

DECEMBER 10, 2022

**TO: THE TOWN OF WEST TISBURY, MA. PLANNING BOARD AND BUILDING INSPECTOR, BOTH BY EMAIL ATTACHMENT**

**FROM: JAY F. THEISE, ESQ., COUNSEL TO THE MBG REALTY TRUST (MYRON GARFINKLE TRUSTEE), AND GEOFFREY GUND**

**RE: NOTICE OF OBJECTIONS TO THE COFFIN REAL ESTATE NOMINEE TRUST (HAZEL COFFIN TRUSTEE) NO NOTICE FICTITIOUS ANR 6.3 ACRE+/- LOT PLAN BY SOURATI ENGINEERING GROUP FILED WITH THE DUKES COUNTY REGISTRY OF DEEDS ON NOVEMBER 23, 2021 AT BOOK 19, PAGE 106**

To the Honorable Members of the Planning Board and to the Building Inspector of the Town of West Tisbury, Massachusetts:

On behalf of Myron Garfinkle, Trustee of the MBG Realty Trust, and Geoffrey Gund (collectively referred to as "Objectors" and/or "Abutters", as the context so admits), please accept this notice of objections as above entitled ("The Objections").

**STATEMENT OF FACTS, OBJECTIONS, POSITIONS, AND EXHIBITS IN SUPPORT THEREOF**

1. Under date of November 11, 2021, Charles R. Gilstad, Professional Land Surveyor on behalf of the Sourati Engineering Group, Professional Land Surveyors, by his signature and stamp on a Plan of Land (the "Plan"), for the Coffin Nominee Trust (the "Coffin Trust"), attached hereto as Exhibit A. certified thereon:
  - a. I certify that this survey and plan were prepared in accordance with the Procedure and Technical Standards for the Practice of Land Surveying in the Commonwealth of Massachusetts.
  - b. I certify that the preparation of this plan conforms with the rules and regulations of the Registers of Deeds of the Commonwealth of Massachusetts.
  - c. M.G.L. (Mass. General Laws sic) Chapter 41, Section 81X. \*

1. CERTIFY that the property lines shown on this plan are the lines dividing existing ownerships, and the lines of the streets or ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown. (Emphasis added.)
2. IT IS important to note that M.G.L. c.41, sec. 81X, a copy of which is attached hereto as Exhibit B, has requirements for endorsement by a Planning Board, but in its second to last paragraph does except those requirements if the plan includes the certification that Giistad provided that it shows the property lines dividing existing ownerships. However, it obviously refers to correct dividing lines, which this plan fails to show, which includes off title property.
3. The Plan, of which no notice was given to Abutters/Objectors or any interested parties, is apparently a so called ANR plan (Approval Not Required), and also has printed thereon, "Endorsement is without regard to buildability or permitted occupancy, does not stay zoning violations and is subject to other notation thereon." However, the Plan has no endorsement(s). (See Exhibit A.)
4. The Plan includes under "Notes" that it "...mergers Lots 2A-1.1 and 2A-1.2," respectively known to the Planning Board and Building Inspector from extensive hearings from 2019, and 2020 as the so called "Coffin Trust Barn and Coffin Trust Pool Lots."
5. The Plan is blatantly wrong and in breach of its certifications as it includes approximately half an acre of land not owned by the Coffin Trust, which if properly shown clearly disconnect the two "merged" lots where portions of the included Way, and so called Right of Way bound of the facing lots across from each other owned by the Walsdorf Family on

the south side and the Gund Family on the north side and half interests in the Way on the non-facing portions owned by the Valenti Family, and a further Gund portion. These deductions are significant. The Gund-Walsdorf facing land which disconnects the Barn and Pool Lots is, per the Plan, 484 linear feet at a width of 30 feet for a total of 14,250 square feet ( $484 \times 30 = 14,250$ ), the Valenti 50% of the Way is 129 linear feet at a width of 15 feet for a total of 1935 square feet ( $129 \times 15 = 1935$ ), and a further Gund 50% of the Way 277 linear feet at a width of 15 feet for a total of 4,155 square feet ( $277 \times 15 = 4155$ ), is a grand total of non-Coffin Trust owned land but shown as owned on the Plan of 20,610 square feet. That's approximately half an acre, which deducted from the Plan reduces the aggregate Coffin Trust land to approximately 5.8 acres. See Exhibit C attached hereto. (Note: Exhibit C is here marked up to show the improperly included acreage. Red shows the disconnect, blue the Valenti land, and green the further Gund land.)

