

Exhibit A to the Memorandum of Understanding dated July 28, 2008

**Tidewater Conservation Foundation and Tidewater, LLC
Mitigation Plan**

Introduction

This Plan contains the terms for an agreement between the Tidewater Conservation Foundation (“TCF”) and Tidewater, LLC; and the Falmouth Town Council (the “Council”). The terms provide for actions to be taken by TCF and Tidewater, LLC in exchange for the Council’s approval of an amendment to the Tidewater LLC, Master Plan, an approval that will permit the construction of a regional learning center (the “Learning Center”) at Tidewater Farm (the “Farm”) supporting the agricultural and other permitted uses adjacent to and within the Conservation Easement. The four basic components of mitigation offered by TCF and Tidewater, LLC include:

- (a) a financial commitment of \$50,000 from TCF to the Town of Falmouth in support of property acquisition for the Greening of Falmouth;
- (b) the development of four trail systems providing a significant increase in public access to both the Protected Property as defined in the Memorandum of Understanding and surrounding areas;
- (c) a redefinition and expansion of the land at Tidewater Farm to be controlled consistent with the Protected Property requirements; and
- (d) clarification of the permitted uses and activities within the Protected Property.

Detailed Description

1. The Greening of Falmouth Open Space Project

Over a period of ten (10) years, TCF will assist in funding the Town’s activities in support of Open Space implementation with a financial contribution of fifty thousand dollars (\$50,000). TCF, working collaboratively with the Town’s Open Space Subcommittee, shall ensure the contributed funds are directed towards and in support of efforts outside of the existing Conservation Easement, but consistent with the activities supported at Tidewater Farm. The expenditures may include, but are not necessarily limited to, additional land acquisition that will be characterized as part of the Protected Property, new trail development beyond what is currently described in this Plan or other projects supporting sustainable agricultural. Payment of this commitment will be secured and guaranteed by Tidewater LLC and TCF through a promissory note or in such other manner of guarantee as is consistent with standard commercial practices. The terms of a note will provide for 10 annual payments of \$5000 each with no interest accruing on the principal. Any default in payment by TCF or Tidewater, LLC shall be considered a default as to the terms of the Memorandum of Understanding in its entirety and such default shall be subject to all remedies as shall further be provided for under the terms of the Note.

From a mitigation perspective, this financial commitment will accomplish the following:

- (a) the identification and acquisition of additional land in exchange for the .6 acre footprint requirement for constructing the Learning Center;
- (b) the potential for acquiring key connections for additional trail system development; and
- (c) development of a collaborative relationship with the Town of Falmouth furthering the underlying purposes of the Conservation Easement.

Estimated value: \$50,000; Estimated value of the additional open space preservation: TBD

2. Trails

TCF and Tidewater LLC will work in collaboration with Portland Trails to establish and maintain four (4) new trail systems located both within and outside the Protected Property (the “Trails”). See Schedule A incorporated herein by reference. The intent is to provide access to the public as well as to connect the Farm to other key areas of Falmouth. This trail system will provide access along the shore of the Presumpscot River estuary, will be ideal for nature study, exercise and serve as a connector for the working farm areas with public transportation and parking available at Clearwater Drive. The Trails will also provide pedestrian access from Tidewater directly to Route 1 sidewalks and future access to the Town of Falmouth’s Pine Grove trail network. With the exception of the Village Park Connection, Portland Trails has agreed to hold the necessary easements. The Village Park Connection easement discussed below will be arranged with the Town of Falmouth. Under the direction of TCF Board member, Caleb Hemphill, Portland Trails and TCF are addressing and allocating responsibility for trail development costs, long-term trail maintenance and, ultimately, and the requirements for public access. The terms of such responsibilities will be the subject of a written agreement between TCF, Tidewater LLC and Portland Trails, a copy of which will be provided to the Council upon final execution and attached as to this Plan as Schedule B incorporated herein by reference. The Trails are illustrated below and described as follows:

- **Brickyard Point Trail**

This trail starts at the Learning Center and will provide access over the Scittery Gussett creek to the Brickyard Point property recently acquired by Portland Trails. A pedestrian bridge is planned to be constructed over the creek to provide year-round access. The trail will require the grant of an easement by TCF to Portland Trails. In addition to an easement, TCF will donate in-kind services to assist Portland Trails with the development and maintenance of the access trail.

