

Amanda Stearns

From: Natalie L. Burns <nburns@JBGH.com>
Sent: Wednesday, May 04, 2011 5:55 PM
To: Amanda Stearns
Subject: RE: Inquiring about Town of Falmouth's need to approve UMaine Lease/Service Agreement with Tidewater, LLC

Amanda,

Like everything else that we have reviewed on this, it is not entirely clear whether it requires Town approval. Any assignment of the easement requires prior permission of the Town under Section 11(d) of the easement. However, this is now written as a service agreement rather than a lease (which I believe clearly would have required approval under Section 11(d) as a partial assignment). Still, I am concerned that the service agreement remains in effect an assignment of some of Tidewater's rights under the conservation easement because Section 1 limits uses to Tidewater, its invitees and the general public. The Cooperation Service is being assigned exclusive rights, rather than just using this portion of the property jointly with Tidewater and as such cannot be considered an invitee or the general public. For that reason, it seems to me that it would be prudent to send the service agreement to the Town for approval under Section 11(d) of the Conservation Easement as a partial assignment. This would not fall within the exception in Section 11(d) for an assignment associated with a transfer of the entire Protected Property. The consent would be reviewed under the standard in Section 12(e), which appears to be met given the proposed user and use.

I do not believe that Section 12(d) requires an additional approval from the Town as to the cultivation use itself since that use appears to fall within the uses allowed by Exhibit B. This would also allow "those structures need[ed] to support a demonstration farm or other low-intensity agricultural uses." Those structures may require some sort of building permit or even Planning Board review, but they do not require approval under the terms of the conservation easement.

Finally, all Town approvals under the conservation easement have to come from the Town Council.

Give me a call with any questions.

Thanks,

Natalie

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From: Amanda Stearns [mailto:astearns@town.falmouth.me.us]
Sent: Friday, April 29, 2011 1:56 PM
To: Natalie L. Burns
Subject: Inquiring about Town of Falmouth's need to approve UMaine Lease/Service Agreement with Tidewater, LLC
Importance: High

Hi Natalie,