



# FREDERICK COUNTY PLANNING COMMISSION

March 12, 2014

**TITLE:** Shoresh, Inc. Forest Resource Ordinance Modification Request

**FILE NUMBER:** SP-01-35, AP 14203

**REQUEST:** Forest Resource Ordinance Modification Request

The Applicant is requesting a modification of §1-21-40 (C) of the FRO to allow the use of off-site banking credits in lieu of planting forest in an on-site priority area.

## **PROJECT INFORMATION:**

**ADDRESS/LOCATION:** 2428 Pleasant View Road; Located on the west side of Pleasant View Road, 1,000 feet south of Doubs Road  
**TAX MAP/PARCEL:** Map 103, Parcel 104  
**COMP. PLAN:** Agricultural/Rural and Natural Resource  
**ZONING:** Agricultural and Resource Conservation  
**PLANNING REGION:** Adamstown  
**WATER/SEWER:** No Planned Service

## **APPLICANT/REPRESENTATIVES:**

**APPLICANT:** Shoresh, Inc.  
**OWNER:** Shoresh, Inc.  
**SURVEYOR/ENGINEER:** N/A  
**ARCHITECT:** N/A  
**ATTORNEY:** Rand Weinberg

**STAFF:** Mike Wilkins, Principal Planner II

**RECOMMENDATION:** Denial

## **ATTACHMENTS:**

- EXHIBIT 1- Applicant's Modification Request**
- EXHIBIT 2- Executed Forest Resource Deed of Easement/Maintenance Covenants and Agreement**
- EXHIBIT 3- Forest Improvements and Protection Agreement**
- EXHIBIT 4- Approved Simplified Forest Stand Delineation and Final Forest Conservation Plan for Shoresh Inc.**
- EXHIBIT 5- Environmental Compliance Section FRO Inspection Details**

## STAFF REPORT

### ISSUE

The Applicant is requesting a modification of §1-21-40 (C) of the Forest Resource Ordinance (FRO) to allow the use of off-site banking credits in lieu of planting forest in an on-site priority area, or in the alternative for an interpretation of §1-21-40 (D) that “every reasonable effort has been made to forest or reforest priority areas listed in § 1-21-40(C).” The Applicant wishes to extinguish the portions of the previously recorded FRO easement that requires planting, and meet its FRO mitigation requirements by purchasing off-site forest banking credits.

### BACKGROUND

This property has received the following Board of Appeals (BOA) and Planning Commission (FcPc) approvals

- December 18, 2001- BOA granted a special exception to establish a four-season camp/retreat facility on this 103.60 acre site.
- January 9, 2002- FcPc approved a Concept Plan for the camp/retreat.
- March 13, 2002- FcPc approved a Site Plan for the camp/retreat.
- June 13, 2007- FcPc approved revisions to the 2002 Site Plan.
- May 23, 2008- Staff approved minor revisions to the 2007 Site Plan.
- June 19, 2008- Staff approved minor revisions to the May 23, 2008 Site Plan.

