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January 11, 2011

Aquinnahboardofhealth@comcast.net
and Overnight Mail

Aquinnah Board of Health
65 State Road
Aquinnah, MA

Re: Septic System Application – January 19, 2011 hearing
Owner: Maria A. Kitras and James J. Decoulos, Trustees
of the Gorda Realty Trust
Property: Off Moshup Trail, Assessor Map 12, Parcel 38 (Set-Off Lot 232)

Dear Members of the Board of Health:

This firm represents Maria A. Kitras and James J. Decoulos, Trustees of the Gorda Realty Trust ("Trust"), owner of the above-referenced Property located off Moshup Trail, Assessor Map 12, Parcel 38 (Set-Off Lot 232). This letter and the accompanying documents constitute the Trust's application to install a septic system to serve a proposed three-bedroom single-family dwelling at the Property ("Application").

The Trust has mailed notice to abutters and arranged for publication of two advertisements in the Vineyard Gazette for a public hearing on January 19, 2011, in accordance with the Board's regulations. A copy of the notice to abutters was mailed to the Board.

In support of the Application, enclosed are the following Exhibit documents:

1. Application for Disposal System Construction Permit, January 5, 2011 (a copy is attached; the original will be sent to the Board under separate cover by Decoulos & Company);
2. Plan titled "Proposed Septic System, Assessor Map 12, Parcel 38, Aquinnah, Massachusetts", prepared by Decoulos & Company, stamped by James J. Decoulos, P.E., dated June 27, 2001, revised January 5, 2011.

(two sheets) (a copy is attached; the original stamped plan will be sent under separate cover by Decoulos & Company).

3. A check in the amount of \$175.00 payable to the Town of Aquinnah as the application fee for a Disposal Work Permit;
4. Certified list of abutters from Angela Cywinski of the Aquinnah Board of Assessors dated November 15, 2010 (a copy is attached; the original will be sent to the Board under separate cover by Decoulos & Company);
5. Spreadsheet entitled "Review of approved variances granted under Aquinnah Board of Health Regulations".

The Application and proposed septic system design are in full compliance with Title 5 of the State Environmental Code, 310 CMR 15.000 ("Title 5"). Therefore, no variances are needed from Title 5.

While reserving all rights, the Trust requests a variance from the following provisions of the Aquinnah Board of Health Rules and Regulations ("BOH Regulations"), as revised through April 7, 2004, to the extent that such provisions apply to the Application:

- a. subsection 4.10 of Section 6: to allow an approximately 10 foot setback to a property line where 30 feet are required;
- b. subsection 4.00 of Section 6: to allow an approximately 51 foot setback to wetlands where 150 feet are required; and,
- c. subsection 4.20 of Section 6: to allow a four foot separation between the lowest point of the leaching field and the high seasonal water table where five feet are required.

As an initial matter, we point out that Title 5 provides that the technical information filed herewith in support of the Application is valid and must be considered by the Board.

On June 23, 2000, James Decoulos, P.E., filed Soil Evaluation and Percolation Test Forms from the Massachusetts Department of Environmental Protection (DEP) with the Board. The data presented in the Forms was based upon soil testing conducted on April 25, 2000, which was overseen by Board appointed agent, Ms. Cynthia Barletta. The data was used in the septic design which was previously approved by the Board on December 6, 2002 (DWP # 441).

There is no "expiration date" for percolation or soil testing under Title 5. In addition, there is no "expiration date" under the Board's Regulations. Title 5 provides that percolation test data is "deemed valid for an indefinite period provided the soils within the site evaluated remain undisturbed and unaltered." (See 310 CMR 15.104(1).) James Decoulos, P.E., the Trust's Registered Professional Engineer, has confirmed that he personally observed the Property (including the specific locations of the percolation test sites and the proposed leaching area) on many occasions since the testing was performed on April 25, 2000, and has further confirmed that the soils within the site evaluated have remained undisturbed and unaltered. As a result, the technical information submitted with the Application is valid and applicable.

Compliance with the Standard of Review for Variances in the BOH's Regulations

Without waiving any rights regarding the applicability of the BOH Regulations, the Trust is able to demonstrate that the Application complies with the Regulations' standard of review for variances as set forth in subsection 5.00 of Section 6 of the Regulations. In particular, the Application demonstrates that the same degree of environmental protection can be achieved without strict application of the BOH Regulations, (As mentioned above, the Application fully complies with Title 5 and, therefore, it provides all of the environmental protections required under Title 5.)

a. With respect to subsection 4.10 of the BOH Regulations, the Application's closer distance to the property line has no effect on environmental protection in this case. For instance, there is no sensitive receptor (e.g. no drinking water well, no other leaching area, no building foundation, etc.) located in close proximity to the property line. Therefore, the proposed location of the leaching area will not affect the abutting property or this Property. The Application provides the same degree of protection as subsection 4.10. Thus, the Board should grant a variance from subsection 4.10 of Section 6 of the Local Regulations.

b. With respect to subsection 4.00 of the BOH Regulations, the Application's closer distance to wetlands should have no adverse effect on those wetlands. As an initial matter, the Trust has received a Final Superseding Order of Conditions ("Final SOC") under the State's Wetlands Protection Act and the Town's local Wetlands Bylaw, approving the construction of the proposed septic system near the wetlands, in DEP File Number SE 27-237. The Final SOC is recorded at the Dukes County Registry of Deeds in Book 1172, Page 487 and an Extension Permit is recorded in Book 1172, Page 495 (Attached as Exhibit 6 is a copy of the recorded Final SOC and the Extension thereto.)

Pursuant to the Final SOC, erosion control and sedimentation barriers will be installed between the work zone and the wetlands to ensure that there is no temporary disturbance to the wetlands during construction. Following construction, the work area will be stabilized and revegetated, so that there will be no sedimentation in the wetland.

Importantly, State's wetland protection regulations specify a regulatory presumption that the effluent discharge from a leaching area that is located at least fifty feet from a wetlands will provide sufficient protection to the wetlands. (See 310 CMR 10.03(3).) As set forth in the Application, the Trust's leaching facility will be located more than fifty feet from wetlands. Thus, the Application is entitled to the regulatory presumption of no impact to the wetlands, and the Board shall presume that the Application will not impair wetlands. The Application therefore can provide the same degree of environmental protection as under the Regulations. Thus, the Board should grant a variance from subsection 4.0 of Section 6 of the Local Regulations.

c. With respect to subsection 4.20 of the BOH Regulations, the Application's closer distance to the high seasonal water table does not adversely affect the water table in this instance. That is so because the five foot separation is only applicable, if at all, in cases where there is a very rapid percolation rates through very sandy, outwash soils. For instance, in Title 5, DEP has concluded that a five foot separation applies only where there is a recorded percolation rate of two minutes or less per inch. (See 310 CMR 15.212(1)(a).) However, in the present case, the Application demonstrates that the soil's parent material is glacial till (and not sandy outwash soil) and the percolation rate is much slower, at approximately 30 minutes per inch. (See attached Plan.) In the present case, there is no reasonable concern that effluent will seep to the water table too fast without adequate biological treatment through the soil. Thus, the Application will provide the same degree of protection as that set forth in the Regulations.

As a final matter, although the BOH Regulations do not contain a separate variance standard concerning "manifestly unjust", the Trust can nevertheless demonstrate that it would be manifestly unjust for the Board to not approve the proposed Application, because there is no feasible alternate location for the proposed leaching area. (We understand that Board Chairman Jerry Wiener and the Town's engineer, Richard Barbini, previously testified on this issue in the Massachusetts Land Court in December 1999, in the case Pettegrove v. Zoning Board of Appeals of Aquinnah, Land Court Misc. Case No. 248339 and 249530.) The design of the system properly locates the leaching area in the only feasible location on the Property. The Board would deprive the Trust of substantially all beneficial use of the Property if it were to deny the Application. Consequently, the Trust has met the standards to obtain the variances.

