

O-26-23

Forest Conservation Plan Appeals

Amendment Summary:

Amendment 1, also known as a "sponsor's amendment," encompasses several crucial changes made by the bill sponsor, Ald. Savidge, in response to requests by the Planning Commission & others.

- Section 21.71.060, Forest Stand Delineation, is added to the bill for amendment purposes.
 - Entire section is copyedited to current code standards
 - 8(ii) - Eliminates automatic approval if the Department fails to notify the applicant in writing within 30 days.
 - 9 - changes approval criteria from "complete and correct" to "approved by the Department."
 - Requires appeals of forest stand delineation decisions to be filed within ten days
 - Appeals of Board of Appeals rulings can be filed in Anne Arundel County Circuit Court
- Section 21.71.070, Forest Conservation Plan, was originally in the bill. This amendment includes additional changes.
 - A(1) - rewritten to lay out an appeals process. Original code bars preliminary plan appeals.
 - A(1)(b) - Changes "shall require any forest clearing to be halted" during review to "may require."
 - C(2) - Reduces requirements for the final forest conservation plans
 - C(3) - Removes automatic approval if the decision takes longer than 45 days
 - C(3) - Removes the ability to request an extension under "extenuating circumstances."
 - Requires appeals of Planning and Zoning Dept. decisions to be filed within ten days
 - Appeals of Board of Appeals rulings can be filed in Anne Arundel County Circuit Court within 30 days of the Board's decision.

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AMENDMENT 1 – ALD. SAVIDGE (Sponsor's Amendment)

Amendment 1:

On page 4, in line 11, insert the following:

"Title 21 – PLANNING AND ZONING
Division V - Regulations of General Applicability
Section 21.71.060 - Forest stand delineation.

A. Criteria.

1. Application. A forest stand delineation shall be submitted to the Department as the first step of making application for the plans or permits specified in ~~Section~~ § 21.71.045 and shall not be impacted by change in ownership of the property.
2. Preparation. The delineation shall be prepared by a licensed Forester, licensed Landscape Architect, or a qualified professional who meets the requirements stated in the Code of Maryland Regulations (COMAR) § 08.19.06.01A.
3. Components Required. The delineation shall be used during the preliminary review process to determine the most suitable and practical areas for forest conservation and shall contain the following components:
 - ia. A topographic map delineating intermittent and perennial streams, and steep slopes;
 - ii**b.** A natural resources inventory;
 - iii**c.** A soils map delineating soils with structural limitations, hydric soils, or soils with a soil k value greater than 0.35 on slopes of fifteen percent or more;
 - iv**d.** Forest stand maps indicating species, location, and size of trees and showing dominant and co-dominant forest types;
 - v**e.** Location of 100-year floodplains;
 - vi**f.** The location and delineation of all tidal and non-tidal wetlands and their buffers;
 - vii**g.** Information required by the Forest Conservation Technical Manual; and

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removed on the property in the past ten years, if said removal has not already been mitigated for in a current or past forest conservation plan.

87. Time for sSubmittal.

- ~~ia.~~ ia. Within ~~thirty~~30 calendar days after receipt of the ~~fd~~ forest stand delineation, the Department shall notify the applicant in writing (by email or postal letter) whether the forest stand delineation is complete and correct. In the event a forest stand delineation is not complete and correct, the Department shall transmit to the applicant a detailed and specific listing of deficiencies.
- ~~ii~~b. ~~If the Department fails to notify the applicant in writing within thirty days, the delineation shall be treated as complete and correct.~~
- ~~iii.~~ The Department may require in writing further information or provide for an additional fifteen calendar days under extenuating circumstances as determined by the Department.

98. Incomplete Submissions. If the applicant submits two forest stand delineations ~~which~~that are not found to be complete and correct approved by the Department, the Department shall, at the applicant's expense, engage a licensed Forester, licensed Landscape Architect, or a qualified professional who meets the requirements stated in COMAR § 08.19.06.01A to complete and submit a forest stand delineation on the applicant's behalf.

