

DECOULOS & COMPANY

ENVIRONMENTAL ENGINEERING & LAND PLANNING

VIA USPS FIRST CLASS MAIL

CERTIFIED MAIL #7001 2510 0008 1211 8218

Friday, May 21, 2004

Philip J. Norton, Jr., Esq.
26 Church Street
Edgartown, MA 02539

RE: Real property owned by Peter Ochs, Moshup Trail, Aquinnah

Dear Mr. Norton:

It has come to my attention that Peter Ochs is seeking to sell his real property off Moshup Trail in Aquinnah. The property is defined by the Aquinnah Assessors as on Map 12, Parcel 41 and was originally "set-off" from the 1878 partition of the town common lands by the Dukes County Probate Court as Lot 708.

My wife Maria A. Kitras and I are co-trustees of Gorda Realty Trust which owns vacant land directly abutting the Ochs' lot to the north. The Gorda lot is defined by the Aquinnah Assessors as on Map 12, Parcel 38 and was originally "set-off" from the 1878 partition of the town common lands by the Probate Court as Lot 232.

Gorda purchased lot 232 on December 17, 1997 with the benefit of an express easement that runs through the Ochs' property. See Dukes County Registry of Deeds (the Registry) Book 717, Page 404 and the easement granted from Ochs to Jeffrey Madison in Book 555, Page 11. Since its purchase, Gorda has sought a variety of permits to construct a house, driveway, septic system and well on Lot 232.

After six years of permitting, Gorda now holds a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection (DEP)¹; a permit under the local wetlands by-law from the Aquinnah Conservation Commission; a septic system approval from the Aquinnah Board of Health; and, the constructive approval of the subdivision of Lot 232 into two lots.²

The effort to obtain these approvals has required decisions from the Massachusetts Land Court (Pettegrove v. ZBA of Aquinnah, 8 LCR 208 (2000)) and the Secretary of the Massachusetts Office of Environmental Affairs.³

¹ The property owners to the southwest of the Ochs' property, JoAnn and Jack Fruchtman, have appealed this permit and we are awaiting a decision from the DEP Office of Administrative Appeals.

² The Town of Aquinnah has appealed this approval and it is now before the Massachusetts Appeals Court. See Kitras v. Aquinnah, Docket No. 2002-P-1508.

³ The Fruchtman's alleged that the threatened orchid *Arethusa bulbosa* would be impacted from Gorda's proposal. The Secretary determined this claim to be baseless.

Page 2 of 2
Philip J. Norton, Jr., Esq.
Friday, May 21, 2004

Enclosed herewith is the Superseding Order of Conditions (SOC) from DEP; Figures 4, 5 and 8 referenced in the SOC; and, the decision from the Middlesex Superior Court approving the constructive subdivision.

This information is presented for potential buyers to be informed of rights held by Gorda Realty Trust across the Ochs' property.

Please feel free to call or email (jamesj@decoulos.com) if you have any questions or concerns. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'James J. Decoulos', written in a cursive style.

James J. Decoulos, Co-Trustee
Gorda Realty Trust

Cc: James E. Feiner *via certified mail #7001 2510 0008 1211 8201*
David M. Flanders *via certified mail #7001 2510 0008 1211 8195*