

DRAFT (CDR)
July 17, 2008

**NOTE: THIS DOCUMENT IS A WORKING DRAFT BASED UPON DISCUSSIONS
HELD BY A WORKING GROUP; IT HAS NOT BEEN REVIEWED OR APPROVED
BY THE FALMOUTH TOWN COUNCIL**

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "Memorandum") is between the Town of Falmouth (the Town), Tidewater, LLC (Tidewater LLC) and Tidewater Conservation Foundation (the Foundation) regarding the transfer and use of property owned by Tidewater LLC and over which the Town has a Conservation Easement, as well as adjacent property.

WHEREAS, the Town previously approved zoning for land owned by Tidewater LLC to facilitate a mixed use development, the protection of the ~~historie~~-Finks Farm Property and the protection of a significant open space area (collectively identified as Tidewater Farm), as well as working with Tidewater LLC to develop a Master Plan and Management Plan for the Protected Property dated April 4, 2005 and entering into a Memorandum of Understanding dated December 20, 2004; and

WHEREAS, Tidewater LLC granted to the Town a Conservation Easement over the parcel of land identified on the Master Plan as TF 1, which Conservation Easement is dated October 14, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23279, Page 235; and

WHEREAS, the parties now seek to amend the terms of the Conservation Easement (the Easement) to allow Tidewater LLC and the Foundation to construct a new structure to be owned by the ~~Tidewater Conservation~~-Foundation or such other nonprofit successor organization. The purpose of the new structure is to house an educational and agriculturally based learning center (the Learning Center) facility to be utilized by the University of Maine through its estate and county based Cooperative Extension college and other non-profit users having charitable purposes consistent with the activities provided for in the Conservation Easement(~~the education center~~). In addition, this MOU is intended to lay the foundation for determining -and-related parking in a portion of the Conservation Easement area as further uses in the Easement are defined; and

WHEREAS, as the parties also seek to add to the Conservation definition of Protected Property-Easement the area shown as TF 2 on the Master Plan; and

WHEREAS, the parties further wish to clarify and amend the terms of the Conservation Easement so that it contains all of the regulations and restrictions for the property, taking into consideration prior guidance and determinations from ~~without the need for reference to the~~

Master Plan, the Management Plan, the prior Memorandum of Understanding ~~or any other document or plan;~~

NOW, THEREFORE, the parties agree as follows:

1. Exhibit A ~~to the of the Conservation~~ Easement shall be amended to include both TF 1 and TF 2.

2. Exhibit B of the ~~Conservation~~ Easement shall be amended to specify all temporary and permanent uses permitted on the land covered by ~~the~~that Easement and to regulate the intensity of such uses. Regulation of uses and intensity will be pursuant to As a starting point for discussion, the parties shall use the list of uses in the Zoning Ordinance, Section 3.18, on the Master Plan, within the Conservation Easement and in the Land Management Plan with the exception of the learning center which is an added use. TF 2 shall have different permitted uses, including the uses currently allowed in TF 2 as established by the Zoning Ordinance, the Master Plan and the Land Management Plan. The area of the Learning Center e-education-center building shall be included in the TF 2 use area.

3. The proposed ~~Learning education-center~~ Center shall be included as a permitted use in Exhibit B. The Falmouth Town Council shall be granted the authority to review and approve the preliminary site plan for the Learning Center including -education-center and the building design, -including but not limited to the-location, construction method, ~~-and-~~ size of parking areas, the overall site plan/design, and the location and size of proposed signage, prior to Planning Board review of the project under applicable Town ordinance provisions. The preliminary site plan shall also demonstrate how the proposed development and parking will impact entrances from the access road to the inn proposed to be located on the area delineated as TF 3 on the Master Plan and within the adjacent residential neighborhoods. The preliminary plan will demonstrate that the allowed uses will minimize the impacts on the property covered by the ~~Conservation~~ Easement to the greatest possible extent. In the event that temporary events will require off-site parking, Tidewater LLC and the Foundation shall demonstrate that it has sufficient control of off-site parking facilities that can be used as part of a parking plan for event parking and will provide for appropriate transportation from the off-site parking location to the event site. Tidewater LLC and the Tidewater Conservation Foundation understand that the review and approval of a preliminary site plan by the Council may result in restrictions or limitations placed on permitted permanent and temporary uses due to dimensional constraints of the property or impacts to abutting property.