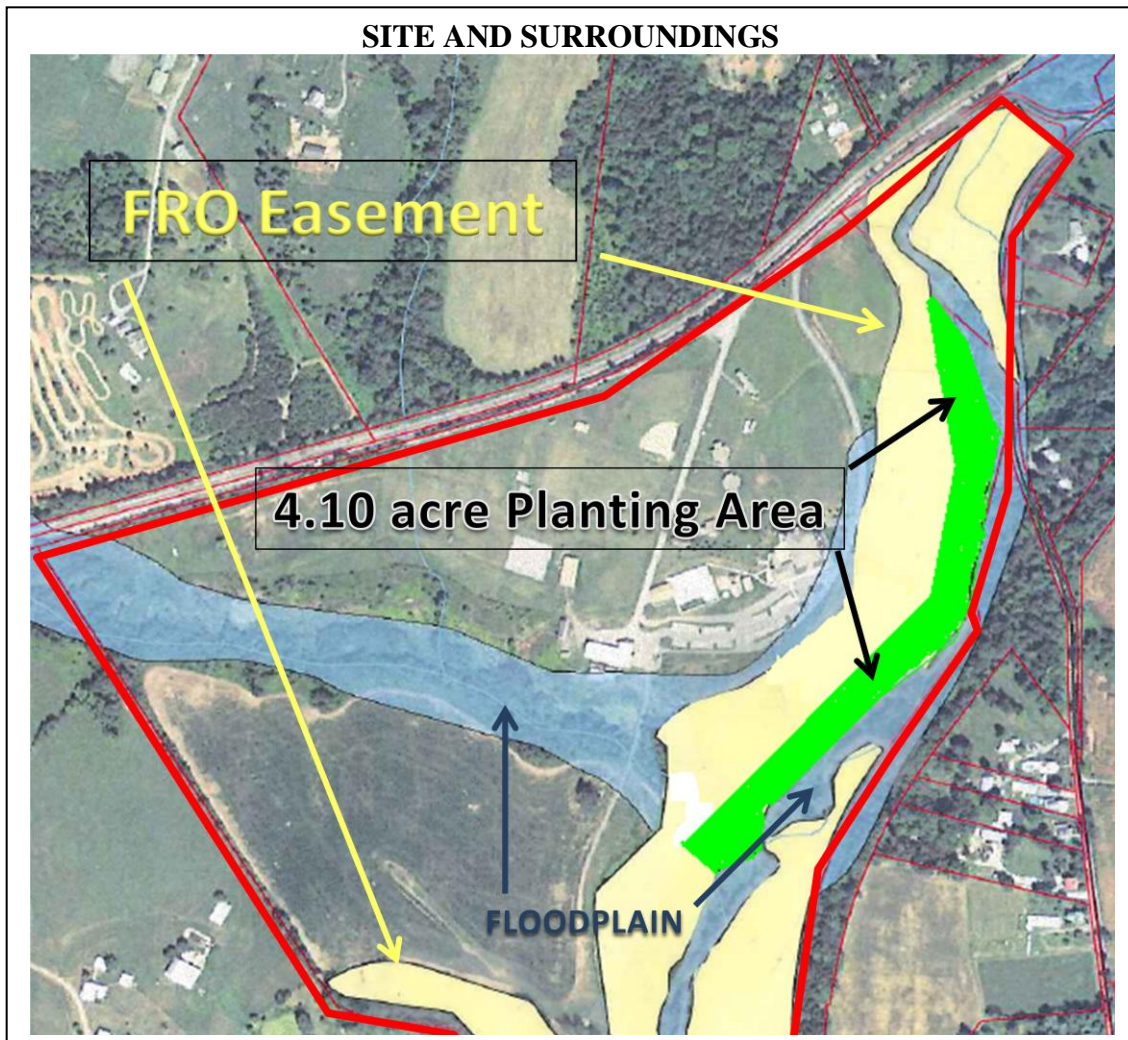
In 2003, the Applicant provided the required FRO mitigation by placing 12.804 acres of existing forest under a perpetual FRO easement and by placing a 4.10 acre forest planting area under a perpetual FRO easement (L3836 F0079). The Applicant posted a financial guarantee of \$32,006.25 to be held by the County until the 4.10 acre planting area meets the minimum stocking/survival rate.

In addition to meeting the minimum FRO requirements, the Applicant placed an additional 11.043 acres of the property under a FRO banking easement, proposing to eventually plant the additional acreage and sell the credits in the County’s Forest Banking Program. Although the easement for the banking areas was recorded, no further action has been taken (no financial guarantee, planting, inspections, or Banking Agreement).

Since the banking portion of the recorded easement was voluntary, and the required improvements and legal documents have not been executed, the approval of the release of the banking portion of the site is permissible and may be done through Staff and the Board of County Commissioners. Therefore the release of the surplus (banking) easement area is not subject to the FcPc’s review.

The area requiring the FcPc’s approval is the 4.10 acres of required forest planting. A County inspection report dated April 12, 2004 confirms the Applicant planted the tree seedlings and installed tree shelters on April 11, 2004. The Applicant notes in their modification application that the site was flooded shortly after the plantings were installed and the flood took out all the plantings. The Applicant wishes to abandon the easement, be released from the planting requirement, and purchase forest banking credits. To accomplish this, the FcPc must find that “every reasonable effort has been made to afforest or reforest priority areas listed in § 1-21-40(C)”, or find that the Applicant meets the criteria for granting a modification under § 1-21-21.

