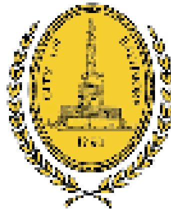
CITY OF BALTIMORE

BRANDON M. SCOTT,
Mayor



DEPARTMENT OF LAW
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May 11, 2026

The Honorable President and Members
of the Baltimore City Council
Room 409, City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 26-0161 – Natural Resources – Forest and Tree Conservation – Conforming Amendments

Dear President and City Council Members:

The Law Department reviewed City Council Bill 26-0161 for form and legal sufficiency. The bill amends the Forest and Tree Conservation provisions in Division IV of Article 7 of the Baltimore City Code to comply with new State law requirements. This bill would take effect on July 1, 2026.

The bill makes extensive changes to the existing provisions of Article 7 of the City Code in accordance with amendments to the Maryland Natural Resources Article of the State code which will take effect July 1, 2026. All future references to Sections of the Natural Resources Article of the State Code in this bill report reference the law that will take effect on July 1, 2026. 2023 Laws of Md., ch. 542. A local forest conservation program must meet or be more stringent than the requirements of the State Forest Conservation Act provisions in Sections 5-1601–5-1612 of the Natural Resources Article of the Maryland Code. Md. Code, Nat'l Res., §§ 5-1603(a)(2), (c)(1); Code of Maryland Regulations, ("COMAR"), 08.19.02.02A. The State has disseminated a Draft Model Ordinance for use by local forest conservation programs in updating local forest conservation law. The Draft Model Ordinance has not yet been published by the State.

The Law Department has the following required amendments for Council Bill 26-0161.

- Section 41-2, pg. 2, lines 28-29. On line 28, delete "§ 5-1601" and insert "§§ 5-1601-5-1612". On line 29, Add "AND CODE OF MARYLAND REGULATIONS 08.19.01.03" following the word "ARTICLE". Code of Maryland Regulations 08.19.01.03A states: "Terms used in this subtitle apply to both the local program and the State program." Moreover, the COMAR provision contains a broader statement that terms not defined in the regulation have the meanings in Sections 5-103 and 5-1601-5-1612 of the Natural Resources Article of the Maryland Code.

- Section 41-3(f), pg. 3, lines 22-30. The definition of "Critical habitat" should be amended as follows to meet the State definition in Section 5-1601(h) of the Natural Resources Article of the Maryland Code and COMAR 08.19.01.03B(10): in line 24 on page 3 delete

the word “contributes” and insert the words “is likely to contribute”; in line 26 on page 3 delete the word “occupied” and insert the words “likely to be occupied”; and in line 27 on page 3 delete the word “or” and insert the word “and.” Line 29 of the definition references Sections 4-2A-04 and 10-2A-06 of the Natural Resources Article of the Maryland Code in accordance with the Model Forest Conservation Ordinance in COMAR 08.19.03.01 and the Draft Model Ordinance, pg. 2. However, the Law Department believes the citation to Section 4-2A-04 should be corrected to Section 4-2A-06. See Md. Code, Nat. Res. § 5-1601(h)(3). Compare Md. Code, Nat. Res. § 5-1601(i).

- Section 41-7, pgs. 10-13. On page 12 of Section 41-7(8), line 16, the word “development” should be “redevelopment.” COMAR 08.19.01.04A(15)(a); Draft Model Ordinance, pg. 9.

- Section 42-6(d), pg. 15, lines 29-32, pg. 16, lines 1-20. Section 42-6(d)(2) of Article 7 in Council Bill 26-0161 limits who is considered an abutting and adjacent property owner for purposes of receiving notice of a proposed clearing of a priority retention area. The requirements for administrative standing in Maryland are not strict, and it is generally easy to become a party to administrative proceedings. *Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588, 599 (2014). Moreover, this limitation on who is an abutting or adjacent property owner cannot be used to determine who may have standing to seek judicial review under what would be new Section 42-6(e). City Council Bill 26-0161, pg. 16, lines 21-28. Standing is a matter to be resolved by the courts. *Matter of Carpenter*, 264 Md.App.138, 148 (2024) (*quoting Sugarloaf v. Dep't of Env't*, 344 Md. 271, 290 (1996)). The limitation regarding who is an abutting or adjacent property owner results in less opportunity for challenge to the proposed clearing of a priority retention area. As a result, the Council Bill provides less protection than the State law and therefore does not meet the State standards. The bill should be amended to strike lines 18-20 on page 16.