10. Appeals.

- a. The approval of a forest stand delineation by the Department may be appealed by a resident of Annapolis or a local environmental organization to the Board of Appeals.
- b. Any appeal noted shall be filed within 10 days of the final administrative decision or Planning Commission decision.
- c. Pending appeal, a preliminary forest conservation plan may not be considered by the Department or Planning Commission."

On page 4, strike lines 17 through 21, and insert:

"1. Appeals.

- a. A preliminary forest conservation plan is appealable, within the timelines established above, as part of the appeal of a final administrative decision or Planning Commission decision specified in Chapter 21.08.
- b. Any appeal noted shall be filed within 10 days of the final administrative decision or Planning Commission decision.

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c. A stay pending appeal shall be imposed during an appeal to the Circuit Court."

On page 4, strike lines 32 through 40, and on page 5, strike lines 1 through 8, and insert the following:

- "a. Any person aggrieved by a decision of the Director to approve or disapprove a final forest conservation plan shall be entitled to note an appeal **within 10** days of the Director's approval or disapproval and said project shall halt work on any forest clearing until the Board of Appeals settles the appeal.
- b. Any party to the proceeding before the Board of Appeals aggrieved of the decision of the Board shall be entitled to file a petition for judicial review within 30 days of the decision of the Board with the Circuit Court for Anne Arundel County.
- c. The Department shall require any forest clearing to be halted until the judicial review has been completed."

On page 5, in line 9, insert the following:

**"Title 21 – PLANNING AND ZONING
Division V - Regulations of General Applicability
Section 21.71.070 - Forest conservation plan.**

A. General Provisions.

1. Appeals.

- a. A preliminary forest conservation plan is appealable, within the timelines established above, as part of the appeal of a final administrative decision or Planning Commission decision specified in Chapter 21.08.
- b. A stay pending appeal shall be imposed during an appeal to the Circuit Court.

C. Final Forest Conservation Plan.

1. **Final Plan Required.** A final forest conservation plan shall be prepared by a licensed Forester, a licensed Landscape Architect, or a qualified professional who meets the requirements stated in COMAR § 08.19.06.01(A).
2. **Requirements.** A final forest conservation plan shall:
- ia. Be submitted by the applicant consistent with requirements established by the Department and the law with the following:

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- ~~a.~~ A final subdivision plan,
- ~~b.~~ A final project plan,
- ei. An application for a grading permit, or
- ~~ii.~~ An application for a sediment control permit;
- ib. Show proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;
- ic. In the case of afforestation or reforestation, include an afforestation or reforestation plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;
- id. Incorporate justification for any proposed disturbance of priority retention areas, including reasons why such priority retention areas cannot be retained and how the applicant shall replace proposed disturbed priority retention areas through afforestation and reforestation, in compliance with the requirements of this chapter.
- ve. Incorporate a binding five-year maintenance agreement specified in COMAR § 08.19.05.01 that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:
 - ai. Watering, and
 - bi. A reinforcement planting provision if survival rates fall below required standards, as provided in the Forest Conservation Technical Manual;
- vf. Incorporate a long-term binding protective agreement as specified in COMAR § 08.19.05.02 that:
 - a. Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention; and
 - b. Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest;
- viig. Include a statement of how the project will impact the City's tree canopy goals;
- viiah. Include the substantive elements required under Subsection B.2.~~ii.~~ ~~v.~~, ~~vii.~~ ~~ix.~~, and ~~xi.~~ of this section, as finalized elements of the forest conservation plan; and

