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April 21, 2010

Ms. Deborah Patterson  
Recorder  
Land Court  
226 Causeway Street  
Boston, MA 02114

1017  
**RECEIVED**

APR 22 2010

Nicholas J. DeLuca

Subject: *Maria A. Kitras, Trustee, et al. v. Town of Aquinnah, et al.*  
Land Court Case No. 97 MISC 238738 (CWT)

Dear Ms. Patterson:

Enclosed please find the Commonwealth's memorandum in support of its position in the above-referenced case, which is being decided on a case-stated basis.

Thank you and your staff for your attention to this matter.

Very truly yours,

John M. Donnelly  
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Enclosure

cc: See Service List

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COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

DUKES, ss.

LAND COURT  
CASE NO. 97 MISC 238738 (CWT)

MARIA A. KITRAS, Trustee, *et al.*

Plaintiffs

v.

TOWN OF AQUINNAH, *et al.*

Defendants

MEMORADUM OF THE COMMONWEALTH OF MASSACHUSETTS

The Commonwealth of Massachusetts ("Commonwealth") holds reversionary interests in land held by the Town of Aquinnah and the Martha's Vineyard Land Bank based on use of the property as conservation land. The Commonwealth urges this court to dismiss Count I of the plaintiffs' complaint because the evidence fails to prove that the plaintiffs are holders of easements by necessity.

The plaintiffs' claims that they are holders of easements by necessity fail because there is no evidence that there was an intent to create easements of access to the plaintiffs' lots at the time that they were partitioned from a common owner in 1878. The Commonwealth notes that evidence supports the conclusion that there was no intent of the common owner to create the easements claimed by the plaintiffs. This evidence includes: (1) evidence of other expressed easements with no expressed easements of access and (2) evidence regarding the perceived condition and value of the land for roughly 120 years after the 1878 partition. The plaintiffs

thus fail to meet their burden of proof in light of evidence that negates intent.

Sheriff's Meadow Foundation, Inc. v. Bay-Courte Edgartown, Inc., 401 Mass. 267, 269 (1987)(plaintiffs bear the burden of proving title); Spillane v. Adams, 76 Mass. App. Ct. 378, 381-82 (2010)(plaintiffs failed to prove title in face of countervailing evidence).

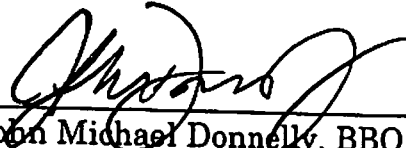
In support of the Commonwealth's case, it partially adopts the facts and the arguments found in pages 1 through 26 of the memorandum of law filed by the defendants, the Town of Aquinnah, the Vineyard Conservation Society, Inc., the Martha's Vineyard Land Bank, Jack Fruchtman, JoAnn Fruchtman, Caroline B. Kennedy, Edwin Schlossberg, David Wice, and Betsy Wice. The Commonwealth does not adopt the section of the memorandum regarding "Common Practice" found on pages 27 through 30.

Therefore, based on the reasons related above, the Commonwealth requests that this court issue and order dismissing Count I of the plaintiffs' complaint.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS  
By its Attorneys

MARTHA COAKLEY  
ATTORNEY GENERAL

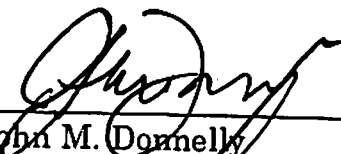


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CERTIFICATE OF SERVICE

I, John M. Donnelly, Assistant Attorney General, hereby certify that on this date I served the foregoing upon all parties, by mailing a copy, first class, postage prepaid to all parties on the attached service list.



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John M. Donnelly  
Assistant Attorney General  
Trial Division

Dated: April 21, 2010

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