- a. The Derelict Fee Statute, M.G.L.A. c.183, section 158 (also referred to as "The Fee in the Way Statute"), by its operation confers title as a matter of law along private ways that are also lot bounds (as in this matter) to the grantee (buyers) to the mid-point of the Way, or all of the Way if there are facing title holders across from each other both bounded by the Way (also the case here.)
- b. As a matter of law and facts no Coffin Trust deed out reserves the title in the Way as explicitly required by the Derelict Fee Statute to prevent the automatic conveyances. See the opinion letter (and resume) attached hereto and incorporated by reference herein marked Exhibit D from Attorney Eric Green, appointed by the Massachusetts Land Court Chief Justice as a Land Court Examiner, conferring on him the legal status to give title opinions to the Land Court, and qualifying him as an expert before all Courts and Boards of the Commonwealth. His opinion sets forth the Fee in the Way statute

clearly operates along this 30' wide foot Way. As a result, portions of it shown on the Coffin Trust various ANR plans as owned by the Coffin Trust are actually owned by the Abutters on the Way, contrary to what is shown on the new certified Plan.

- c. Also see the affidavit of Brian Murphy, Professional Land Surveyor, and particularly paragraph 14 thereof, which is attached hereto as Exhibit E, and incorporated by reference herein.
  - d. The Coffin Trustee's agents were provided with these opinions in 2019/2020.
  - e. Mr. Sourati actually attended at least one of the Planning Board hearings at which he spoke defending his then fictitious plan showing the Barn Lot at 3.01 acres, failing to deduct the road way included to get to the 3.01 acres that in his stated judgment met the buildable lot zoning requirement of a 3 acre lot, even in the face of the zoning provision requiring a deduction of road square footage to determine necessary buildable acreage, let alone the failure to deduct the Fee in the Way portion of the 4,155 square feet owned by Gund he included as part of lot 2A-1.1. He also stated at that hearing he had provided the Planning Board with many plans that included road acreage as part of buildable lot acreage, also stating the Planning Board always approved those plans. A remarkable standard: 'it's not wrong if nobody notices.' (Emphasis added.)
5. Put simply, the present "merged" Coffin Plan includes considerable land it does not own, and in significant part disconnects the two lots from which the Plan boldly states are merged to create the nonexistent 6.3 Acre lot shown thereon. (Emphasis added.)
  6. The Planning Board, Building Inspector, and others including such as the Public, justifiably rely on the good faith of Applicants and the sufficiency and accuracy of plans put before it by qualified registered engineers.

7. The subject Plan depicts the now sixth lot created by the Coffin Trust, in what appears to be a clear example of incremental zoning, intended to escape the rigors of the subdivision control law by seriatim no notice ANR lots.
8. Gund has put the Coffin Trust on notice of INTENTION TO PREVENT ADVERSE POSSESSION, and the trespassing nature of the Plan and demanded the Coffin Trust have the recorded Plan expunged by the Dukes County Registry of Deeds and replaced by an accurate plan, and further objects to this wrongful claim of ownership of parts of Gund property. (NOTE TO ALL: The undersigned Counsel will report any response to these demands, or no response as the case may be, at the presently scheduled Zoom Planning Board hearing of December 27, 2021.) See the Gund letter of even date attached hereto as Exhibit F.
9. As a result of the nature of the public advertising of these Coffin Trust lots, under cover of November 29, 2021, but before the objected to new Plan was known, Counsel sent the following letter to the broker of record, a copy of which is attached hereto as Exhibit G. As of this writing, December 10, 2021, no response has been received.
10. Part of the continuing history of objections to the Coffin Land Divisions resulted in the Building Inspector's revocation of a previously issued building permit for the then Barn Lot. The Coffin Trust as co-Appellant took a timely appeal to the West Tisbury Zoning Board of Appeals. On behalf of the opposition to the Appeal, the undersigned Counsel filed an opposition brief in rebuttal on November 22, 2019 entitled Opposition Brief to Notice of Appeal by Franken and Coffin Trustee, which among other issues fully set forth the Fee in the Way discussion, as well as attaching the Land Court Examiner's opinion letter, and the Surveyor's affidavit, attached hereto as Exhibits D and E. The Coffin Trust withdrew their Appeal on the eve of the hearing, never rebutting any of the opposition positions. The unchallenged positions, including the Fee in the Way ownership of Gund and Waldorf's by