Estimated Value: \$25,000; Easement donation: \$20,000; Materials: None; TCF In-Kind Services: \$5,000

- **The Tidewater Basin Estuary Trail**

This trail also starts at the Learning Center and will provide a scenic path along the salt marsh and a trail through the wooded conservation land leading to the traffic circle on Clearwater Drive where parking and bus transportation are available. The trail will provide scenic overviews of the estuary and an approximately 100 foot pedestrian bridge will be installed by TCF and Portland Trails to cross a section of salt marsh which will allow an unusual opportunity for nature study.

Estimated Value: \$50,000; Easement donation: \$30,000; Materials: Wetland crossing materials - \$10,000 (charitable donations to TCF from community businesses and individuals); TCF In-Kind Services: \$10,000

- **Clearwater Drive to Route 1/Pine Grove Connection**

This trail section will be developed cooperatively between TCF, Portland Trails, FTAC and Princeton Properties. The trail will start at the traffic circle on Clearwater Drive and provide a trail connection through the Protected Property, and along an edge of the Clearwater Estates/Princeton Properties, a section adjacent to the Portland Water District easement and out to the sidewalk on Route 1 across from Pine Grove.

Estimated Value: \$7,500; Easement donation: \$3,000; Materials: \$500; TCF In-Kind Services: \$4,000

- **Village Park Connection**

Starting at the Learning Center, this trail will provide a scenic path through the agricultural and orchard areas that are planned between the residential development and the TCF Conservation areas. The trail is planned to cross Farm Gate Road and provide a trail connection to the Falmouth Village Park and Family Ice areas.

Estimated Value: \$5,000; Easement donation: \$1,000; Materials: \$1,000; TCF In-Kind Services: \$3,000

3. Land Use Plan for Open Space Preservation

A key component identified by all interested stakeholders is to balance development within the Protected Property while ensuring permitted activities and uses are consistent with maintaining open space and sustainable agriculture. In addition to agriculture, other permitted uses in the area include education and the arts. TCF will take the following steps to maintain the open space while ensuring the economic sustainability of the area:

- TCF will construct the Learning Center consistent with the parameters provided for in the attached Schedule C incorporated herein by reference and as may be further modified consistent with the site plan review process. Construction shall begin upon completion of a capital campaign raising all funds necessary to cover construction costs. It is estimated this step will be completed no later than the Spring of 2009. TCF's option to construct the Learning Center will expire five years from the date of the Council's approval of the amendment to the Master Plan.
- With the exception of small outbuildings necessary to support permissible uses within the Protected Property, no further new construction will occur. Such outbuildings shall not exceed 12 feet in height.
- As part of its management obligations, TCF has begun a strategic planning process for Tidewater Farm and the Protected Property, the Tidewater Conservation Foundation 2008 Strategic Plan. The initial draft of the Strategic Plan describes and provides for the implementation of intended uses and activities at the Farm in 3 phases. The phases include the development and establishment of collaborative partnerships addressing environmental protection, agricultural research and site specific education. Implementation will be done in conjunction with these strategic partners and monitored by TCF. The focus will continue to emphasize agricultural and demonstration projects the results of which can be applied in other areas within the Town of Falmouth and outlying communities.
- Renovation of existing buildings within located within the Conservation Easement shall be consistent with the historic nature and the character of the property. Improvements to existing buildings shall not exceed an expansion of more than 15% of the current total gross square footage of the structures.

4. Protected Property

In 2005, the Town and Tidewater LLC established two principal areas within Tidewater Farm, TF1 and TF2. TF1 was defined as the Protected Property and subject to the uses provided for in the Easement and a related Management Plan. Adjacent to the Protected Property were (and continue to exist) two buildings in the area designated as TF2. The original concept provided for with respect to TF2 and its buildings was improvements and maintenance to support the activities and uses identified as permissible in the Protected Property. In order to ensure consistency in administration, Tidewater LLC and TCF will take the following steps:

- **Tidewater LLC Donation of TF1 and TF2 to Tidewater Conservation Foundation**

Tidewater, LLC will sign a Letter of Intent providing for the donation of TF1 and the TF2 parcel and buildings to TCF consistent with the terms of the accompanying Memorandum of Understanding. Upon donation, TCF will assume the obligations of Tidewater, LLC.

Estimated Value: Charitable Donation

- **Definition of Protected Property**

The definition of Protected Property will expand to include the TF2 area of the Farm. This change will ensure consistent administration of the two areas with TCF supporting the long range vision for Tidewater Farm. The TF1 and TF2 areas will continue to be delineated separately. This will allow TCF and the Council to monitor the activities and approval of uses involving the buildings separately from the open space areas. The Learning Center will be identified as included within the TF2 area.