## SITE AND SURROUNDINGS



## ANALYSIS

### A. FOREST RESOURCE ORDINANCE REQUIREMENTS

#### 1. § 1-21-40. CONSERVATION AND FORESTATION PRIORITIES.

**§1-21-40 (A):** *In general. In the implementation of any subdivision or development project, priority shall be given:*

- (1) *First, to conservation of existing on-site forest areas according to the sequence listed in subsection (B) of this section;*
- (2) *Second, to forestation of on-site areas according to the sequence listed in subsection (C) of this section;*
- (3) *Third, to forestation or mitigation off- site according to the sequence listed in subsection (D) of this section.*

The approved FRO plan and executed easements for Shoresh meet the first and second criteria listed under §1-21-40 (A). All of the existing on-site forest areas (priority #1) have been placed in a FRO easement. The remaining mitigation requirement was to be met by planting (a.k.a. forestation) of on-site areas in accordance with priority # 2 above, as required in §1-21-40(C).

**§1-21-40(C):** *Priority sequence for on-site forestation. After every reasonable effort to minimize the cutting and clearing of trees and other woody plants in on-site priority areas listed in § 1-21-40(B) has been exhausted, the following areas shall be considered the priority sequence for on-site forestation:*

- (1) ***Buffers adjacent to intermittent and perennial streams to widths of at least 50 feet from stream banks;***
- (2) ***Areas in 100 year floodplains and all other floodplains listed in the Zoning Ordinance, § 1-19-9.100;***
- (3) ***Corridors to connect existing forests within or adjacent to the development site with a minimum width of 300 feet where practical to facilitate wildlife movement;***
- (4) ***Buffers adjacent to critical habitats where appropriate;***
- (5) ***Slopes of 25% or greater and slopes of 15% or greater with a soil K value greater than 0.35, including the slopes of ravines or other natural depressions;***
- (6) ***Buffers between differing land uses that are deemed to be noncompatible by the Department or buffers adjacent to highways; and***
- (7) ***Lands adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate.***

The approved FRO plan and executed easements meet the priority sequence for on-site forestation. The 4.10 acre planting area is along Tuscarora Creek (a perennial stream) and is within the 100 year floodplain, meeting the first and second priorities listed under §1-21-40 (C) above.

Two existing forest conservation areas are situated on either side of the 4.10 acre planting area. To the south of the planting area a 9.48 acre forest stand is protected, and to the north two small forest areas totaling 1.40 acres are preserved. The 4.10 acre planting area connects the separate existing forest areas on the site, creating a connecting corridor and increasing the overall area of contiguous forest cover, which meets the third and seventh priorities listed under §1-21-40 (C).

The planting area on the Shoresh property meets four of the seven priority sequences required under §1-21-40 (C).

**§1-21-40(D):** *Priority sequence for forestation or mitigation off-site. After every reasonable effort has been made to minimize the clearing of trees and other woody plants in on-site priority areas listed in § 1-21-40(B), and after every reasonable effort has been made to afforest or reforest priority areas listed in § 1-21-40(C), the following shall be considered the priority sequence for forestation or mitigation off-site:*

- (1) ***Purchase of credits through the Frederick County Forest Banking Program;***
- (2) ***Forestation of hydrologically-sensitive areas, preferably in agriculturally zoned or used land;***
- (3) ***Protection of existing off-site forest at a 1:2 ratio, as provided in subsection (G) of this section, in areas closely associated with streams, wetlands, or floodplains, preferably in agriculturally zoned or used land, when such land is not already substantially protected by the Zoning Ordinance or other long-term protective instruments in perpetuity; and***
- (4) ***Payment into the fee-in-lieu program.***

The Applicant has requested the FcPc to determine that “every reasonable effort” has been made to plant the site, thus allowing the Applicant to extinguish the conservation easement, abandon the planting, and purchase credits through the forest banking program.

A County inspection report dated April 12, 2004 confirms the Applicant planted the tree seedlings and installed tree shelters on April 11, 2004. The Applicant notes in their modification application that the site was flooded shortly after the plantings were installed and the flood took out all the plantings. The Applicant contacted County staff for an inspection and partial bond release on March 7, 2005 and on March 14, 2005 inspectors failed the site due to the inadequate condition of the planting area. On November 23, 2005 a second bond release request was submitted and was failed due to the inadequate condition of the planting area. On October 25, 2010 a third bond release request was received and was failed. The inspector noted that only a small portion of the plantings (10%) were surviving and those were threatened by competing vegetation. There were many tree shelters lying on the ground “which have been engulfed by surrounding vegetation.” The inspector informed the Applicant the the competing vegetation must be controlled and the prescribed number of trees must be planted.