The Board Previously Approved and Granted a Permit for the Same Design and Application

As the Board is aware, it previously approved essentially the same design and Application, including the same location of the leaching area. On or about December 6, 2002, the Board granted a permit for the Trust's same septic system design and location as that presently proposed by the Trust (DWP # 441). On January 22, 2006, the Board

granted a one year extension of the permit to December 4, 2006. The Trust subsequently requested the Board to toll or extend the expiration date due to a then pending wetlands appeal pertaining to the Project (which appeal was resolved in the Trust's favor). After granting a one year extension on January 22, 2006, the Board refused to grant additional extensions. (Attached as Exhibit 7 are letters dated November 22, 2005, January 22, 2006, May 29, 2009, and June 30, 2009.) There is no evidence to indicate that the permit and design that were previously approved, and extended, by the Board was not protective of the environment.

The Board has Granted Many Variances for Other Similar Applications

Based upon the Trust's review of the Board's available public records, it appears that the Board has granted variances to at least fourteen (14) separate property owners, to grant relief from subsections 4.00, 4.10 and 4.20 of the Regulations and to allow other owners in conditions substantially similar to the Trust's case to locate leaching facilities the same distance to property lines, wetlands, and with four foot groundwater separation distances than otherwise allowed under the Regulations. (See Exhibit 5, the Spreadsheet entitled "Review of approved variances granted under Aquinnah Board of Health Regulations".)

In fact, in the following seven cases, the Board granted similar variances from property lines (10 foot distance), wetlands (approximately 51 distance), or water tables (four foot separation) (see Exhibit 5):

Applicant: Marjory Galbraith; Board Permit #499; Assessor Map 9, Parcels 44 and 58.1;

Applicant: 531 Set Off Trust; Board Permit #498; Assessor Map 12, Parcel 11;

Applicant: Gardner Brown; Board Permit # 508; Assessor Map 8 , Parcels 107, 108 and 109;

Applicant: Isaac Taylor; Board Permit #515; Assessor Map 6, Parcel 45;

Applicant: Michael Cimmino; Board Permit # 534; Assessor Map 5, Parcels 16 and 20.5;

Applicant: June Manning; Board Permit #544; Assessor Map 6, Parcel 76; and

Applicant: The Chilmark Association; Board Permit #568; Assessor Map 8, Parcel 112.

Question on the Applicability of the Board's Regulations

Although the Trust complies with the variance standards and should receive the three requested variances, as set forth above, the Trust reserves all rights and defenses relative to the Application insofar as the Trust questions whether the Aquinnah BOH Regulations apply to the Application. We question whether subsections 4.00, 4.10, 4.20 and other sections of the BOH Regulations apply to the Application because it appears that those provisions were not properly promulgated in accordance with the procedures mandated by M.G.L. c. 111, §31 and Title 5. In particular, we believe there are three fatal flaws in the Regulations, rendering them null and void as to this Application, as follows:

1. Pursuant to G.L. c. 111, §31, no local regulation relating to the minimum requirements for subsurface sewerage disposal shall be adopted until such time as the Board of Health shall hold a twice-advertised public hearing on the proposed regulations, with the advertisement describing the subject matter of the regulation, sufficient for identification. In the present case, based upon our review of the prior classified advertisements of the Vineyard Gazette, it appears that the Board of Health failed to provide the statutorily required published notice of the proposed septic system regulations. The Trustees, who are long-time owners of the Property, were prejudiced by not having the opportunity to review published notice of the proposed regulations.

2. Pursuant to G.L. c. 111, §31, "Prior to the adoption of such regulation or amendment which exceeds the minimum requirements for subsurface disposal of sanitary sewage as provided by the state environmental code, a board of health shall state at said public hearing the local conditions which exist or reasons for exceeding such minimum requirements." (Emphasis added) Based upon review of the Board of Health records, there is no evidence that the Board of Health ever provided the statutorily required statements concerning the alleged local conditions which existed or the alleged reasons for exceeding Title 5's minimum requirements with respect to subsection 4.00, 4.10 and 4.20 of Section 6 of the BOH Regulations. The Board's failure to provide Statements concerning the specific local conditions that allegedly support subsections 4.00, 4.10 and 4.20 invalidates those subsections pursuant to G.L. c. 111, §31, and makes those subsections inapplicable to the Application.

3. Pursuant to G.L. c. 111, §31, "Boards of health shall file with the department of environmental protection, attested copies of sanitary codes, and all rules, regulations and standards which have been adopted, and any amendments and additions thereto, for the maintenance of a central register pursuant to section eight of chapter twenty-one A." (Emphasis added) In turn, Title 5 provides that "local regulations adopted under M.G.L. c. 111, §31 shall be filed with the Department's Boston Office and the appropriate Regional Office of the Department in accordance with M.G.L. c. 21A, §13." (See 310 CMR 15.003(5).) (Emphasis added)

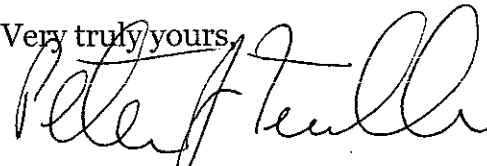
Aquinnah Board of Health
January 11, 2011
Page 7

Based upon a formal public records review conducted at DEP's Boston Office and the appropriate Southeast Regional Office ("SERO"), it is clear that the Board's current Regulations were not submitted to DEP's Boston Office. In addition, the BOH Regulations have never been filed at SERO. (Attached as Exhibit 8 are a copy of a letter to Mr. Decoulos from DEP dated August 18, 2010 in response to Mr. Decoulos' review of records concerning Regulations through 1999-2000, and an email from the SERO dated October 15, 2010, demonstrating that the Board's Regulations have never been filed at SERO.) Because the Board's regulations were not promulgated in accordance with G.L. c. 111, §31 or 310 CMR 15.1003(5), those local regulations are invalid and can not be applied to the Application.

Based upon the foregoing, we respectfully request that the Board vote at its hearing on January 19, 2011, to grant the three requested variances and approve the Application.

Please contact me if you have any questions concerning this letter. Thank you for your assistance and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter J. Feuerbach", written over the typed name.

Peter J. Feuerbach

PJF/ees
Encls
cc: Client (w/encl)

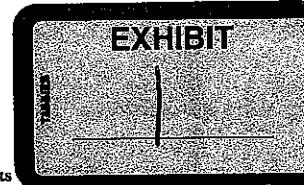
No. _____

FEE _____

COMMONWEALTH OF MASSACHUSETTS

Board of Health, AQUINNAH, MA.

APPLICATION FOR DISPOSAL SYSTEM CONSTRUCTION PERMIT

Application for a Permit to Construct ☒ Repair () Upgrade () Abandon () - ☒ Complete System ☐ Individual Components

Location <u>OFF MOSHUP TRAIL</u>	Owner's Name <u>KITRAS & DECOVLOS TR GORDA PT</u>
Map/Parcel# <u>12/38</u>	Address <u>38 BOW RD, BELMONT, MA 02478</u>
Lot# <u>232</u>	Telephone# <u>617-489-7795</u>
Installer's Name <u>DECA CONSTRUCTION</u>	Designer's Name <u>JAMES J. DECOVLOS</u>
Address <u>46 PEACEGATE WAY, VINEYARD HAVEN</u>	Address <u>185 ALEWIFE BROOK PKWY, CAMBRIDGE</u>
Telephone# <u>508-693-5014</u>	Telephone# <u>617-489-7795</u>

Type of Building RESIDENTIAL DWELLING Lot Size 140,263 sq. ft.
 Dwelling - No. of Bedrooms 3 Garbage grinder ()
 Other - Type of Building _____ No. of persons _____ Showers (), Cafeteria ()
 Other Fixtures _____
 Design Flow (min. required) 330 gpd Calculated design flow 330 Design flow provided 339 gpd
 Plan: Date 4/27/01 Number of sheets 2 Revision Date 1/5/11
 Title PROPOSED SEPTIC SYSTEM ASSessor MAP 12 PARCEL 38, AQUINNAH, MA
 Description of Soil(s) 10 YR 5/6 SANDY LOAM - PARENT MATERIAL
 Soil Evaluator Form No. 11 Name of Soil Evaluator JAMES J. DECOVLOS Date of Evaluation 4/25/00

DESCRIPTION OF REPAIRS OR ALTERATIONS _____

The undersigned agrees to install the above described Individual Sewage Disposal System in accordance with the provisions of TITLE 5 and further agrees to not place the system in operation until a Certificate of Compliance has been issued by the Board of Health.