the disconnecting intervening land between the Barn and Pool lots (emphasis added), is a clear admission against interest by the Coffin Trust of the truth of those positions. (Note: My ZBA Opposition brief, 73 pages including Exhibits, is not attached hereto, but is on file with the W. Tisbury ZBA.)

11. There is a legal doctrine recognized by the Courts of Massachusetts known as the "Clean Hands Doctrine," which holds one who seeks relief must come to the tribunal having acted properly in the same or a related matter. In addition to the knowing misrepresentations on the Plan, on information and belief as of this date (December 10, 2021), the Coffin Trust has failed to cure two zoning violations, doing construction work on the lot known as the pool house lot, which appeared at that time as Lot 2A-1.2 without first applying for and obtaining a Building Permit, on account of which the Building Inspector wrote the Coffin Trust to obtain a permit, (which the Building Inspector confirmed to the undersigned on December 9, 2021 has still not been applied for), nor has the Coffin Trust acted on the Order to remove the decayed and condemned barn on the "Barn Lot", a clear hazard. Black letter law, "One who seeks equity (relief) must come to the (Tribunal sic), doing equity and with Clean Hands."
12. Also attached hereto is a partial bibliography of the leading Massachusetts case law in complete support of the objections pressed herein. Exhibit 10.

#### **RELIEF SOUGHT**

Your Objectors/Abutters recognize there is no known formal request before either the Planning Board or Building Inspector concerning this Plan at this time. However, as it clearly arises in the nature of the continuing issues of the Abutters/Objectors, all parties in interest, and in several instances owners of encroached land included in this fictitious Plan, this properly belongs before the Planning Board and the Building Inspector.

We therefore respectfully request the Planning Board:

1. Issue a notice to the Coffin Real Estate Nominee Trust, Hazel Coffin Trustee, and/or the Courati Engineering Group by its Principal and to Charles R. Gilstad to appear and show cause why this Plan should not be revoked and expunged, also requiring the Coffin Trust to notify the entire neighborhood and the undersigned of the same, and/or of any new plan or plans submitted to the Registry of Deeds, and the Planning Board showing the true property lines, and;
2. Order the Coffin Trust be entitled to no relief notwithstanding paragraph 1, ante, unless and until the Coffin Trust cures the outstanding violations by obtaining and paying for both the necessary building permit and removal of the condemned barn and any foundation, restoring the property to a natural state, and;
3. Ordering that this relief and any and all Coffin Trust future requests with respect to any and all "Sarita Walker Road" property of the Trust, including its heirs, successors, assigns, and grantees be subject to the West Tisbury requirements, and immediately referred to the Martha's Vineyard Commission for further approval, further ordering said requirement to be put in order form to be recorded with the Dukes County Registry of Deeds, and the same stamped on all plans, and;
4. Order such other and further relief, terms, conditions, including performance bonding as this Board shall determine proper, now and/or in the future.