The approved FRO plan requires the following:

- The site is to be monitored three times a year.
- Control of invasive species by spraying or mowing is to occur three times a year, or as otherwise needed.
- If at the end of the 2 year inspection period, the survival rate is below 75% of the total number of trees originally planted, then a replanting will be required.

The Forest Improvements and Protection Agreement (FIPA) signed by the Applicant requires the following:

- Improvements [plantings, mowing, spraying, etc.] shown on the approved Forest Conservation Plan be implemented per the plan specifications
- The planting area shall be adequately maintained, managed, and monitored for two complete growing seasons by the owner to ensure forest establishment and/or protection
- The owner shall control competing vegetation and replace any dead plantings to the minimal survival rate
- If a substantial amount of living seedlings/trees is not maintained, new plantings must occur, and the guarantee shall remain in effect for two new complete growing seasons, for each new planting, or until a “forest” has existed for two years

The Forest Resource Inspection and Maintenance Covenants and Agreement, recorded in the Land Records at L3836 F0086 with the Deed of Easement, requires the following:

- The Grantors (Shoresh, Inc.) covenant and agree to provide for all the planting, maintenance, and protection of the Forest Conservation areas to ensure that the Forest Conservation Area is and remains in compliance with the approved Forest Conservation Plan.
- The person(s) or entity having legal title to the property is responsible for the maintenance and protection of that area.
- Upon written notice from Frederick County of any problems or deficiencies in the Forest Conservation Area, the grantor will correct the problems as directed.

Inspections of the site found that the tree shelters that were pushed over by the flooding event were not straightened, but were left as they were, and the competing vegetation has not been controlled by mowing or spraying, which has contributed to the significant mortality rate of the plantings. The owner failed to meet the improvement and maintenance requirements specified on the approved forest conservation plan, in the recorded Inspection and Maintenance Covenants and Agreement, and the executed FIPA.

Staff does not find that every reasonable effort has been made to establish a forest in the priority areas listed in §1-21-40 (C) as the site was not maintained in accordance with the approved plan and legal agreements and only one attempt at planting was made.

The FRO allows for flexibility of priorities, but only as specified in §1-21-40(E):

**§1-21-40(E): Flexibility of priorities. A sequence other than the one described in subsections (C) and (D) of this section may be used for a specific project, if necessary, to achieve the objectives of the County Comprehensive Plan or county land use policies or to take advantage of opportunities to consolidate forest conservation efforts.**

The Shores property has Comprehensive Plan designations of Agricultural/Rural and Natural Resource. The Natural Resource designation and is applied only to properties that have important environmental features that are intended to be protected from development. One of the goals of the Frederick County Comprehensive Plan is to "Protect natural resources and environmentally sensitive areas in Frederick County" (NR-G-01). The Comprehensive Plan also establishes the following policies:

- NR-P-06- Promote the establishment and protection of forested buffers along streams and the Monocacy River
- NR-P-08 Encourage Best Management Practices to control flooding, erosion, stream sedimentation and thermal impacts to waterways
- NR-P-15 Promote and practice invasive and exotic species (flora and fauna) control to help maintain the diversity and health of forestlands and native plant and animal populations