Signed [Signature] Date 1/5/11

Inspections _____

No. _____

COMMONWEALTH OF MASSACHUSETTS

FEE _____

Board of Health, _____, MA.

CERTIFICATE OF COMPLIANCE

Description of Work: ☐ Individual Component(s) ☐ Complete System

The undersigned hereby certify that the Sewage Disposal System: Constructed (), Repaired (), Upgraded (), Abandoned ()

by: _____

at _____

has been installed in accordance with the provisions of 310 CMR 15.00 (Title 5) and the approved design plans/as-built plans relating to application No. _____, dated _____, Approved Design Flow _____ (gpd)

Installer _____

Designer: _____ Inspector: _____ Date: _____

The issuance of this permit shall not be construed as a guarantee that the system will function as designed.

No. _____

FEE _____

COMMONWEALTH OF MASSACHUSETTS

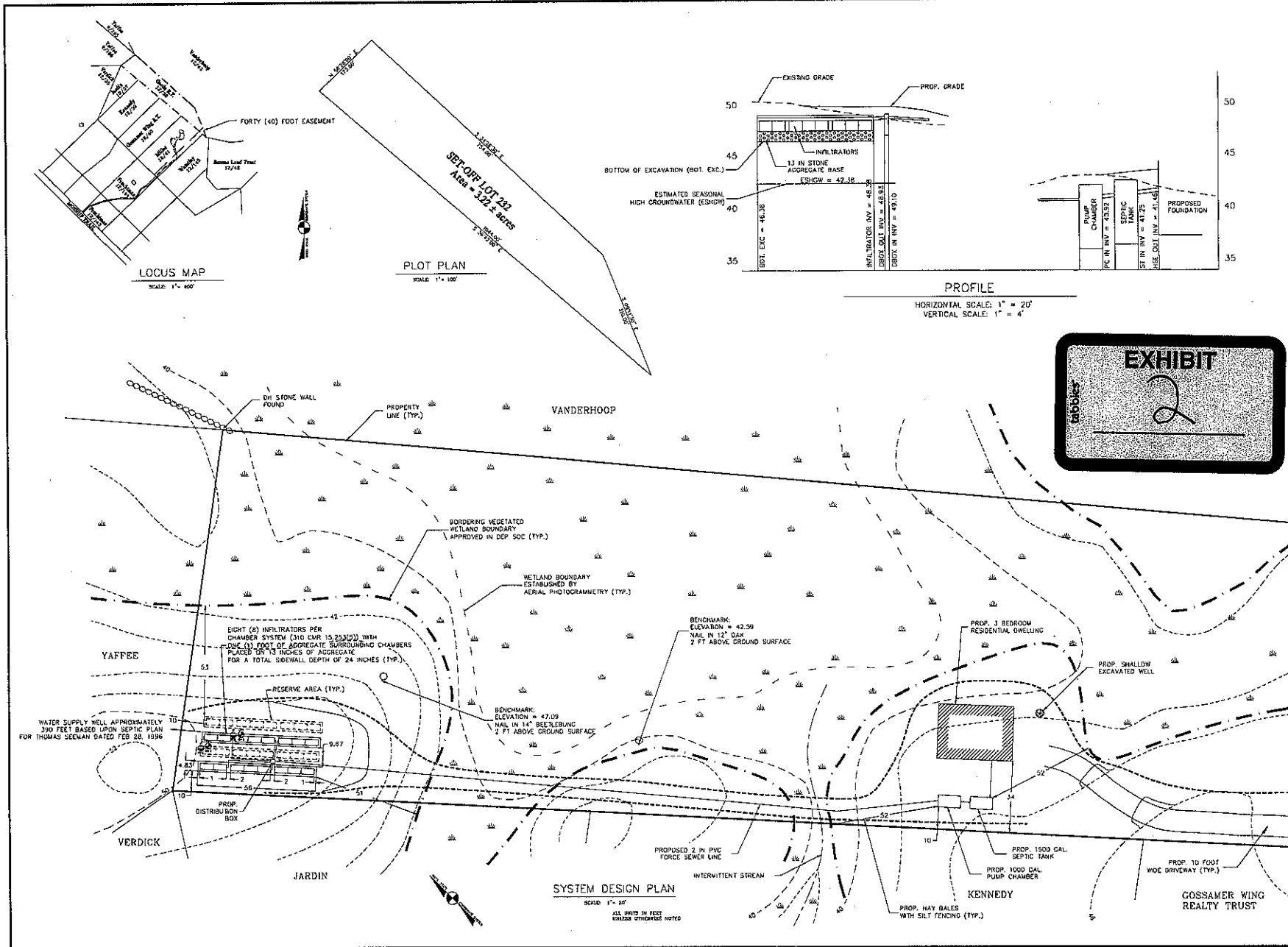
Board of Health, _____, MA.

DISPOSAL SYSTEM CONSTRUCTION PERMIT

Permission is hereby granted to: Construct () Repair () Upgrade () Abandon () an individual sewage disposal system at _____ as described in the application for

Disposal System Construction Permit No. _____, dated _____.

Provided: Construction shall be completed within three years of the date of this permit. All local conditions must be met.



DECOULOS & COMPANY	DATE	6/27/01
185 ALEWEE BROOK PARKWAY	SCALE	AS NOTED
CAMBRIDGE, MASSACHUSETTS 02188	DRWN	TCM
WWW.DECOULOS.COM	DES	TCM
617 488 7795	CHKD	JUD
	APRVD	JUD
	SHEET NO.	1 OF 2

PERCOLATION TESTING DATA

PERFORMED BY: JAMES J. DECOULOS, PE, LSP
AN APPROVED SOIL EVALUATOR
OBSERVED BY: CYNTHIA BARLETTA, AQUINAH BOH AGENT
DATE OF TEST: APRIL 25, 2000
PARENT MATERIAL: GLACIAL TILL

PERCOLATION TEST #1
SURFACE ELEVATION = 49.34
PRESOAK = OVERNIGHT SOAK PLUS 15 MINS
SLOWEST 1" DROP = 22 MIN
PERC RATE = 30 MIN/INCH
TOTAL DEPTH = 22"
BOTTOM ELEVATION = 47.51

PERCOLATION TEST #2
SURFACE ELEVATION = 49.82
PRESOAK = OVERNIGHT SOAK PLUS 15 MINS
SLOWEST 1" DROP = 30 MIN
PERC RATE = 30 MIN/INCH
TOTAL DEPTH = 35"
BOTTOM ELEVATION = 47.74

TEST PIT DATA

TEST PIT DH1

SURFACE ELEVATION = 49.34
DEPTH (IN) SOIL HORIZON
0-6 A - 10 YR 2.5/1 TOPSOIL
6-16 B - 7.5 YR 4/6 SUBSOIL
16-36 C - 10 YR 5/8 SANDY LOAM
MIXED WITH 5/8
ONE INCH MICROWELL CMW-1 AT DH1
CASING ELEVATION = 51.28
TOTAL DEPTH = 11.96 FT
DEPTH TO STATIC WATER ON 5/1/01 = 0.44
GROUNDWATER ELEVATION ON 5/1/01 = 41.84

TEST PIT DH3

SURFACE ELEVATION = 49.82
DEPTH (IN) SOIL HORIZON
0-6 A - 10 YR 2.5/1 TOPSOIL
6-16 B - 7.5 YR 4/6 SUBSOIL
16-36 C - 10 YR 5/8 SANDY LOAM
MIXED WITH 5/8
ONE INCH MICROWELL CMW-2 AT DH3
CASING ELEVATION = 51.28
TOTAL DEPTH = 11.04 FT
DEPTH TO STATIC WATER ON 5/1/01 = 8.90
GROUNDWATER ELEVATION ON 5/1/01 = 42.38

