

GORDA REALTY TRUST
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VIA FACSIMILE AND EMAIL

Friday, February 04, 2005

Carl M. Widdiss, Chairman
Aquinnah Board of Selectmen
65 State Road
Aquinnah, MA 02535

*RE: Release of the Gorda Realty Trust dated December 23, 2002;
Aquinnah Assessor Map 12, Parcel 38; Set-Off Lot 232*

Dear Chairman Widdiss and members of the Board:

On behalf of Gorda Realty Trust, we respectfully request that the Town of Aquinnah, acting through its Conservation Commission, Board of Health and Planning Board, toll the effective time period of permits issued from the above referenced settlement.

Gorda released all claims against the Town on December 23, 2002 that related to the above referenced property. The release was based upon the issuance of permits under the Aquinnah Wetlands/Water Resource Protection By-law and the State Environmental Code, Title 5, 310 CMR 15.000.

The purpose of the request is that Gorda is unable to utilize either permit until a wetland appeal taken by Joann and Jack Fruchtman, Jr. is resolved (Matter of Maria A. Kitras; DEP Docket No. 2001-114).

The appeal was taken by the Fruchtman's after the Massachusetts Department of Environmental Protection issued a Superseding Order of Conditions to Gorda on July 12, 2001 to construct a driveway, bridge, house, septic system and well within areas regulated under the Massachusetts Wetlands Protection Act.

We respectfully request that both permits be tolled until all appeals under DEP Docket No. 1001-114 are resolved. We believe that this request is fair and reasonable based upon existing case law. *See Almeida Bus Lines v. Dept. of Public Utilities*, 348 Mass. 331 (1965); *Woods v. Newton*, 351 Mass. 98, 104 (1966); *Belfer v. Building Commissioner of Boston*, 363 Mass. 439, 444-445 (1973); and, *Crocker v. Martha's Vineyard Commission*, 402 Mass. 77 (1990). *See also Preseault v. Wheel*, 123 Vt. 247, 253 (1974); and, *National Waste Managers v. Arundel*, 135 Md. App. 585, 611 (2000).

Please feel free to contact me if you have any questions or need additional information. Thank you.

Very truly yours,



James J. Decoulos, Co-Trustee
Gorda Realty Trust

cc: Ronald H. Rappaport, Esq., Reynolds, Rappaport & Kaplan, LLP