPPC staff that, on or about April 26, 2006, Mr. Mereos had several trenches dug on his property in order to drain the water from the wetlands located on his site causing further damage to environmentally sensitive areas.

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”

- Mr. Mereos has been involved in a prior tree clearing action located at his previous residence of 14503 Golden Eagle Court, Burtonsville, MD 20866. M-NCPPC inspection staff responded to a DPS complaint and made Mr. and Mrs. Mereos aware of the Forest Conservation Law.
- The citation for violation of the Forest Conservation Law was issued in October 2005. In January 2006, MDE identified approximately four to six truckloads of fill dirt that were brought onto the subject property and spread over the wetland area.
- More recently, in May 2006, M-NCPPC inspection staff identified several trenches that had been recently dug on the property. The trenches were draining water away from the wetland area into a stream and drainage channel. These were reported to Ms. Tracy McCleaf (COE) and Mr. Rich Wolters (MDE). The COE issued an additional letter of compliance dated May 24, 2006 to Mr. Mereos (Attachment 19).

F. “other relevant factors”

- Some individuals have told staff that Mr. Mereos has made veiled threats against them and their property should anyone come forward and state that they observed him clearing forest on the subject property.
- There are also individuals who have told staff that Mr. Mereos has recently been canvassing the neighborhood inquiring into who “turned him in to the county”.

LIST OF ATTACHMENTS

- Attachment 1: Vicinity Map
- Attachment 2: Estimated area of forest clearing
- Attachment 3: Chronology of events.
- Attachment 4: October 13, 2005 letter from Mr. Mereos contesting the civil citation
- Attachment 5: M-NCPPC Administrative Order for Corrective Action
- Attachment 6: March 26, 2006 letters from Mr. Whittaker
- Attachment 7: March 30 M-NCPPC staff response letter to Mr. Whittaker
- Attachment 8: April 26, 2006 letter from Mr. Whittaker
- Attachment 9: Statements from two individuals stating that the forest clearing occurred before Mr. Mereos owned the property
- Attachment 10: Maryland Department of Assessments and Taxation Records
- Attachment 11: Site aerial photograph; 2002 M-NCPPC GIS
- Attachment 12: Site aerial photograph; 2004, M-NCPPC GIS
- Attachment 13: USDA Aerial Photograph; June 2005
- Attachment 14: Site photographs by M-NCPPC inspector; September 1, 2005
- Attachment 15: Emails from individuals regarding tree clearing
- Attachment 16: Sections 22A-16 and 22A-17 of the Montgomery County Forest Conservation Law in effect at the time the forest clearing violation was identified
- Attachment 17: M-NCPPC exemption letter from platting requirements
- Attachment 18: Maryland Department of the Environment field reports
- Attachment 19: U.S. Army Corps of Engineers field report and letter

ATTACHMENT 1

Vicinity Map