Respectfully submitted on behalf of the Objectors/Abutters by their Counsel,

  
Jay F. Theise

Jay Frederic Theise Law Associates LLC

Street Address for FedEx, etc. deliveries is:

19 Locust Lane, Aquinnah, MA. 02535

Postal Address:

P.O. Box 755, Chilmark, MA. 02535

Office Phone: 617-482-8300 (Also defaults to cell<sup>11</sup>)

Cell: 617-930-1575

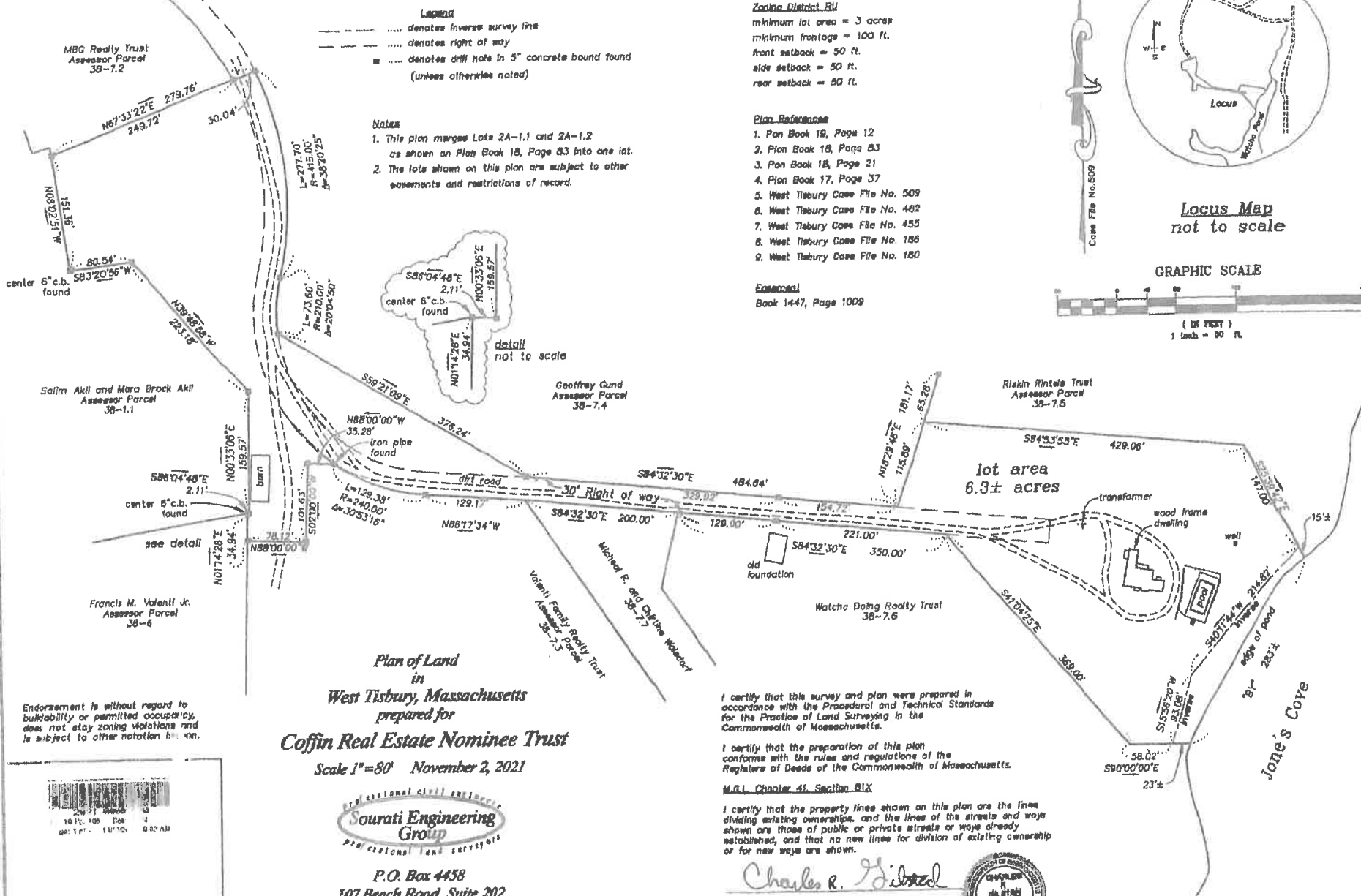
E-Mail: [jft@theiselaw.com](mailto:jft@theiselaw.com)