DESIGN DATA

PROPOSED CONDITION: PROPOSED HOUSE (3 BEDROOMS)
PROPOSED HYDRAULIC LOADING: 110 GAL PER BEDROOM PER DAY X 3 BEDROOMS = 330 GPD
DAILY FLOW X 150 % = 330 GAL X 150 % = 495 GAL (MIN)
SEPTIC TANK PROVIDED: 1,500 GAL (MIN. TITLE 5)
DESIGN PERCOLATION RATE: 30 MIN/INCH
EFFLUENT LOADING RATE: CLASS II 0.53 GPD/SF
REQUIRED AREA: 330 GPD/0.53 GPD/SF = 1000 SF (TITLE 5)
AREA PROVIDED: TWO CHAMBER SYSTEMS PER 310 CDR 15.253
EACH CHAMBER SYSTEM SHALL BE IN AN ELEVATION OF 4.83 FT WIDE X 16.0 FT LONG X 24 INCHES OF SIDEWALL.

$$((4.83 \times 56.0) + ((2 \times 56.0) \times (2 \times 4.83))) \times 2 \text{ FT SIDEWALL} = 1028 \text{ SF}$$

NOTES:

- DEPTH MAY VARY W/ TRIBUTARY AREA.
- FOR 100 SF/LF FENCE, 3" FOR 100 SF/LF FENCE, UNLESS POST IS TO BE SET IN PEAT THEN J OR DEPTH POSSIBLE BY PUSHING BY HAND SHALL BE REQUIRED.
- 1 1/2" ID, WOOD POST 8' O.C. (SEE NOTE 1)
- WRAP ATTACHMENT CORD AROUND POST TWICE
- 5' - 10'
- 2' - 3' (SEE NOTE 1)
- FINISH GRADE
- STAKED HAY BALE
- BURY FABRIC 6"± IN GROUND

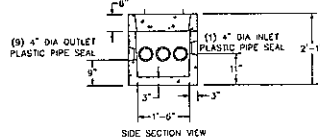
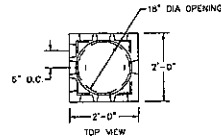
HAY BALE / SILT FENCE DETAIL

REFERENCES

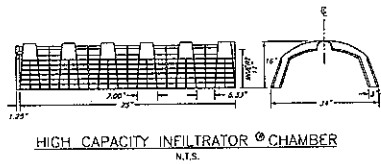
- AERIAL PHOTOGRAMMETRY PROVIDED BY LOCKWOOD MAPPING; FLOWN MARCH, 1979
- WETLANDS ESTABLISHED FROM AERIAL PHOTOGRAMMETRY AND FIELD OBSERVATIONS BY DOUG COOPER OF COOPER ENVIRONMENTAL SERVICES.
- STADIA FIELD SURVEY BY JAMES J. DECOULOS AND BRIAN VANDERHOOP, MARCH 11, 1998
- ELECTRONIC FIELD SURVEY BY JAMES J. DECOULOS AND CHERYL SELLITA, APRIL 18, 1998
- AQUINAH ASSESSOR RECORDS, APRIL, 1998
- DUNES COUNTY REGISTRY OF DEEDS BOOK 65, PAGE 180
- STADIA FIELD SURVEY BY JAMES J. DECOULOS AND RANDY JARDIN, FEBRUARY 2, 1999
- STADIA FIELD SURVEY BY JAMES J. DECOULOS AND PAUL PETROCCINI, OCTOBER 4, 2000
- ELECTRONIC FIELD SURVEY BY JAMES J. DECOULOS AND TED LESLIE, MAY 1, 2001

GENERAL NOTES

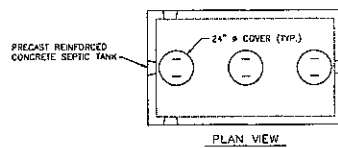
- ELEVATIONS ARE BASED UPON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929.
- FINISHED GRADING TO BE PERFORMED IN ACCORDANCE WITH PLAN.
- PERCOLATION TESTS PERFORMED IN ACCORDANCE WITH THE INSTRUCTIONS IN TITLE 5 OF THE MASSACHUSETTS STATE ENVIRONMENTAL CODE
- ALL CONSTRUCTION TO CONFORM TO TITLE 5 OF THE MASSACHUSETTS STATE ENVIRONMENTAL CODE.
- ALL TOPSOIL, SUBSOIL, AND DELETERIOUS MATERIAL, IF ANY, MUST BE EXCAVATED AND REMOVED BELOW THE LEACHING FIELD AND TO A DISTANCE OF 5 FEET FROM ALL SIDES OF THE LEACHING FIELD. FILL MATERIAL SHALL CONFORM TO GRADATIONS SPECIFIED IN 310 CMR 15.255 (2).
- TIGHT JOINT PAVING TO CONSIST OF 4 INCH DIAMETER POLYVINYL CHLORIDE PIPE(PVC) SCHEDULE 40, UNLESS OTHERWISE NOTED.
- IN CASES WHERE LEDGE OR Boulders ARE PRESENT, THE OWNER WILL NOT BE RESPONSIBLE FOR ASSURING THE AMOUNT OF ROCK TO BE ENCOUNTERED.
- THE OWNER WILL NOT BE RESPONSIBLE FOR THE PERFORMANCE OF THIS SYSTEM UNLESS CONSTRUCTED AS SHOWN. ANY ALTERATIONS MUST BE APPROVED IN WRITING BY THE ENGINEER.
- HEAVY MACHINERY SHALL NOT BE PERMITTED TO PASS OVER THE LEACHING FIELD.
- FOR PROPER PERFORMANCE, SEPTIC TANK SHOULD BE INSPECTED AT LEAST ONCE A YEAR AND WHEN THE TOTAL DEPTH OF SOLID AND SOLIDS EXCEEDS 1/3 THE LIQUID DEPTH OF THE TANK, THE TANK SHOULD BE PUMPED.
- SYSTEM HAS NOT BEEN DESIGNED FOR A CARGAGE GRINDER.
- SYSTEM COMPONENT LOCATIONS SHALL BE STAKED BY ENGINEER IN FIELD BEFORE ANY CLEARING OR GRUBBING ACTIVITIES.



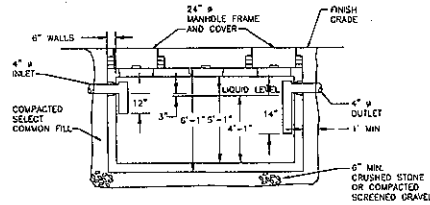
DISTRIBUTION BOX DETAIL
N.T.S.



HIGH CAPACITY INFILTRATOR CHAMBER
N.T.S.

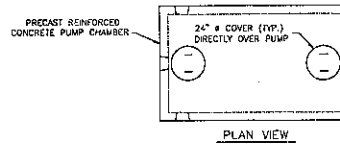


PLAN VIEW

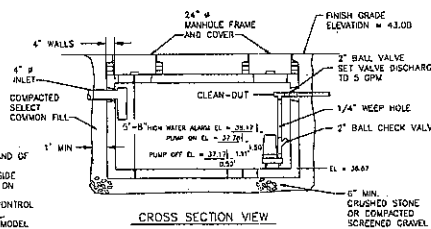


CROSS SECTION VIEW

1,500 GAL. SEPTIC TANK DETAIL
N.T.S.



PLAN VIEW



CROSS SECTION VIEW

1,000 GAL. PUMP CHAMBER DETAIL
N.T.S.

PUMP CHAMBER NOTES:

- TANK SHALL BE WATER TIGHT AND OF MONOLITHIC CONSTRUCTION
- ALARM SHALL BE LOCATED INSIDE DWELLING WITH POWER PROVIDED ON SEPARATE CIRCUIT FROM PUMP
- INSTALL RAINBOW TYPE 115 CONTROL AND ALARM OR APPROVED EQUAL
- PUMP SHALL BE HYDROMATIC MODEL SP50 OR APPROVED EQUAL
- PUMP AND ALARM ACTIVATION LEVELS ARE DESIGNED TO ALLOW THE DAILY DESIGN FLOW OF THE SYSTEM TO BE STORED IN THE PUMP CHAMBER TO COMPLY WITH THE EMERGENCY STORAGE PROVISIONS OF 310 CMR 15.231(2).

