

O-16-26 Forest Conservation

Summary of Savidge Amendments 2 through 6

Tags: **Conformance** = carries out or supports a state change. **Local enhancement** = stronger than the state floor. **Staff request** = requested by City staff.

Amendment 2. Stream buffer definition (21.71.020) **Conformance + Local enhancement**

Sets clear buffer widths that match the state retention standards, 100 feet on perennial streams and 50 feet on intermittent streams. At the Office of Law's request, it replaces the old open-ended standard, which let the Director set the width to prevent a "deleterious effect" with no criteria, with objective standards. The Director may expand the buffer up to 50 additional feet only where a specific condition exists: slopes of 15% or greater, highly erodible soils, hydric soils or nontidal wetlands, or habitat for sensitive species. Consistent with state law under NRA 5-1607(c) and more protective under 5-1606(d).

Amendment 3. Annual report (21.71.190) **Conformance**

State requirements: changes the due date for the annual report to the Department of Natural Resources from March 1 to August 31, and adds reporting on the acres for which fees were collected and the acres reforested, afforested, or conserved using those fees.

Amendment 4. Forest conservation plan appeals (21.71.070) **Conformance + Local enhancement + OOL**

The most substantial amendment. Today, an appeal of a forest conservation plan goes to the Building Board of Appeals. This amendment does three things. **(1) Establishes a separate appealable decision.** SB 526 and the Maryland Supreme Court in CREG Westport require that a forest conservation plan approval be a distinct, final, appealable decision. The amendment makes the plan appealable when the associated application receives its final approval. **(2) Moves the appeal to the Board of Appeals.** On the Office of Law's advice, forest conservation plan appeals now go to the Board of Appeals under Chapter 21.30 rather than the Building Board of Appeals. Because the ordinance is in Chapter 21, the Board of Appeals is the more appropriate body, and unlike the Building Board of Appeals it has adopted procedures. Planning Commission approvals are appealed to circuit court; grading permit and site design approvals go to the Board of Appeals within 30 days. **(3) Keeps forest and grading appeals separate.** A grading permit is still appealed to the Building Board of Appeals under Chapter 17, but the amendment prohibits that appeal from including forest conservation plan issues, which must follow the new forest conservation track to the Board of Appeals. This prevents two bodies from hearing the same forest question.

Amendment 5. Notice of plan approval (21.71.070.C) **Local enhancement**

Not required by the state; a local transparency measure. Forest conservation plan approvals authorize tree clearing that is often of significant public interest, yet there is no requirement to notify anyone when a plan is approved. This amendment requires, upon approval, written notice to abutting and adjacent property owners, publication in a newspaper of general circulation, and website posting, each stating the decision date and the appeal window. The cost is borne by the applicant, consistent with existing practice such as 21.24.120, so it carries no fiscal impact. It also corrects a paragraph numbering error in the same section. Fair notice lets the public exercise the appeal rights the state now guarantees. Amendments 4 and 5 are interdependent and should move together. *(This was modified per Environmental Matters to remove the mailed public notification requirement as that is already included in the State changes. See 5A below)*

NEW - Amendment 5A. Newspaper notification requirement (21.71.070.C) **Local enhancement**

(This is an alternative to 5, as discussed by Environmental Matters) Corrects a numbering error in 21.71.070(C) and replaces the website-only posting requirement with real public notice. On the approval that finalizes a forest conservation plan, the Department publishes notice in a newspaper of general circulation at the applicant's expense and posts the plan to the website within three business days. The publication and posting must state the date of final approval and the right to appeal, including the body hearing the appeal and the 30-day filing period. Notice is what makes the appeal right meaningful, since a right nobody knows about cannot be exercised. Moves together with Amendment 4.

UPDATED - Amendment 6. Applicability (Section II) **Conformance**

(The Planning Commission recommended the original 6 be tweaked to ensure development projects in the pipeline are not unduly impacted. This reflects such a recommendation) Provides that the ordinance takes effect upon passage and applies to any development application submitted on or after July 1, 2026. July 1, 2026 is the state conformance date under SB 526 as modified by HB 1511, so the line is anchored to the state deadline rather than to the Council calendar. Applications submitted before that date remain under the current forest conservation program. A submission date is fixed in the record, which gives applicants certainty and creates no incentive to race approvals ahead of passage.

Amendment 7. Appeal body fix (Environmental Matters) **Conformance + Local enhancement + OOL**

If Amendment 4 passes the other references to the Building Board of Appeals in this Chapter will need to be changed to the Board of Appeals.

Amendment 8. Divergent standards in the Critical Area (21.71.030.B.2) **PC recommendation**

Recommended unanimously by the Planning Commission and introduced on the Commission's behalf. Provides that where a requirement of the forest conservation chapter is more restrictive than a comparable requirement under the Critical Area Protection Law or Chapter 21.54, the more restrictive requirement controls. Current law treats the two programs as either-or, so a Critical Area property is fully outside the forest conservation chapter. The Office of Law has raised the question of whether this would newly subject Critical

Area properties to a full forest conservation plan, and whether Critical Area Commission review is required. ***Sponsor position pending resolution of that question and may not introduce.***

Amendment 9. Residential exemption and planned developments (21.71.030.B.8) *Local enhancement*

Clarifies that the small residential exemption, which covers construction on an existing single lot of record clearing less than 20,000 square feet of forest, does not apply to lots within a planned development. As written, the exemption is framed in terms of a single lot, which leaves open whether a builder could claim it lot by lot inside a larger planned development and avoid a forest conservation plan for the project as a whole. This amendment closes that reading. Furthermore, this amendment reflects the intention of the FCA and simply adjusts the language to better reflect that.

Amendment 10. Notice of intent to appeal (21.71.070.A.2) *Colleague request*

Offered at the request of Alderman Huntley. Replaces the automatic 30-day no-cutting period with a 7-day window in which a person entitled to appeal may file a simple written notice of intent. If a notice is filed, the stay continues through the appeal period and any appeal. If none is filed, the applicant may proceed after 7 days. The window runs from the later of newspaper publication and website posting, so the clock starts when the public can actually see the approval. The filing requires only a name, address, and the plan at issue, and no fee may be charged. Applicants are not asked to wait on a hypothetical appeal, and forest is not lost while a real one is being prepared. City Forester Brian Adams has advised that a 7 to 10 day notice period would be sufficient and that clearing within 30 days is unlikely in practice, since a grading permit, bond, and signed agreements must be in place first.