E-Fax: 617-391-3027



**EXHIBIT A**

**THE COFFIN REAL ESTATE NOMINEE TRUST 6.3 ACRE PLAN DATED NOVEMBER 2, 2021 AND FILED WITH THE DUKES COUNTY REGISTRY OF DEEDS ON NOVEMBER 23, 2021 AT BOOK 19, PAGE 106, PREPARED BY SOURATI ENGINEERING GROUP**



**Legend**

- ..... denotes inverse survey line
- denotes right of way
- ..... denotes drill hole in 5" concrete bound found (unless otherwise noted)

**Notes**

- This plan merges Lots 2A-1.1 and 2A-1.2 as shown on Plan Book 18, Page 83 into one lot.
- The lots shown on this plan are subject to other easements and restrictions of record.

**Zoning District BU**

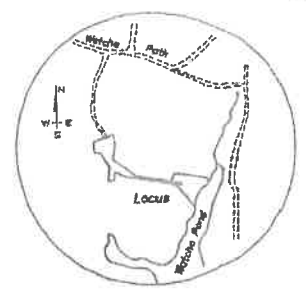
minimum lot area = 3 acres  
 minimum frontage = 100 ft.  
 front setback = 50 ft.  
 side setback = 50 ft.  
 rear setback = 50 ft.

**Plan References**

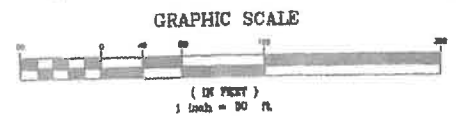
- Plan Book 18, Page 12
- Plan Book 18, Page 83
- Plan Book 18, Page 21
- Plan Book 17, Page 37
- West Tisbury Cove File No. 509
- West Tisbury Cove File No. 482
- West Tisbury Cove File No. 453
- West Tisbury Cove File No. 186
- West Tisbury Cove File No. 180

**Easement**

Book 1447, Page 1009



**Locus Map**  
not to scale



**Plan of Land**  
 in  
**West Tisbury, Massachusetts**  
 prepared for  
**Coffin Real Estate Nominee Trust**  
 Scale 1"=80' November 2, 2021



P.O. Box 4458  
 107 Beach Road, Suite 202  
 Vineyard Haven, MA 02568  
 Phone (508) 693-9933 www.souratigroup.com

I certify that this survey and plan were prepared in accordance with the Procedural and Technical Standards for the Practice of Land Surveying in the Commonwealth of Massachusetts.

I certify that the preparation of this plan conforms with the rules and regulations of the Registrars of Deeds of the Commonwealth of Massachusetts.

**M.G.L. Chapter 41, Section 81X**

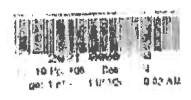
I certify that the property lines shown on this plan are the lines dividing existing ownership, and the lines of the streets and ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown.

*Charles R. Gilsted*  
 Charles R. Gilsted Professional Land Surveyor



Date: 11/2/21

Endorsement is without regard to buildability or permitted occupancy, does not stay zoning violations and is subject to other notation herein.



**EXHIBIT B**

**MASSACHUSETTS GENERAL LAW CHAPTER 41, SECTION 81X ENTITLED REQUIREMENTS FOR  
REGISTRATION OF A PLAN**

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title VII</b>	CITIES, TOWNS AND DISTRICTS
<b>Chapter 41</b>	OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS
<b>Section 81X</b>	REQUIREMENTS FOR REGISTRATION OF PLAN