- NOTES:
- TANK SHALL BE OF MONOLITHIC CONSTRUCTION.
 - THE OUTLET TEE SHALL BE EQUIPPED WITH A GAS BATTLE AND A MASSDEP APPROVED EFFLUENT FILTER.

DECOULOS & COMPANY
185 ALEWEE BROOK PARKWAY
CAMBRIDGE, MASSACHUSETTS 02138
WWW.DECOULOS.COM
617 489 7795

PROPOSED SEPTIC DETAILS
ASSESSOR MAP 12, PARCEL 38
AQUINAH, MASSACHUSETTS

DATE
6/27/00
SCALE
AS NOTED

DRWN JJD
DES JJD
CHKD JJD
APRD JJD

SHEET NO.
2 OF 2



EXHIBIT 3

\$175.00 check for the application fee

12/06/10
AQU003

Town of Aquinnah

REMITTANCE ADVICE

RUBIN AND RUDMAN LLP
CHECK NO.: 104817

DATE	INVOICE NUMBER	DESCRIPTION	AMOUNT	DEDUCTIONS	NET AMOUNT
12-06-10	12/06/2010		175.00	0.00	175.00
				TOTAL:	175.00

THIS CHECK IS VOID WITHOUT A GREEN & BLUE BORDER AND BACKGROUND PLUS A KNIGHT & FINGERPRINT WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

LAW OFFICES OF
RUBIN AND RUDMAN LLP
50 ROWES WHARF
BOSTON, MA 02110

5-13
110

104817

PAY ONE HUNDRED SEVENTY-FIVE AND 00/100 DOLLARS

DATE 12/06/10

NET AMOUNT 175.00

TO THE
ORDER
OF
Town of Aquinnah

RUBIN AND RUDMAN LLP



AUTHORIZED SIGNATURE

BANK OF AMERICA

⑈00104817⑈⑈011000138⑈00573 17208⑈

Abutters List Report

✓ Town of Aquinnah, MA
November 15, 2010

Subject Properties:

12-38

GORDA REALTY TRUST
DECOULOS & KITRAS TRUSTEES
38 BOW ROAD
BELMONT, MA 02478

12-38

MOSHUP TR

Parcel Number: 12-136

Mailing Address: GOSSAMER WING REALTY TRUST
B HALL TRUSTEE
BOX 5039
EDGARTOWN, MA 02539

Cama Number: 12-136

Property Address: MOSHUP TR

Parcel Number: 12-145

Mailing Address: WAMSLEY HEBRON ETAL
REAR MOSHUP TR
AQUINNAH, MA 02535

Cama Number: 12-145

Property Address: MOSHUP TR

Parcel Number: 12-35.1

Mailing Address: VERDICK WALTER
PO BOX 458
MAMARONECK, NY 10543

Cama Number: 12-35.1

Property Address: 5 SEA MIST LN

Parcel Number: 12-35.2

Mailing Address: EISENBERG DAVID
EISENBERG PAULA
28 LINDEN AVE
LARCHMONT, NY 10538

Cama Number: 12-35.2

Property Address: 3 SEA MIST LN

Parcel Number: 12-37

Mailing Address: JARDIN TAMARA TR
YOUNG ABIGAIL TR
PO BOX 2833
VINEYARD HAVEN, MA 02568

Cama Number: 12-37

Property Address: MOSHUP TR

Parcel Number: 12-39

Mailing Address: KENNEDY CAROLINE B
C/O ESI DESIGN E SCHLOSSBERG
111 FIFTH AVE 12TH FL
NEW YORK, NY 10003

Cama Number: 12-39

Property Address: MOSHUP TR

Parcel Number: 12-40

Mailing Address: HALL BENJAMIN L & BRIAN M TRS
GOSSAMER WING REALTY TRUST
PO BOX 5039
EDGARTOWN, MA 02539

Cama Number: 12-40

Property Address: MOSHUP TR

Parcel Number: 12-41

Mailing Address: MILLER JANE B
MILLER MARK J
32 W 4TH ST
NEW CASTLE, DE 19720

Cama Number: 12-41

Property Address: 39 MOSHUP TR

Parcel Number: 12-42

Mailing Address: BARONS LAND TRUST
HOWASSWEE ESTHER
BOX 5039
EDGARTOWN, MA 02539

Cama Number: 12-42

Property Address: MOSHUP TR

Parcel Number: 12-43

Mailing Address: VANDERHOOP LEONARD JR EST OF
VANDERHOOP BARBARA J EXEC
3906 CORBIN AVE
TARZANA, CA 91356-6153

Cama Number: 12-43

Property Address: MOSHUP TR

Subject Properties:

12-38

12-38

MOSHUP TR

GORDA REALTY TRUST
DECOULOS & KITRAS TRUSTEES
38 BOW ROAD
BELMONT, MA 02478

Parcel Number: 9-195
Cama Number: 9-195
Property Address: MAPLE HILL DR

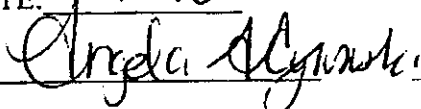
Mailing Address: YAFFEE STEVE
P.O. BOX 382
CHILMARK, MA 02535

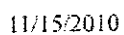
Parcel Number: 9-196
Cama Number: 9-196
Property Address: 6 MAPLE HILL DR

Mailing Address: YAFFEE STEVEN
P.O. BOX 382
CHILMARK, MA 02535

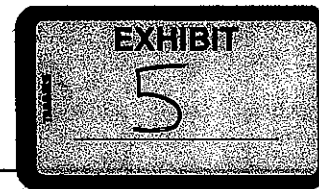
Aquinnah Board of Assessors Certification, (C. 40A, S. 11, MGL)

DATE: 11-15-10





Review of approved variances granted under Aquinnah Board of Health Regulations
Review Period: January 15, 2005 to November 15, 2010