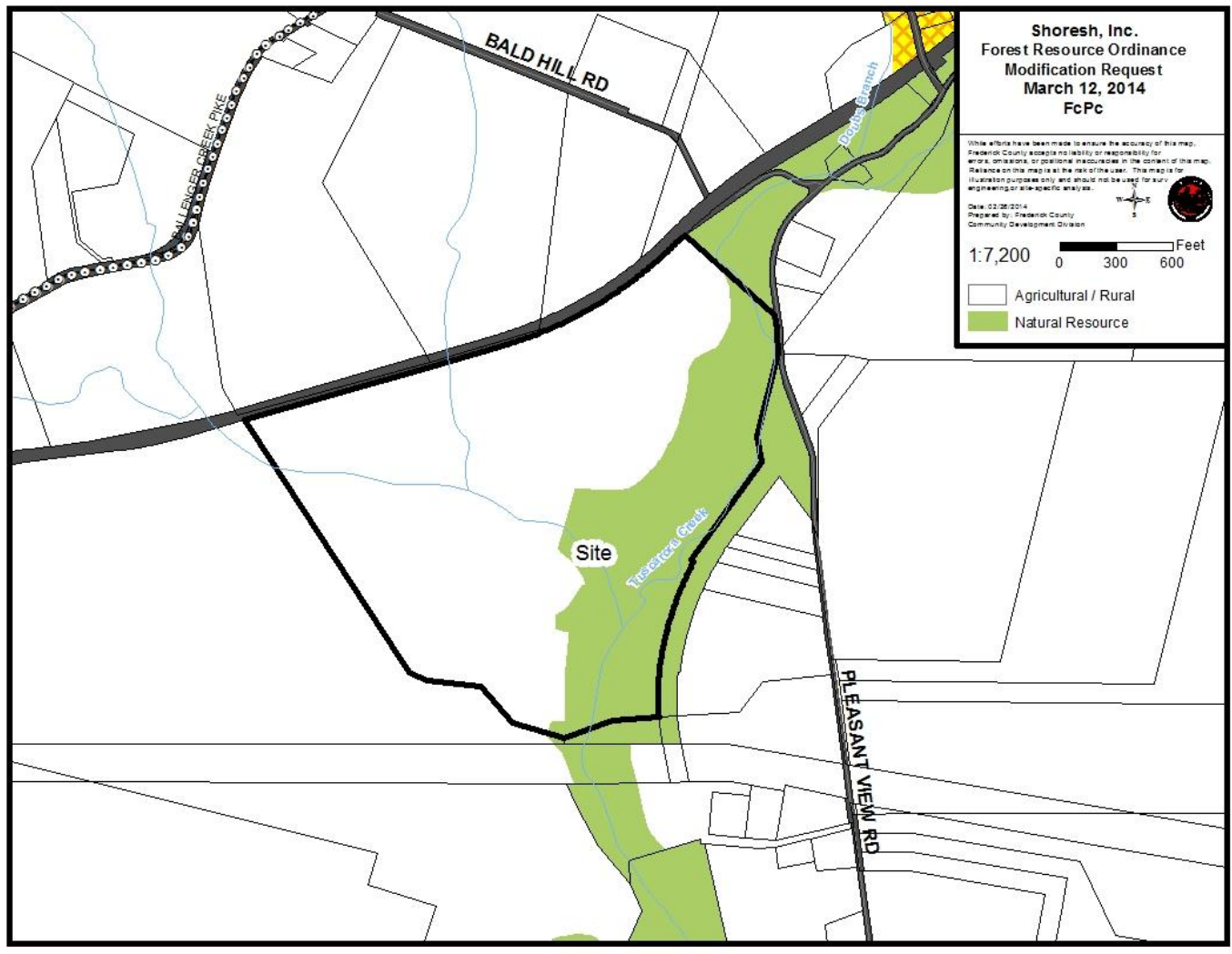
Permitting a sequence other than the one described in §1-21-40 (C) and (D) would not only violate the requirements of the FRO, it would be contrary to the objectives of the County Comprehensive Plan and County land use policies. Removing the 4.10 acre forest conservation easement from the property will remove the protection that is required to be provided to this natural resource and environmentally sensitive area. Waiving the planting requirement and the eradication and control of invasive plant species specifications shown on the approved forest conservation plan is contrary to goal NR-P-15.

Permitting the Applicant to extinguish the 4.10 acre planting area would fragment, not consolidate, forest conservation efforts and would be contrary to the requirements under §1-21-40 (E). The 4.10 acre planting area connects the separate existing forest areas on the site, creating a connecting forest corridor and increasing the overall area of contiguous forest cover, which meets the third and seventh priorities listed under §1-21-40 (C).

The 4.10 acre planting area meets the objectives of the Comprehensive Plan and County land use policies and consolidates the on-site forest conservation effort. Staff finds that the proposal to remove this planting area is contrary to §1-21-40 (E) and the proposal does not qualify for a flexibility of priorities.

**§ 1-21-40. Conservation and Forestation Priorities Findings/Conclusions:** Staff finds that the approved FRO plan and executed easements meet the criteria listed under §1-21-40 (A) and §1-21-40 (C). Staff finds that every reasonable effort has not been made to establish a forest in the priority areas listed in §1-21-40 (C) and that the proposal to remove this planting area is contrary to §1-21-40 (E).

