

Melissa Tryon

From: Parker, Lauren <Lauren.Parker@maine.gov>
Sent: Tuesday, February 26, 2019 9:54 AM
To: Suzanne Breselor Lowell
Subject: RE: [EXTERNAL SENDER] Tidewater Farms Conservation Easement Amendment

Follow Up Flag: Follow up
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Suzanne – I agree with Tidewater, LLC, the Town of Falmouth, and the Falmouth Land Trust that the proposed amendment to the conservation easement will not materially detract from the conservation values intended for protection and, thus, does not require court approval to take effect. *See* 33 M.R.S. § 477-A(2)(b).

The proposed amendment to the conservation easement would attach a new survey to the conservation easement as Exhibit A-1 and define the protected property in reference to Exhibit A-1. Additionally, the proposed amendment would remove language from section 5 of the conservation easement that requires, without specifying which party has the obligation, the maintenance and enhancement of the Historic Hicks Farms Buildings for agricultural, educational, and cultural purposes. This change to section 5 would allow the parties to remove those buildings, which have deteriorated to the point of becoming a public safety hazard.

The conservation easement defines the protected property in general terms by reference to a plan. Specifically, the conservation easement defines the protected property by incorporating Exhibit A, which, in turn, states that the protected property is “generally identified as ‘TF1’” on an April 4, 2005, plan prepared by Orcutt Associates and DeLuca-Hoffman Associates and is “a portion of the premises shown on” the Tidewater Farm Final Subdivision Plan prepared by DeLuca-Hoffman Associates. The April 4, 2005, Orcutt plan is not a survey. The DeLuca-Hoffman Tidewater Farm Final Subdivision Plan, which is also referenced in section 4 of the conservation easement, is a survey but it predates the creation of the Tidewater Farm subdivision and does not delineate the boundaries of the protected property. The generality of the conservation easement’s property description renders the conservation easement ambiguous and its boundaries unascertained. The proposed conservation easement amendment will remove that ambiguity by delineating the boundaries of the protected property. The delineated boundaries depicted on Exhibit A-1 are as “generally identified” on the April 4, 2005 plan. Thus, replacing the conservation easement’s property description as proposed does not effectuate a partial termination of the conservation easement and does not require court approval.

Although the conservation easement does not expressly delineate the boundaries of the protected property, the conservation easement does state that the “Historic Hinks Farm Buildings are located adjacent to the Protected Property.” Because the conservation easement is explicit that those buildings are outside the protected property, removing the language requiring maintenance and enhancement of those buildings for agricultural, education, and cultural purposes will not materially detract from the conservation values intended for protection and also does not require court approval.

Please let me know if you have any questions.

Regards,

Lauren

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From: Suzanne Breselor Lowell <slowell@bernsteinshur.com>
Sent: Friday, January 25, 2019 2:42 PM
To: Parker, Lauren <Lauren.Parker@maine.gov>
Cc: Peter J. Van Hemel <pvanhemel@bernsteinshur.com>; Philip Saucier <psaucier@bernsteinshur.com>; 'Nathan Poore' <npoore@falmouthme.org>; 'Ethan Croce' <ecroce@falmouthme.org>
Subject: [EXTERNAL SENDER] Tidewater Farms Conservation Easement Amendment

Hello Lauren,

My colleague, Pete Van Hemel, reached out to you recently to preview plans by the Town of Falmouth and Tidewater LLC to amend a Conservation Easement granted by Tidewater to the Town, creating the Protected Property on portions of the Tidewater Farm in Falmouth, as described in Book 23279, Page 235 and attached for your reference.

Thank you for reviewing the proposed amendment to the Conservation Easement, also attached. Tidewater has agreed to sell the fee interest in the lot of which the Protected Property is a part to the Town. The Town has reached an agreement to then sell the fee interest to the Falmouth Land Trust, which will take up the responsibilities of the Grantor under the Conservation Easement. The Town will remain the Holder of the Conservation Easement.

In preparation for these transactions, we reviewed the Conservation Easement and hope to take this opportunity to update and refine the document. We have completed a new survey of the area, and would like to reference this in Exhibit A and attach it as Exhibit A-1, as it more accurately describes and delineates the Protected Property versus the original description in Book 23279, Page 235. This new survey accurately locates the boundaries of the Protected Area and recites the acreage as 42.15 acres. It also includes areas the formerly-referenced exhibit (which is basically a master plan/zoning map) suggested were subject to development.

In Section 5, the Conservation Easement speaks to the "Historic Finks Farm Buildings" located on property adjacent to the Protected Property. Despite preservation efforts, these structures have deteriorated to the point where the Town and Tidewater agree they are a public safety hazard. The Land Trust, with financial assistance from the Town, will remove the dangerous structures following closing. Thus, we have proposed to amend the language in Section 5 to clarify that the Finks Farm Buildings, which are not within the Protected Property, no longer need to be maintained and enhanced.

It is the shared understanding of Tidewater LLC, the Town and the Falmouth Land Trust that the changes outlined above in no way "materially detract from the conservation values intended for protection" by the Conservation Easement such as would require approval of the court. The total conserved area is actually larger than previously documented, and the removal of dangerous structures will serve to enhance the public benefit.

If I can provide any additional detail regarding the changes outlined above, please do not hesitate to contact me.

Thank you for your time and consideration.

Best,
Suzanne

Suzanne Breselor Lowell

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