1/10/2011

BOH Meeting Date	Applicant Name	Permit #	Assessor Map	Assessor Parcel	Street	Variance Requests	Approval Date
March 16, 2005	Galbraith, Marjory	499	9	44, 58.1	Old South Road	a) Septic to wetland - 51 ft; b) septic to property line - 12 ft; c) Mounded sytem; d) Bottom of field to GW - 4 ft.	ACC approved OC (DEP Nos. 027-0255 and 027-0357). Previously approved by BOH, but expired (BOH demanded new app on 2/16/05). Re-filed and approved on 5/19/05.
April 14, 2005	531 Set Off Trust	498	12	11	Moshup Trail	a) leaching field to wetland - 110 ft; b) leaching field to property line - 10 ft.	Approved at 7/19/06 meeting.
April 28, 2005	Madison, Jeffrey		5	208.1	State Road	a) Septic to property line; b) septic to wetland.	Resubmission. Approved on 4/28/05. Came back on 8/17/05 to request variance of 110 ft from well to leaching area.
May 19, 2005	Brown, Gardner	508	8	107, 108, 109	East Pasture Way	Septic to wetland - 51 ft.	Approved on 5/19/05.
October 19, 2005	Taylor, Alex	514	6	45	State Road	a) Septic to wetland - 74 ft; b) bottom of field to GW - 4.5 ft.	Approved on 10/19/05.
October 19, 2005	Taylor, Isaac	515	6	45	State Road	a) Septic to wetland - 103 ft; b) bottom of field to GW - 4.0 ft.	Approved on 10/19/05. Board approved hand digging of well on 11/16/05.
December 14, 2005	Holmes, David and Daniel	452	5	165	Jeffers Way	a) Leaching area to wetland - 62 ft; b) leaching area to well (distance not noted).	Previously approved on 11/6/02 with Bioclere to reduce nitrogen. Permit expired and BOH requested new app. Approved at 7/19/06 meeting.
March 15, 2006	Estate of Richard Lehman	517	5	22, 39.1	Lighthouse Road	a) Leaching bed to wetland - 54 ft; b) septic to well - 103 ft; c) leaching bed to property line - 11 ft.	Approved at 4/19/06 meeting.
March 15, 2006	Aquinnah Housing	509	9	103	Church Street	a) Leaching trenches to wetland - 60 ft; b) leaching trenches to property line - 12 ft; c) leaching trenches to well - 135 ft; d) leaching trenches to abutter's well - 120 ft.	Approved at 11/15/06 meeting. Permit expired, resubmitted and approved on 12/9/09 (fee waived).
July 18, 2007	Cimmino, Michael	534	5	16, 20.5	State Road	Previous variance requests in 2004 granted.	Permit lapsed and new app was approved on 7/18/07.
September 19, 2007	Vlachos, Peter	535	6	58	Lighthouse Road	a) Septic to wetland - 79 ft; b) reserve area to wetland - 76 ft; c) septic tank to wetland - 39 ft; d) pump chamber to wetland - 30 ft; e) septic system to well - 143 ft; f) septic system to property line - 16 ft; g) proposed septic system to existing septic system - 46 ft.	Approved at 9/19/07 meeting.
February 20, 2008	Manning, June	544	6	76	52 Lighthouse Road	a) Leaching area to wetlands - 76 ft; b) reserve leaching area to wetlands - 63 ft; c) leaching area to property line - 10 ft.	Approved at 2/20/08 meeting.
January 21, 2009	Slatas, Alan	557	5	16, 20.5	Rose Meadow Way	a) Leaching bed to wetlands - 128 ft; b) reserve area to wetlands - 138 ft; c) septic tank to wetlands - 135 ft; d) leaching bed to isolated wetlands subject to flooding (ILSF) - 73 ft; e) reserve area to ILSF - 63 ft; f) septic tank to ILSF - 77 ft.	Previously approved for Michael Cimino (BOH #476) and approved again prior to expiration (BOH #534). Approved at 1/21/09 meeting.
March 3, 2010	The Chilmark Association	568	8	112	East Pasture Way	a) Leaching field to wetlands - 74 ft; b) reserve leaching area to property line - 10 ft.	Approved at 3/3/10 meeting.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

SE 27-237
Provided by DEP

General Information



2009 00001408

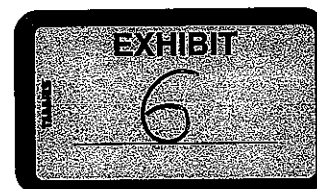
Bk: 1172 Pg: 487 Doc: ORD
Page: 1 of 8 03/09/2009 03:34 PM

From:

Department of Environmental Protection
Issuing Authority

This issuance is for a (check one):

- ☒ Superseding Order of Conditions
☐ Amended Superseding Order of Conditions



To: Applicant:

Gorda Realty Trust
Name
248 Andover Street
Mailing Address
Peabody MA 01960
City/Town State Zip Code

Property Owner (if different from applicant):

Same
Name
Same
Mailing Address
Same
City/Town State Zip Code

1. Project Location:

Moshup Trail Aquinnah
Street Address City/Town
12 38
Assessors Map/Plat Number Parcel/Lot Number

2. Property recorded at the Registry of Deeds for:

Dukes 65 180
County Book Page

Certificate (if registered land)

3. Dates:

March 15, 2000
Date Notice of Intent Filed Date Public Hearing Closed Date of Issuance of Local Order

4. Final Approved Plans and Other Documents (see attached additional plan references on Page 7):

Proposed Conditions, Map 12, Parcel 38 (Set-Off Lot 232), Figure 4	2/12/01
Title	Date
Proposed Bridge Crossing, Map 12, Parcel 38 (Set-Off Lot 232), Figure 5	2/12/01
Title	Date
Proposed Replication Plan, Map 12, Parcel 38 (Set-Off Lot 232), Figure 6	2/12/01
Title	Date
Proposed Septic System Assessor Map 12, Parcel 38, (Sheet 1 of 2)	6/27/01
Title // Signed & Stamped by James J. Decoulos, RPE	Date

5. Final Plans and Documents Prepared by:

Decoulos & Company;
Name

6. Total Fee:

\$ 250.00
(from Appendix B: Wetland Fee Transmittal Form)



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

SE 27-237
Provided by DEP

Findings

Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- | | | |
|--|---|--|
| <input type="checkbox"/> Public Water Supply | <input type="checkbox"/> Land Containing Shellfish | <input checked="" type="checkbox"/> Prevention of Pollution |
| <input checked="" type="checkbox"/> Private Water Supply | <input checked="" type="checkbox"/> Fisheries | <input checked="" type="checkbox"/> Protection of Wildlife Habitat |
| <input checked="" type="checkbox"/> Groundwater Supply | <input checked="" type="checkbox"/> Storm Damage Prevention | <input checked="" type="checkbox"/> Flood Control |

Furthermore, the Department hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- ☒ the following conditions which are necessary, in accordance with the performance standards set forth in the wetlands regulations, to protect those interests checked above. The Department orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

Denied because:

- ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations to protect those interests checked above. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is issued.
- ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).

General Conditions (only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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Provided by DEP

Findings (cont.)

4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
7. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Department on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MA DEP"]
"File Number SE 27-237 "
10. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.
11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Department.
12. The work shall conform to the plans and special conditions referenced in this order.
13. Any change to the plans identified in Condition #12 above shall require the applicant to inquire of the Department in writing whether the change is significant enough to require the filing of a new Notice of Intent.
14. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Department for that evaluation.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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Provided by DEP

Findings (cont.)

15. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
16. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Department.
17. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Department, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

Special Conditions (use additional paper, if necessary): See Attached Pages 7 & 8

Signature:

Tena J. Davies
Tena J. Davies, Bureau of Resource Protection

On 12th of July 2001
Day Month and Year

before me personally appeared Tena J. Davies to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

Diana Patwara
Notary Public

12/20/02
My Commission Expires

This Order is issued to the applicant as follows:

☐ by hand delivery on

☒ by certified mail, # 7099 3400 0008 7890 3595
return receipt requested, on

JUL 12 2001

Date

Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

SE 27-237
Provided by DEP

Appeals

Notice of Appeal Rights:

A) Appeal Rights and Time Limits

The applicant, the owner, any person aggrieved by the Superseding Order, any owner of land abutting the land upon which the proposed work is to be done, or any ten (10) persons pursuant to M.G.L. c.30A, §10A, are hereby notified of their right to request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, providing the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee and a DEP Fee Transmittal Form within ten (10) business days from the date of issuance of this Superseding Order, and addressed to:

Docket Clerk
Office of Administrative Appeals
Department of Environmental Protection
One Winter Street, 3rd Floor
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, and the issuing office of the DEP at:

DEP Southeast Region
20 Riverside Drive
Lakeville, MA 02347

B) Contents of Hearing Request

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information:

- (a) the DEP Wetlands File Number, name of the applicant and address of the project;
- (b) the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by consultant or counsel, the name, fax and telephone numbers, and address of the representative;
- (c) the names, telephone and fax numbers, and addresses of all other parties, if known;
- (d) a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Superseding Order, including specifically the manner in which it is alleged to be inconsistent with the Department's Wetlands Regulations, 310 CMR 10.00, and does not contribute to the protection of the interests identified in the Act, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the Superseding Order;
- (e) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission.

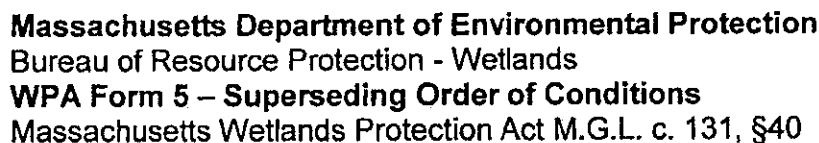
C) Filing Fee and Address

A copy of the Notice of Claim along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Failure to submit all necessary information may result in a dismissal by the Department of the Notice of Claim for an Adjudicatory Hearing.