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- ~~ix.i.~~ Include other information the Department determines is necessary to implement this chapter.
3. **Time for Notification.**
- ~~ia.~~ Within ~~forty-five~~45 calendar days after incorporation of the prospective final forest conservation plan into a complete plan or permit application associated with a regulated activity, the decision making authority for such plans shall notify the applicant in writing whether the forest conservation plan ~~is complete and acceptable~~approved.
- ~~ii.~~ ~~If the decision making authority fails to notify the applicant within forty-five calendar days, the plan shall be treated as complete and approved.~~
- ~~iii.b.~~ The decision making authority may require further information or extend the deadline for an additional ~~fifteen~~15 calendar days under extenuating circumstances in its own discretion.
- ~~iv.~~ ~~At the request of the applicant, the decision making authority may extend the deadline under extenuating circumstances.~~
- ~~v.c.~~ The Department shall post the notifications described in this section and the final forest conservation plan on their website.
4. The Department's review of a final forest conservation plan shall be concurrent with the review of the final subdivision or project plan, grading permit application, or sediment control application associated with the project.
5. The Department may revoke an approved forest conservation plan if it finds that:
- ~~ia.~~ A provision of the plan has been violated;
- ~~ib.~~ Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, omission of a relevant or material factor;
- ~~ic.~~ Changes in the development or in the condition of the site necessitate preparation of a new or amended plan; or
- ~~iv.d.~~ The project plan approval is terminated due to the applicant's inaction as specified in Title 17 of the City Code.
6. The Department may issue a stop work order against a person who violates a provision of this chapter or a regulation, order, approved forest conservation plan, or maintenance agreement.
7. Before revoking approval of a forest conservation plan, the Department shall notify the violator in writing and provide an opportunity for a hearing before the Department Director or designee.
8. Upon approval of the final forest conservation plan the Department shall post the plan on the Department's website within three business days."

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As the change would look in the resolution:

(THIS IS THE BILL + AMENDMENT 1 CHANGES)

Title 21 – PLANNING AND ZONING

Division V - Regulations of General Applicability

Section 21.71.060 - Forest stand delineation.

A. Criteria.

1. Application. A forest stand delineation shall be submitted to the Department as the first step of making application for the plans or permits specified in ~~Section~~ § 21.71.045 and shall not be impacted by change in ownership of the property.
2. Preparation. The delineation shall be prepared by a licensed Forester, licensed Landscape Architect, or a qualified professional who meets the requirements stated in the Code of Maryland Regulations (COMAR) § 08.19.06.01A.
3. Components Required. The delineation shall be used during the preliminary review process to determine the most suitable and practical areas for forest conservation and shall contain the following components:
 - ia. A topographic map delineating intermittent and perennial streams, and steep slopes;
 - iib. A natural resources inventory;
 - iiic. A soils map delineating soils with structural limitations, hydric soils, or soils with a soil k value greater than 0.35 on slopes of fifteen percent or more;
 - ivd. Forest stand maps indicating species, location, and size of trees and showing dominant and co-dominant forest types;
 - ve. Location of 100-year floodplains;

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- vi.f. The location and delineation of all tidal and non-tidal wetlands and their buffers;
 - vii.g. Information required by the Forest Conservation Technical Manual; and
 - viii.h. Other information the Department determines is necessary to implement this chapter, including a nontidal wetlands plan upon request.
4. **Public Notice.** The Department shall post the forest stand delineation on its website within three business days of receipt for at least ~~fifteen~~15 calendar days and provide directions as to how the public may send or deliver written comments, testimony, or documentation pertaining to the forest stand delineation.
- a. The website posting requirement shall apply to any amendments or revisions to the forest stand delineation.
 - b. The Department shall promptly post all correspondence between the department, and the applicant.
 - c. All documents shall be retained by the Department as part of the record of the application.
5. **Delineation Substitutes.**
- 1. If approved by the Department, a simplified forest stand delineation, a concept plan or plat, preliminary plat or plan, sediment control plan, or other appropriate document, verified by a site visit, if appropriate, may substitute for the forest stand delineation if:
 - i.a. No forest cover is disturbed during a construction activity; and
 - ii.b. Designated to be under a long-term protective agreement.
6. 2. The Department shall consider a simplified forest stand delineation, or other substitute plan described in Subsection A.5. of this section, complete if it includes:
- i.a. All requirements under Subsection A.3.i., ii., iii., v., and viii. of this section;
 - ii.b. A map showing existing forest cover as verified by field inspection; and
 - iii.c. Other information required by this chapter.
76. **Length of Delineation.**
- 1. An approved forest stand delineation is valid for five years except that the Department may require submission of a revised forest stand delineation if site conditions change during the five-year period.