# COMPREHENSIVE PLAN



## 2. § 1-21-21. MODIFICATIONS.

**§1-21-21 (A):** *Modification requests. A person may submit a request to the Frederick County Planning Commission (FCPC) for a modification from this chapter or the requirements of Md. Code Ann., Natural Resources Article, §§ 5-1601 through 5-1612, if the person demonstrates that enforcement would result in unwarranted hardship to the person.*

**§1-21-21 (B):** *Required information. An applicant for a modification shall:*

*(1) Describe the special conditions peculiar to the property that would cause the unwarranted hardship;*

The Applicant argues in their modification request that the requirement to plant trees along a perennial stream and the unfortunate flooding event are special conditions that are peculiar to this property. This is not a “special condition peculiar to the property.” Every development project in the County must follow the same priority sequences for on-site forestation. Many properties in the County include a stream

buffer or floodplain area. If a development project contains a stream buffer and/or floodplain area, the priority sequence for mitigation requires these areas to be planted. FRO easements with newly planted forest along streams and within floodplains are common in Frederick County and it is not uncommon for sites to be replanted (partially or fully). Further, the approved forest conservation plan and the executed legal agreements anticipate these situations and require replanting when the required survival rate is not achieved.

*(2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;*

In their modification request, the Applicant states that landowners who are not required to plant along streams or floodplains are not required to replant FRO areas in order to meet their FRO obligations, and many landowners are permitted to meet their FRO requirements by purchasing banking credits.

As noted above, every development project in the County must follow the same priority sequences for on-site forestation. If a site contains a stream buffer and/or floodplain area, the priority sequence for mitigation requires these areas to be planted. Regardless of whether a FRO planting area is along a floodplain or outside of a floodplain, the FRO requires a specific survival rate over a specified period of time.<sup>1</sup> Any planting area that fails to meet the minimum survival rate must be replanted in order to achieve the minimum stocking density. To the best of Staff's knowledge, the County has never released a FRO planting easement in a stream buffer and floodplain area in exchange for banking credits. The only time the County has accepted banking credits in lieu of an on-site priority planting area is on small projects where the required FRO mitigation area is less than the minimum easement size that is permitted by the FRO (0.23 acres).

Enforcing the Forest Resource Ordinance will not deprive the Applicant of rights commonly enjoyed by others in similar areas. In fact, enforcing the FRO in regard to this project will treat the Applicant the same as others in similar areas.

*(3) Verify that the granting of the modification will not confer on the landowner a special privilege that would be denied to other applicants;*

The Applicant states in their modification request that other property owners are permitted to meet their FRO obligations by purchasing banking credits. To reiterate, every development project in the County must follow the same priority sequences for on-site forestation. If a site contains a stream buffer and/or floodplain area, the priority sequence for mitigation listed in the FRO requires these areas to be planted. Again, Staff is not aware of any case in which the County has released a FRO planting easement in a stream buffer and floodplain area in exchange for banking credits. The only time the County has accepted banking credits in lieu of an on-site priority planting area is on small projects where the required FRO mitigation area is less than the minimum easement size that is permitted by the code (0.23 acres). Granting the Applicant's request for a modification in this case **will** "confer on the [Applicant] a special privilege that [is] denied to other applicants."

*(4) Verify that the modification request is not based on conditions or circumstances that are the result of actions by the applicant;*

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<sup>1</sup> Survival rates vary depending on the size of trees planted, and the period of time varies from 2 year to 3 years depending on the size of the trees being planted and/or when the project was approved. In this case the survival rate requirement is 75% 2 years from the date of planting.



The Applicant notes that they planted the 4.10 acre site, and that they are not responsible for the flooding event. Obviously Staff concurs that the flooding event was not a condition or circumstance that was the result of action by the Applicant, but all of the evidence Staff has found suggests that the near 100% mortality rate was a result of the Applicant's inadequate maintenance of the planting site. The flooding event pushed the tree shelters over, but simply straightening the tree shelters would have given many of the seedlings a chance to survive. Further, based on the findings of County inspection staff, the site is overgrown with thick vegetation, a condition which has contributed to the significant mortality rate even if the flooding event did not occur. The Applicant cannot give up on its maintenance responsibilities and claim that the current conditions and circumstances are not the results of its actions.