SE 27-237
Provided by DEP

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on Page 7 of Form 5 shall be submitted to the Department at the address listed below.

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Department.

Department of Environmental Protection
Issuing Authority

Moshup Trail, Map 12, Lot 38	SE 27-237
Project Location	DEP File Number

Dukes County	Book	Page
-----------------	------	------

Gorda Realty Trust
Property Owner

Book	Page
------	------

Date _____

Instrument Number

Document Number

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Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

SE 27-237
Provided by DEP

PLANS (continued):

Wetland Replication Sequencing, Map 12, Parcel 38 (Set-Off Lot 232), Figure 7 2/14/01
Title Date

Proposed Bridge Details, Map 12, Parcel 38 (Set-Off Lot 232), Figure 8 2/14/01
Title Date

Proposed Bridge Details, Map 12, Parcel 38 (Set-Off Lot 232), Figure 9 2/15/01
Title Date

Final Plans and Documents Prepared by: Decoulos & Company

Proposed Septic System Details Assessor Map 12, Parcel 38, (Sheet 2 of 2) 6/27/00
Title // Signed & Stamped by James J. Decoulos, RPE Date

SPECIAL CONDITIONS:

1. The proposed wetland crossing and replication shall be constructed in accordance with the sequence set forth in Section 3.1 of the Notice of Project Change, prepared for Gorda Realty Trust, Aquinnah, Massachusetts, EOE # 12248, DEP File # 27-237, prepared by Decoulos & Company, dated: February 15, 2001.
2. When excavating, transporting and stockpiling wetland soils, the organic layers shall be segregated from the mineral soils.
3. A copy of the construction sequence referenced in Special Condition 1 shall be provided to any contractor or other person performing work conditioned by this Order.
4. A copy of the construction sequence shall be kept available on site during construction of the project.
5. Step 14 of the Proposed Wetland Replication sequence shall be amended to specify the placement of 18 inches of transplanted wetland soil within the replication areas, as shown on Figure No. 7.
6. The wetland replication and/or restoration areas shall be 75% established within two growing seasons (310 CMR 10.55 (b) (6).) Should the replication and/or restoration areas fail to meet this standard, the Department may require additional measures necessary to achieve compliance.
7. In order to protect the integrity of the stream channels, the pressure sewer line shall be horizontally directionally drilled, or jacked, beneath the streams. Trenching for installation of the pressure sewer line shall not occur within twenty-five feet on either side of the centerline of the stream channels.
8. The pressure sewer line shall be installed a minimum of two feet below the bottom of the channel bed.

SPECIAL CONDITIONS:

9. Dewatering effluent shall be discharged in the upland portion of the site either through a filter fabric bag or within a hay bale enclosure to prevent silt laden water from entering the wetland or stream channel.
10. Trench plugs shall be installed on the pressure sewer line, at the wetland – upland interface.
11. Upon completion of the project, a Certificate of Compliance shall be requested from the Department in accordance with General Condition No. 11, and under the provisions of 310 CMR 10.05(9)(d). An "As-Built" plan and a statement from a Registered Professional Engineer certifying compliance with the conditions of this Order shall accompany the request for a Certificate of Compliance.

Attest:

Deanne E. Poirer Registrar



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Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

DEP File Number:

WPA Form 7 – Extension Permit for Orders of Conditions

SE 27-237

Massachusetts Wetlands Protection Act-M.G.L. c. 131, §40

Provided by DEP

A. General Information

1. Applicant:

James J. Decoulos, PE, LSP, Trustee, Gorda Realty Trust

Name

185 Alewife Brook Parkway

Mailing Address

Cambridge

City/Town

MA
State

02138
Zip Code

2. Property Owner (if different):

Name

Mailing Address

City/Town

State

Zip Code

B. Authorization

The Order of Conditions (or Extension Permit) issued to the applicant or property owner listed above on:

July 12, 2001

Date

and made final by the Final Decision issued by Commissioner Robert W. Golledge, Jr. on:

November 10, 2005

Date

for work at:

Moshup Trail

Street Address

12

Assessor's Map/Plat Number

38

Parcel/Lot Number



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

DEP File Number:

WPA Form 7 – Extension Permit for Orders of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

SE 27-237
Provided by DEP

recorded at the Registry of Deeds for:

Dukes
County

717
Book

404
Page

Certificate (if registered land)

is hereby extended until:

November 10, 2011
Date

This date can be no more than 3 years from the expiration date of the Order of Conditions or the latest extension. Only unexpired Orders of Conditions or Extension may be extended.

Date the Order was last extended (if applicable):

Date

Issued by: Massachusetts Department of Environmental Protection

Signature:

Tena J. Davies
Tena J. Davies, Bureau of Resource Protection

FEB - 5 2009
Date

Notary Acknowledgement

Commonwealth of Massachusetts County of

Plymouth

On this

5th
Day

of

FEBRUARY
Month

2009
Year

Before me, the undersigned Notary Public, personally appeared

Tena J. Davies
Name of Signer

proved to me through satisfactory evidence of identification, which was/were

Personally Known

Description of evidence of identification

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



CHARLES P. SHURTLEFF
Notary Public
Commonwealth of Massachusetts
My Commission Expires
Date - Dec 8 2011

Charles P. Shurtleff
Signature of Notary Public

CHARLES P. SHURTLEFF
Printed Name of Notary Public

Dec 8, 2011
My Commission Expires (Date)



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

DEP File Number:

WPA Form 7 – Extension Permit for Orders of Conditions

SE 27-237

Provided by DEP

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

C. Recording Confirmation

The applicant shall record this document in accordance with General Condition 8 of the Order of Conditions (see below), complete the form attached to this Extension Permit, have it stamped by the Registry of Deeds, and return it to the Department.

Note: General Condition 8 of the Order of Conditions requires the applicant, prior to commencement of work, to record the final Order (or in this case, the Extension Permit for the Order of Conditions) in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, it shall be noted in the Registry's Granter Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, it shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done.

Detach page 3 of Form 7 and submit it to the Department prior to the expiration of the Order of Conditions subject to this Extension Permit.

To:

MassDEP

Issuing Authority

Please be advised that the Extension Permit to the Order of Conditions for the project at:

Moshup Trail, Lot 38, Map 12

SE 27-237

Project Location

DEP File Number

has been recorded at the Registry of Deeds of:

Dukes

County

for:

Gorda Realty Trust, James J. Decoulos, Trustee

Property Owner

and has been noted in the chain of title of the affected property in accordance with General Condition 8 of the original Order of Conditions on:

3/9/09

Date

1172

Book

487

Page

If recorded land the instrument number which identifies this transaction is:

BK 1172, PG 485

Instrument Number

If registered land, the document number which identifies this transaction is:

Document Number

TJD/dfg

Signature of Applicant

Attest:

Deanne E. Powers Register

DECOULOS & COMPANY

ENVIRONMENTAL ENGINEERING & LAND PLANNING

VIA USPS PRIORITY MAIL

DELIVERY CONFIRMATION # 0303 3430 0002 8073 2426

Tuesday, November 22, 2005

Jerry A. Wiener, Chairman
Aquinnah Board of Health
65 State Road
Aquinnah, MA 02535

RE: *Disposal System Construction Permit No. 441 (the Permit)*
Aquinnah Assessor Map 12, Parcel 38; Set-Off Lot 232

Dear Chairman Wiener and members of the Board:

On behalf of Gorda Realty Trust, we respectfully request that you toll the expiration time for the above referenced Permit issued by the Board of Health on December 6, 2002 until all state and local permits are finalized. A copy of the permit is attached as Exhibit A.

The reason for the request is that the permittee could not construct the system during a pending state wetland appeal of a Superseding Order of Conditions issued from the Massachusetts Department of Environmental Protection (DEP) on July 12, 2001.

A decision on the appeal was released from the Massachusetts Division of Administrative Law Appeals on August 23, 2005. See Exhibit B. Administrative Magistrate Francis X. Nee described the reason for the delayed decision as a medical leave "after suffering further deterioration of my vision". See footnote 3 at page 5. DEP Commissioner Robert W. Golledge, Jr. adopted the DALA decision on November 10, 2005. See Exhibit C.