Section 81X. No register of deeds shall record any plan showing a division of a tract of land into two or more lots, and ways, whether existing or proposed, providing access thereto, in a city or town in which the subdivision control law is in force unless (1) such plan bears an endorsement of the planning board of such city or town that such plan has been approved by such planning board, and a certificate by the clerk of such city or town, is endorsed on the plan, or is separately recorded and referred to on said plan, that no notice of appeal was received during the twenty days next after receipt and recording of notice from the planning board of the approval of the plan, or, if an appeal was taken, that a final decree has been entered by the court sustaining the approval of the plan, or (2) such plan bears an endorsement of the planning board that approval of such plan is not required, as provided in section eighty-one P, or (3) the plan is accompanied by a certificate of the clerk of such city or town that it is a plan which has been approved by reason of the failure of the planning board to act thereon within the time prescribed, as provided in sections eighty-one U and eighty-one V, or that it is a plan submitted

pursuant to section eighty-one P and that it has been determined by failure of the planning board to act thereon within the prescribed time that approval is not required, and a reference to the book and page where such certificate is recorded is made on said plan; and, unless, in case of plans approved, the endorsement or certificate is dated within six months of the date of the recording, or there is also endorsed thereon or recorded therewith and referred to thereon a certificate of the planning board or city or town clerk, dated within thirty days of the recording, that the approval has not been modified, amended or rescinded, nor the plan changed. Such certificate shall upon application be made by the board or by the clerk unless the records of the board or clerk receiving the application show that there has been such modification, amendment, rescission or change. The planning board of a city or town which has authorized any person, other than a majority of the board, to endorse on a plan the approval of the board or to make any other certificate under the subdivision control law, shall transmit a written statement to the register of deeds and the recorder of the land court, signed by a majority of the board, giving the name of the person so authorized.

The contents of any such endorsement of the planning board or certificate by the clerk of the city or town shall be final and conclusive on all parties, subject to the provisions of section eighty-one W.

Such register and recorder shall each keep in a place open for public inspection a book which shall be a public record in which the name of each city or town in which, according to notices sent him by the board having powers of subdivision control in such city or town the subdivision control law is or may be in effect, shall be separately indexed and in which shall be entered all notices from such board or the board of appeal of such city or town relating to subdivision control, including copies of

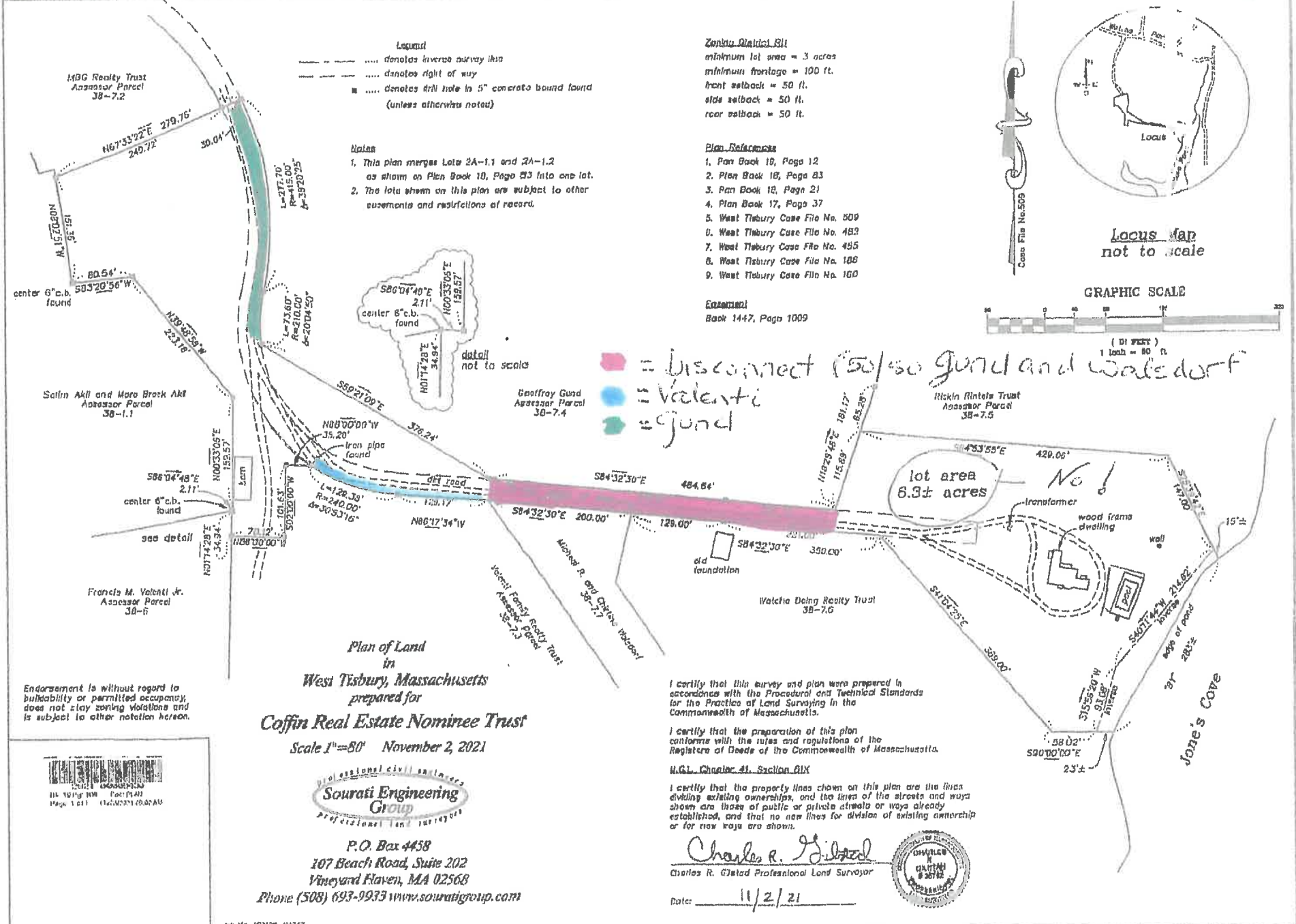
the rules and regulations of such boards. Such register and recorder may each accept for record any plan of land, otherwise appropriate for record, in a city or town of which the board having powers of subdivision control has not sent him notice that the subdivision control law is in effect in such city or town, without requiring the approval of the planning board of such city or town, or a certificate that no approval is necessary.