*(5) Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and*

Staff agrees with the Applicant's statement that the modification request does not arise from a condition relating to land or building use on a neighboring property.

*(6) Verify that the granting of a modification will not adversely affect water quality.*

The Applicant states in their modification request that "purchasing off-site credits will have nothing to do with the quality of any water in Frederick County." However, granting the modification request will permit the Applicant to release the recorded forest conservation easement and waive the requirement to plant a new forest in the Tuscarora Creek stream buffer and associated floodplain, which quite clearly can affect water quality.

Section 1-21-4 (Intent) of the FRO states:

*This chapter is adopted with the intent that new development in the county take place in such a way that the conservation, protection and planting of trees to produce forested areas will help accomplish the following:*

- *Stabilization of soil by the prevention of erosion and sedimentation;*
- *Reduction of stormwater runoff and the potential damage it may create;*
- *Removal of pollutants from the air and water....*

The requirement to mitigate FRO obligations by planting on-site stream buffers and floodplains is set forth in the FRO in part to meet the purpose and intent statements quoted above. Many studies, including stream assessments performed in Frederick County, show water quality is diminished in areas of denuded stream buffers and floodplains. Forests are critical within stream buffers and floodplains to prevent soil erosion and sedimentation, stormwater runoff, and pollutant removal. When streams are buffered by surrounding forests, the amount of excess nitrogen and phosphorus washing into the streams is significantly reduced. Forested stream buffers also help reduce water temperatures, which in turn supports many forms of aquatic species.

**§1-21-21 (C):** *Modification approval. The FCPC must make a finding that the applicant has met the requirements in subsection (B) of this section and that enforcement would cause the applicant unwarranted hardship before the FCPC may approve any modification.*

Maryland courts have held that the "burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship." *Cromwell v. Ward*, 102 Md. App. 691 (1995). In addition to being unable to meet the specific requirements of §1-21-21(B), the Applicant has not met its burden under §1-21-21(C) to show that enforcement of the planting requirements would cause unwarranted hardship.

Unwarranted hardship in the context of forest conservation laws is not a concept that is well-defined in Maryland law. However, several Maryland cases have dealt with “unwarranted [or undue] hardship” in the context of Critical Area zones and zoning variances. These cases have held that unwarranted hardship cannot be shown by economic loss alone, cannot be self-imposed, and must deny any reasonable use of the affected property.

Here, the Applicant’s major argument for a finding of unwarranted hardship is based on the cost of replanting, which the Applicant claims to be \$10,000 or \$20,000. In the *Cromwell* case, the Maryland Court of Special Appeals found that:

Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. 102 Md. App. at 715.

The Applicant’s claimed “hardship” here is not only economic, but also self-imposed. If the Applicant had replanted as required, or even taken the time to place the tree shelters upright after the flood, then the Applicant likely would not be in its current situation.

Finally, in *Lewis v. Dept. of Natural Resources*, 377 Md. 382 (2003) the Court held that the applicant for a modification must demonstrate that denial would deprive the applicant of *any* reasonable use of the part of the property subject to the requirements. This modification request clearly fails that standard, since requiring plantings within the floodplain is not a deprivation of any reasonable use of the property. No use of the property is being denied, the FRO simply requires planting of trees on land that is not usable for anything else. Therefore, the Applicant has failed to meet its burden to prove unwarranted hardship in this case.

**§1-21-21 (D):** *State of Maryland notice. Notice of a request for a modification shall be given to the Maryland State Department of Natural Resources (“Department of Natural Resources”) within 15 days of receipt of a request and prior to the FCPC’s consideration of the request. The Department of Natural Resources shall also be notified of the hearing date, place and time.*

The Department of Natural Resources (DNR) was notified of this modification request within 15 days of receipt of the request and was notified of this hearing.

**§1-21-40 (E):** *State authority. There is established by this chapter the right and authority of the Department of Natural Resources to initiate or intervene in an administrative, judicial or other original proceeding or appeal in the state concerning an approval of a modification under Md. Code Ann., Natural Resources Article, §§ 5-1601 through 5-1612 or this chapter.*

DNR commented that a copy of the FcPc’s decision must be sent to DNR, at which time DNR will determine if the decision meets the intent of the State statutes. Should DNR find that the FcPc’s decision does not meet the intent of the State forest conservation statutes, DNR may intervene.