Gorda requires additional local permits before proceeding with the construction of the disposal system. At this time, we are in an appeals process for a permit under the Aquinnah Wetland By-Law.

If you do not believe that the tolling request is proper, we respectfully request that you grant a one-year extension to the Permit pursuant to the provisions of 310 CMR 15.020(3).

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

Very truly yours,

James J. Decoulos, PE, LSP
jamesj@decoulos.com



TEL. 508 645-2300
FAX 508 645-2310

TOWN OF AQUINNAH

65 STATE ROAD
AQUINNAH, MASSACHUSETTS 02535

January 22, 2006

James J. Decoulos
185 Alewife Brook Parkway
Cambridge, Ma. 02138

Re: Disposal System Construction Permit No. 441, Aquinnah Assessors Map # 12, Lot # 38; Set-Off Lot 232; issued by the Aquinnah Board of Health, 12/06/2002

Dear Mr. Decoulos:

In reviewing your request that we toll the expiration time for the above mentioned permit the Aquinnah Board of Health finds no statute or rule giving us authority to indefinitely "toll" the permit as requested.

However, under Section 15.020 (3) of the 310 CMR the Aquinnah Board of Health grants your request for a one year extension of the above mentioned permit. Be advised that the extended expiration deadline of DWP # 441 is to be 11:59 pm of December 4, 2006.

Sincerely,
The Aquinnah Board of Health

TOWN CLERK
and
ASSESSORS
508-645-2306

ACCOUNTANT
508-645-2305
BUILDING INSPECTOR
508-645-2307

TAX COLLECTOR
508-645-2303
TREASURER
508-645-2304

DECOULOS & COMPANY

ENVIRONMENTAL ENGINEERING & LAND PLANNING

VIA USPS PRIORITY MAIL

DELIVERY CONFIRMATION # 0308 2040 0000 7977 5664

Friday, May 29, 2009

Jerry A. Wiener, Chairman
Aquinnah Board of Health
65 State Road
Aquinnah, MA 02535

RE: *Disposal System Construction Permit No. 441 (the Permit)*
Aquinnah Assessor Map 12, Parcel 38; Set-Off Lot 232

Dear Chairman Wiener and members of the Board:

On behalf of Maria A. Kitras and myself, as we are trustees of Gorda Realty Trust, we respectfully request that you reconsider my request to toll the expiration time for the above referenced Permit issued by the Board of Health on December 6, 2002. My original request was filed on November 22, 2005, before the permit expired, and is attached as Exhibit A. Your response dated January 22, 2006 is attached as Exhibit B.

The reason for the request is that the Supreme Judicial Court has recently established new precedent on tolling local permits. In Cornell v. Board of Appeals of Dracut et al., SJC-10307, the SJC stated that a local permit "may be equitably tolled if, in addition to establishing that such delays were not reasonably avoidable, the variance holder seeks an extension of the variance in a timely fashion." The SJC's decision dated May 22, 2009 is attached as Exhibit C.

In my original request to the Board, I properly demonstrated that the delays associated in exercising your Permit were unavoidable. The one year permit extension that you provided is the maximum limit allowed in the State Environmental Code, Title 5, 310 CMR 15.020(3):

The local Approving Authority or the Department may issue a written one year extension to the Disposal System Construction Permit required by 310 CMR 15.020(1) upon written request of the permittee, filed before the expiration date, and documenting the facts that prevent completion of the approved system within the time of the original permit. Only one extension may be granted.

We continue to be delayed in exercising our permits and I have summarized the delays and the permitting status at: www.decoulos.com/tollingpermits.htm

Based upon the new precedent set by the SJC in Cornell, the Board now has the authority to toll the permit until the time in which we are reasonably able to exercise it. We request that you acknowledge that the Permit is valid and I shall update the Board every six months on the overall permitting status of our efforts.

Page 2 of 2
Jerry A. Wiener, Chairman
Aquinnah Board of Health
Friday, May 29, 2009

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
jamesj@decoulos.com

cc: Ronald H. Rappaport



TEL. 508 645-2300
FAX 508 645-2310

TOWN OF AQUINNAH

65 STATE ROAD
AQUINNAH, MASSACHUSETTS 02535

June 30, 2009

Mr. James J. Decoulos
Co-Trustee, Gorda Realty Trust
Decoulos & Company
185 Alewife Brook Parkway
Cambridge, MA 02138

RE: Disposal System Construction Permit No. 441 (the Permit)
Aquinnah Assessors Map 12, Parcel 38; Set-Off Lot 232

Dear Mr. Decoulos:

We write in response to your letter dated May 29, 2009, requesting either tolling or an extension of your on-site septic permit for the above-noted parcel, originally issued on December 6, 2002, and extended to December 4, 2006.

As you note in your letter, Title 5 gives the Board no authority to extend the permit for an additional period of time. In addition, your request for an extension comes after the permit has already expired. Finally, the data on which the permit was based is now dated, and may not be reliable at this juncture. Accordingly, the Board voted to deny your request for an extension at its June 24, 2009, meeting.

Please file a new application for a permit at your convenience, and call with any other questions you may have regarding this matter.

Very truly yours,

Jerry Wiener
Chairman, Board of Health

JW/jmh

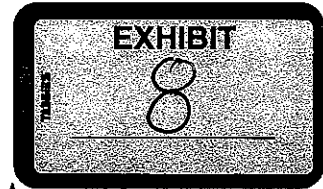
TOWN CLERK
508-645-2304
ASSESSORS
508-645-2306

ACCOUNTANT
508-645-2305
BUILDING INSPECTOR
508-645-2307

TOWN COORDINATOR
508-645-2300
TAX COLLECTOR/TREASURER
508-645-2303



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500



DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

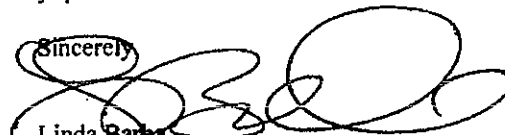
August 18, 2010

James J. Decoulos, PE, LSP
Decoulos & Company, LLC
185 Alewife Brook Parkway
Cambridge, MA 02138

Dear Mr. Decoulos:

In response to your public records request on August 12, 2010, to review "health rules, regulations, standards and sanitary codes" filed with MassDEP pursuant to G.L. c. 111, sec. 31, you were permitted to inspect such records in our office on August 16, 2010. You were permitted to and did make electronic copies of the Central Register files maintained by MassDEP for the Towns of Aquinnah and Gay Head. If you require additional records, please submit another request pursuant to the Public Records Law, G.L. c. 66, sec. 10(a).

Please contact David Ferris at 617-654-6514 if you any questions.

Sincerely,

Linda Barba
Bureau of Resource Protection

1/11/2011

Gmail - Freedom of Information Act req...



James J. Decoulos <decoulos@gmail.com>

Freedom of Information Act request to identify board of health regulations in the town of Aquinnah

Lavoie, Irene (DEP) <Irene.Lavoie@state.ma.us>

Fri, Oct 15, 2010 at 2:14 PM

To: "James J. Decoulos" <jamesj@decoulos.com>

Hi James,

Jeff Gould has doubled checked our files here and there are no Aquinnah (or Gay Head) regulations in our file. If you have any questions regarding this please contact Jeff Gould at 508-946-2757.

Thank you

Irene

Irene J. Lavoie

DEP-Southeast Regional Office

Office: (508) 946-2718 / Fax: (508) 946-2865

E-Mail: Irene.Lavoie@state.ma.us

"For Use in Intra-Agency Policy Deliberations"

From: decoulos@gmail.com [mailto:decoulos@gmail.com] **On Behalf Of** James J. Decoulos

Sent: Thursday, September 30, 2010 1:50 PM

To: Lavoie, Irene (DEP)

Cc: Gould, Jeffrey (DEP)

Subject: Freedom of Information Act request to identify board of health regulations in the town of Aquinnah