Notwithstanding the foregoing provisions of this section, the register of deeds shall accept for recording and the land court shall accept with a petition for registration or confirmation of title any plan bearing a certificate by a registered land surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of streets and ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown. The recording of any such plan shall not relieve any owner from compliance with the provisions of the subdivision control law or of any other applicable provision of law.

No register of deeds or recorder of the land court shall accept for record a notice of modification, amendment or rescission of approval of a plan of a subdivision unless such notice contains a statement by the planning board that such modification, amendment or rescission does not affect any lot or rights appurtenant thereto in such subdivision which lot was conveyed or mortgaged in good faith and for valuable consideration subsequent to the approval of the subdivision plan.

**EXHIBIT C**

**CORRECTED PLAN SHOWING REMOVAL ON NON-OWNED COFFIN REAL ESTATE NOMINEE TRUST LAND  
WRONGLY INCLUDED ON EXHIBIT A HERETO**



**Legend**

- ..... denotes inverse survey line
- ..... denotes right of way
- ..... denotes drill hole in 5" concrete bound found (unless otherwise noted)

**Notes**

1. This plan merges Lots 2A-1.1 and 2A-1.2 as shown on Plan Book 18, Page 83 into one lot.
2. The lots shown on this plan are subject to other easements and restrictions of record.

**Zoning District B1**

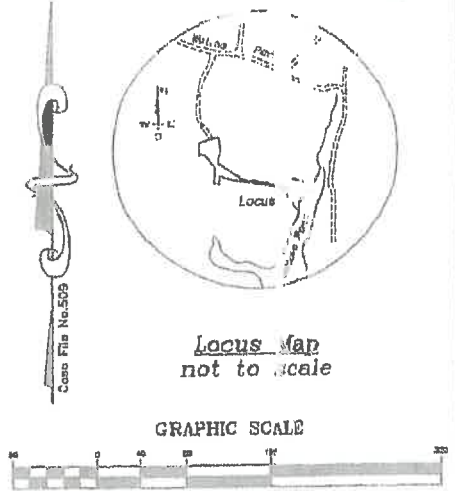
minimum lot area = 3 acres  
 minimum frontage = 100 ft.  
 front setback = 50 ft.  
 side setback = 50 ft.  
 rear setback = 50 ft.