**§ 1-21-21. Modifications Findings/Conclusions:** Staff finds that the application does not meet the requirements in §1-21-21 (B) and that enforcement would not cause the Applicant unwarranted hardship.

## **B. STATE REGULATIONS.**

1. The conservation and forestation priorities under §1-21-40 of the FRO were adopted in accordance with the minimum requirements outlined in the Annotated Code of Maryland, Natural Resources Article §5-1607 et seq.
2. §5-1610.1 (d) states that the establishment of forest mitigation banks and their use may not alter the sequence for retention, reforestation, or afforestation on a development site as outlined in §5-1607.
3. Code of Maryland Regulations (COMAR) 08.19.03.01(6.3)(B)(4) requires a binding 2-year maintenance agreement (known in Frederick County as the FIPA) that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment.
4. COMAR 08.19.03.01(6.3)(B)(4) requires a reinforcement planting if survival rates fall below required standards.
5. COMAR 08.19.04.10 (Variance) lists the same six criteria for demonstrating unwarranted hardship as §1-21-21 of the County FRO.

Staff notes that the provisions of the FRO applicable to this modification request are in compliance with the minimum requirements established in the Annotated Code of Maryland and COMAR.

## **C. OTHER CONSIDERATIONS.**

Since 2008 Staff has provided the Applicant several alternatives to help them finalize their FRO planting obligations, including the following:

- Recommended purchasing tree seedlings through the State nursery, where seedlings can be purchased for \$0.10-\$0.30 apiece (seedling cost to plant 4.10 acres at the minimum 350 trees per acre is estimated to be less than \$500.00. This estimate does not include tree shelters and site maintenance).
- Recommended having the children who attend the Shoresh facility help plant the trees, saving in labor costs and providing an educational opportunity.
- Although Staff strongly believes that the 4.10 acre floodplain planting area can be successful if trees are properly planted and maintained, and replanting the floodplain is Staff's recommendation, Staff gave the Applicant several on-site alternatives to facilitate a resolution to the situation, including the following:
  - The planting area could be moved to the west, towards the camp facilities, where the plantings would provide some water quality benefit but be further away from the creek. This option would require very minor changes to the FRO plan, and the area is already within the recorded FRO easement.
  - A spring fed stream runs through the property. This stream is in the floodplain but is less likely to flood than the area immediately adjacent to Tuscarora Creek. The FRO plan could be revised to move the 4.10 acre planting area to this stream. In addition to changing the FRO plan, this area would have to be placed into a FRO easement.

## **RECOMMENDATION**

Based upon the findings and conclusions as presented in the staff report, the application does not meet the FRO requirements.

The Applicant has requested that the FcPc determine that “every reasonable effort” has been made to plant the site, thus allowing the Applicant to extinguish the conservation easement, abandon the planting, and purchase credits through the forest banking program. Staff finds that the approved FRO plan and executed easements meet the priority sequence criteria listed under §1-21-40 (A) and §1-21-40 (C). Staff finds that every reasonable effort has not been made to establish a forest in the priority areas listed in §1-21-40 (C) and that the proposal to remove this planting area is contrary to §1-21-40 (E).

Further, Staff finds that the application does not meet the requirements for granting a modification in §1-21-21 (B) and that enforcement of §1-21-40 or any other applicable provision of the FRO will not cause the Applicant unwarranted hardship.

Staff also believes that if the Applicant’s request is granted, DNR is likely to intervene, as such a decision would be contrary to the State forest conservation laws.

Staff recommends that the FcPc deny the Applicant’s request to eliminate the 4.10 acre on-site FRO planting area.

## **PLANNING COMMISSION ACTION**

### MOTION TO APPROVE

I move that the Planning Commission **deny** the Applicant’s requests in **SP-01-35 (AP 14203)** for the proposed removal of the 4.10 acre forest planting easement on the Shoresh, LLC property, based on the findings and conclusions of the staff report and the testimony, exhibits, and documentary evidence produced at the public meeting, and more specifically, based on the findings that:

- 1) Every reasonable effort has not been made to establish a forest in the priority areas listed in §1-21-40 (C); and
- 2) This request does not meet the requirements for granting a modification in §1-21-21 (B).