- Section 42-6(e), pg. 16, lines 21-28. Council Bill 26-0161 provides judicial review only for an approved plan, but case law requires that judicial review be available for the decision to deny a plan. *See Chesapeake Bay Foundation, Inc. v. CREG Westport I, LLC*, 481 Md. 325, 352-53 (2022) (equating the finality of the denial of a forest conservation plan with the approval of a forest conservation plan for purposes of judicial review). To effectuate this change, strike “an approved” and “approval of the” from lines 23 and 25 on page 16 of the bill and substitute “a final decision regarding a.” This change in language provides for judicial review from a final decision regardless of whether that decision is made by the Planning Director or the Planning Commission. Under current City law in Section 4-306(a) of Article 32 of the City Code, an applicant who is aggrieved by the final decision of the Director of Planning regarding a decision under the forest conservation provisions may seek an administrative appeal from that decision to the Planning Commission.

- The City definition of Urban Forest in Section 45-4(a) is less stringent than the State standard. Accordingly, an amendment is required in line 11 on page 27 of Council Bill 26-0161 to remove the word “and” and replace it with the word “or” to meet the State standard

for urban forest subject to retention and protection. See Md. Code, Nat. Res. § 5-1607(c)(1).

- The standards in Section 45-4(b)(2) of Article 7 on City Council Bill 26-0161, pg. 27, lines 21-31, pg. 28, lines 1-7 differ from the variance standards set forth in Section 47-3 of Article 7 of the City Code and the Draft Model Ordinance, pg. 25. Additionally, the requirement to obtain written approval from the Director of Planning for the plants and areas identified in Section 45-4(c)(1) and (2) does not reference the requirement that an applicant demonstrate that they would qualify for a variance. Accordingly, an amendment is required to the bill on page 28, line 31. Delete the words "ESTABLISHED UNDER SUBSECTION (B) OF THIS SECTION" on line 31 and insert the words "FOR A VARIANCE UNDER SUBTITLE 47 {VARIANCES} OF THIS DIVISION IV." The procedure in Section 45-4(d)(2)(iii) (City Council Bill 26-0161, pg. 29, lines 4-6) requiring an applicant to actually receive a variance for clearing the trees identified in Section 45-4(c)(3) is more stringent than State law.

- Section 45-6(b), pg. 30, lines 7-17. Section 45-6(b) discusses the procedure for review of a plan to clear a priority retention area. Section 45-6(b)(1) requires that prior to approving the clearing of a priority retention area and the associated forest conservation plan the Department will seek the State's review and input. Section 45-6(b)(2) provides that the Department, after reviewing the State's materials, shall issue a final determination of approval or denial of the proposed clearing of a priority retention area. Section 42-6(d) on pages 15-16 of the bill requires that notice and an opportunity to comment be given to all property owners abutting and adjacent to the boundary of the subject property of any proposed clearing of a priority retention area as described in § 45-6. The content of Section 42-6(d) should be moved to Section 45-6, or at a minimum a reference to Section 42-6(d) should be inserted into Section 45-6.

- Section 45-6(c), pg. 30, lines 19-30. In the First Reader version of Section 45-6(c) of Article 7 in Council Bill 26-0161 an applicant may appeal a final determination by the Planning Department regarding a proposed clearing of a priority retention area to the Planning Commission, whose decision is binding and there is no further appeal. The Planning Department has proposed an amendment to Section 45-6(c) that provides that an applicant is entitled to judicial review of the Department's final determination. This is legally required because the Supreme Court of Maryland in *Chesapeake Bay Foundation, Inc.v. CREG Westport I, LLC*, *supra*, 481 Md. 325, indicates that the granting of a waiver or variance permitting the removal of specimen trees is also a final decision. *Id*. at 353. Providing judicial review only to the applicant and not to a person who may be aggrieved by a final determination approving the clearing of a priority retention area is incompatible with the view of the Maryland Supreme Court in *CREG*. Thus, to meet legal sufficiency the right to seek judicial review must be provided to both an applicant and other aggrieved person and it must be provided from a final determination regarding a plan to clear a priority retention area. Under current City law in Section 4-306(a) of Article 32 of the City Code, an applicant who is aggrieved by the final decision of the Director of Planning regarding a decision under the forest conservation provisions may appeal that decision to the Planning Commission. The judicial review provision should also mirror the language

in lines 26-28 on page 16 of the bill that the judicial review will be conducted in accordance with the Maryland rules and limited to the record compiled by the Planning Department.

Subject to the foregoing required amendments, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,

Michele M. Toth
Assistant Solicitor

cc: Ebony Thompson
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Council Vice President Middleton
Councilmember Gray
Councilmember Porter
Councilmember Blanchard
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