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~~12.~~ When a new forest stand delineation is required to be completed, it shall identify and account for any forest or trees that may have been removed on the property in the past ten years, if said removal has not already been mitigated for in a current or past forest conservation plan.

87. Time for sSubmittal.

- ia. Within ~~thirty~~30 calendar days after receipt of the ~~fsd~~ forest stand delineation, the Department shall notify the applicant in writing (by email or postal letter) whether the forest stand delineation is complete and correct. In the event a forest stand delineation is not complete and correct, the Department shall transmit to the applicant a detailed and specific listing of deficiencies.
- ~~ii~~b If the Department fails to notify the applicant in writing within thirty days, the delineation shall be treated as complete and correct.
- ~~iii~~—The Department may require in writing further information or provide for an additional fifteen calendar days under extenuating circumstances as determined by the Department.

98. Incomplete Submissions. If the applicant submits two forest stand delineations which are not ~~found to be complete and correct~~approved by the Department, the Department shall, at the applicant's expense, engage a licensed Forester, licensed Landscape Architect, or a qualified professional who meets the requirements stated in COMAR § 08.19.06.01A to complete and submit a forest stand delineation on the applicant's behalf.

10. Appeals.

- a. The approval of a forest stand delineation by the Department may be appealed by a resident of Annapolis or a local environmental organization to the Board of Appeals.
- b. Any appeal shall be filed within 10 days of the approval of a forest stand delineation by the Department.**
- c. Pending appeal, a preliminary forest conservation plan may not be considered by the Department or Planning Commission."

**Title 21 – PLANNING AND ZONING
Division V - Regulations of General Applicability
Section 21.71.070 - Forest conservation plan.**

A. General Provisions.

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~~1. A preliminary forest conservation plan cannot be appealed. A forest conservation plan is appealable as part of the appeal of a final administrative decision, Planning Commission decision or Board of Appeals decision specified in Chapter 21.08. A stay pending appeal shall be imposed during the time allowed to file an appeal, and if an appeal has been filed, for sixty days thereafter.~~

1. Appeals.

a. A preliminary forest conservation plan is appealable, within the timelines established above, as part of the appeal of a final administrative decision or Planning Commission decision specified in Chapter 21.08.

b. Any appeal noted shall be filed within 10 days of the final administrative decision or Planning Commission decision.

c. A stay pending appeal shall be imposed during an appeal to the Circuit Court.

~~2. With regard to (1) a plan of subdivision or a grading or sediment control plan that was administratively approved, or (2) a planned development that has obtained final planned development approval, prior to September 26, 2016, the disposition of which remain governed by former Section 17.09.025.B. of the city Code, any person aggrieved by a decision of the director to approve or disapprove the Forest Conservation Plan associated with such applications shall be entitled to note an appeal to the building board of appeals. Any party to the proceeding before the Building Board of Appeals aggrieved of the decision of the Building Board of Appeals shall be entitled to file a petition for judicial review of the decision of the Building Board of Appeals in the Circuit Court for Anne Arundel County.~~

(Amendment: entire bill change is stricken)

~~a. With regard to:~~

~~i. A plan of subdivision or a grading or sediment control plan that was administratively approved; or~~

~~ii. Planned development that has obtained final planned development approval, prior to September 26, 2016, the disposition of which remains governed by former section 17.09.025.b. of the city code;~~

~~Any person aggrieved by a decision of the Director to approve or disapprove the forest conservation plan associated with such applications shall be entitled to note an appeal, and said project shall halt work on any forest clearing until the Board of Appeals settles the appeal.~~

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~~b. Any party to the proceeding before the Building Board of Appeals aggrieved of the decision of the Building Board shall be entitled to file a petition for judicial review of the decision of the Building Board in the Circuit Court for Anne Arundel County. The Department may require any forest clearing to be halted until the judicial review has been completed.~~

(Amendment: replacement to stricken section)

- "a. Any person aggrieved by a decision of the Director to approve or disapprove a final forest conservation plan shall be entitled to note an appeal within 10 days of the Director's approval or disapproval and said project shall halt work on any forest clearing until the Board of Appeals settles the appeal.
- b. Any party to the proceeding before the Board of Appeals aggrieved of the decision of the Board shall be entitled to file a petition for judicial review within 30 days of the decision of the Board with the Circuit Court for Anne Arundel County.
- c. The Department shall require any forest clearing to be halted until the judicial review has been completed."