4. Upon issuance of a building permit for the Learning Center, Tidewater LLC shall convey the fee interest in TF 1 and TF2 including the two buildings located within TF2 to the Tidewater Conservation Foundation on prior to the Town's issuance of any building permits for the education-center. Tidewater shall convey the fee interest in TF 2 to Tidewater Conservation Foundation or the then current owner of the fee interest in TF 1 when the owner of TF 2 demonstrates that it is financially able to own and operate the property. Prior to the time of that sale, Tidewater may enter into a ground lease with the owner of TF 1 for the land area associated with the Learning Center education-center.

5. The amended ~~Conservation~~ Easement shall include a grant to the Town the right, but not the obligation, to maintain the historic structures on TF ~~1~~2. This grant shall be limited to repairs necessary to maintain the current structural integrity of the buildings~~structures~~. ~~The Town may recover its costs of any repairs, up to a maximum of \$20,000.00. The amended Conservation Easement shall include a self-help provision concerning the Town's ability to maintain the structures, with a maximum limit of \$20,000 committed by Tidewater LLC as in cost expenses recoverable from by the Town.~~

6. Consistent with review through the plan board process, as determined necessary ~~The parties shall develop design guidelines for any new construction or modification of the existing structures on either TF 1 or TF 2. The design of the Learning Center education center and other new buildings shall be as established by Section 3 of this Memorandum of Understanding and the existing provisions of the Master Plan, n and, The Land Management Plans and the Conservation Easement and may also look to the existing Tidewater Village Design Guidelines. The developed design guidelines shall also take into account the historic character of the house and barn located on TF 2.~~ The developed design guidelines will not be unduly burdensome as to cost or permitted methods of work.

7. Tidewater shall provide mitigation for the loss of the conservation value of the area of TF 1~~2~~ where the ~~education center~~ Learning Center and parking will be located. This mitigation shall be done in accordance with a plan approved by the Town Council, which plan shall be incorporated as part of this document. (the Mitigation Plan) Tidewater LLC may satisfy this condition with the Tidewater Conservation Foundation's assistance or may assign this obligation to the Tidewater Conservation Foundation without additional Town approval. **[EDITORIAL NOTE; THE TERMS OF THE MITIGATION PLAN HAVE NOT BEEN DETERMINED BEEN FINALLY APPROVED.]**

8. ~~Tidewater may retain control of the historic Finks Farm structures after the transfer of TF 1 to Tidewater Conservation Foundation until such time as Tidewater Conservation Foundation demonstrates to Tidewater that it has the financial ability to maintain the historic structures. Any transfer of the structures to any party other than the Tidewater Conservation Foundation shall require the prior approval of the Town. Tidewater LLC, the Foundation and any subsequent owner of TF 1 shall maintain the historic character of the structures on that parcel to the greatest practical extent possible and shall not allow demolition of the structures either by willful act or by neglect.~~

9. The parties agree to negotiate in good faith in the preparation and execution of all legal documentation reflective of and necessary to implement the terms and conditions of this Memorandum of Understanding.

10. This Memorandum of Understanding and any documents drafted in accordance herewith shall be governed by the laws of the State of Maine, without regard to the conflict of law provisions thereof. Until replacement documents are signed, the original Conservation Easement, the original Memorandum of Understanding and the Master Plan shall remain in full force and effect.

11. Neither party may assign either this Memorandum or any of its rights, interests, or obligations hereunder without the prior written approval of the other party.

Agreed to by the undersigned this ____ day of _____, 2008.

TIDEWATER LLC

TOWN OF FALMOUTH

By: _____

By: _____

Printed Name

Printed Name

Its:

Its

TIDEWATER CONSERVATION FOUNDATION

By: _____

Printed Name

Its:

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