(CODE SECTION ADDED TO BILL & AMENDED)

Title 21 – PLANNING AND ZONING Division V - Regulations of General Applicability Section 21.71.070 - Forest conservation plan.

C. Final Forest Conservation Plan.

1. Final Plan Required. A final forest conservation plan shall be prepared by a licensed Forester, a licensed Landscape Architect, or a qualified professional who meets the requirements stated in COMAR § 08.19.06.01A.
2. Requirements. A final forest conservation plan shall:
 - ~~a.~~ ~~A final subdivision plan,~~
 - ~~b.~~ ~~A final project plan,~~
 - ei. An application for a grading permit, or
 - ~~di.~~ An application for a sediment control permit;

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- ii**b**. Show proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;
- iii**c**. In the case of afforestation or reforestation, include an afforestation or reforestation plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;
- iv**d**. Incorporate justification for any proposed disturbance of priority retention areas, including reasons why such priority retention areas cannot be retained and how the applicant shall replace proposed disturbed priority retention areas through afforestation and reforestation, in compliance with the requirements of this chapter.
- v**e**. Incorporate a binding five-year maintenance agreement specified in COMAR § 08.19.05.01 that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:
 - ai. Watering, and
 - bi. A reinforcement planting provision if survival rates fall below required standards, as provided in the Forest Conservation Technical Manual;
- vi**f**. Incorporate a long-term binding protective agreement as specified in COMAR § 08.19.05.02 that:
 - a. Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention; and
 - b. Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest;
- vii**g**. Include a statement of how the project will impact the City's tree canopy goals;
- viii**h**. Include the substantive elements required under Subsection B.2.~~ii—v~~, ~~vii—ix~~, and ~~xi~~ of this section, as finalized elements of the forest conservation plan; and
- ix**i**. Include other information the Department determines is necessary to implement this chapter.

3. **Time for Notification.**

- ia. Within ~~forty-five~~45 calendar days after incorporation of the prospective final forest conservation plan into a complete plan or permit application

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associated with a regulated activity, the decision making authority for such plans shall notify the applicant in writing whether the forest conservation plan is ~~complete and acceptable~~ approved.

- ~~ii. If the decision making authority fails to notify the applicant within forty-five calendar days, the plan shall be treated as complete and approved.~~
 - ~~iii~~b. The decision making authority may require further information or extend the deadline for an additional ~~fifteen~~15 calendar days under extenuating circumstances in its own discretion.
 - ~~iv. At the request of the applicant, the decision making authority may extend the deadline under extenuating circumstances.~~
 - ~~v~~c. The Department shall post the notifications described in this section and the final forest conservation plan on their website.
4. The Department's review of a final forest conservation plan shall be concurrent with the review of the final subdivision or project plan, grading permit application, or sediment control application associated with the project.
 5. The Department may revoke an approved forest conservation plan if it finds that:
 - ~~i~~a. A provision of the plan has been violated;
 - ~~ii~~b. Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, omission of a relevant or material factor;
 - ~~iii~~c. Changes in the development or in the condition of the site necessitate preparation of a new or amended plan; or
 - ~~iv~~d. The project plan approval is terminated due to the applicant's inaction as specified in Title 17 of the City Code.
 6. The Department may issue a stop work order against a person who violates a provision of this chapter or a regulation, order, approved forest conservation plan, or maintenance agreement.
 7. Before revoking approval of a forest conservation plan, the Department shall notify the violator in writing and provide an opportunity for a hearing before the Department Director or designee.
 8. Upon approval of the final forest conservation plan the Department shall post the plan on the Department's website within three business days.

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