**Plan References**

1. Plan Book 18, Page 12
2. Plan Book 18, Page 83
3. Plan Book 18, Page 21
4. Plan Book 17, Page 37
5. West Tibury Case File No. 809
6. West Tibury Case File No. 482
7. West Tibury Case File No. 495
8. West Tibury Case File No. 188
9. West Tibury Case File No. 160

**Easement**

Book 1447, Page 1009



Handwritten notes in pink, blue, and green:

- = disconnect (50/50 Gund and Waldorf)
- = Valenti
- = Gund

lot area 6.3± acres

**Plan of Land**  
 in  
**West Tibury, Massachusetts**  
 prepared for  
**Coffin Real Estate Nominee Trust**  
 Scale 1"=80' November 2, 2021

Professional civil engineers  
**Sourati Engineering Group**  
 Professional Land Surveyors

P.O. Box 4458  
 107 Beach Road, Suite 202  
 Vineyard Haven, MA 02568  
 Phone (508) 693-9933 www.souratigroup.com

I certify that this survey and plan were prepared in accordance with the Procedural and Technical Standards for the Practice of Land Surveying in the Commonwealth of Massachusetts.

I certify that the preparation of this plan conforms with the rules and regulations of the Register of Deeds of the Commonwealth of Massachusetts.

**M.G.L. Chapter 41, Section A1X**

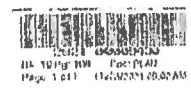
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*Charles R. Gilbert*  
 Charles R. Gilbert Professional Land Surveyor



Date: 11/2/21

Endorsement is without regard to buildability or permitted occupancy, does not deny zoning violations and is subject to other notation hereon.





**EXHIBIT D**

**LAND COURT EXAMINER ATTORNEY ERIC GREEN'S OPINION LETTER AND RESUME**

**SHAPIRO & GREENE, P.C.**  
**ATTORNEYS AND CONVEYANCERS**  
76 H STREET  
POST OFFICE BOX 986  
HULL, MA 02045-0986

Telephone: (781) 925-0040 Facsimile: (781) 925-6077  
E-mail: [ShaoGreene@Aol.Com](mailto:ShaoGreene@Aol.Com)

Eric M. Greene  
Marshall D. Shapiro, Senior Counsel

Marjorie J. Famiglietti,  
Office Manager

File No. 19T463

November 18, 2019

Jay F. Theise, Esquire  
Jay F. Theise & Associates, LLC  
92 State Street  
Boston, MA 02109

Re: Lot 2A-1.1, 118 Sarita Walker Road,  
West Tisbury, Massachusetts

Dear Jay,

Pursuant to your request and our discussions, I have conducted extensive title research at the Dukes County Registry of Deeds ("Deeds") regarding the above described premises as well as so called "Sarita Walker Road" and other abutting properties, concerning MGLA c. 183, section 58; the so called Derelict Fee Statute, and its application to the Private road and encapsulated driveway known as Sarita Walker Road in West Tisbury, Ma. My opinion, for the reasons set forth below, is that the Statute applies to "Sarita Walker Road, and in particular Lot 2A-1.1 (and other lots).

My research into the title to Lot 2A-1.1, Sarita Walker Road, and the other lots abutting it begins with a deed from Richard W. Renehan, Trustee of Scrubby Neck Farm Trust to Benjamin H. Coffin, IV dated March 30, 1987 and recorded with said Deeds in Book 473, Page 312. Though not the first time that the title was put into the Coffin family's name, this deed covers all of the area directly abutting Sarita Walker Road prior to the various land divisions noted below. The said Benjamin H. Coffin, IV later gave a one half interest in the parcel to his wife Hazel Coffin by deed dated December 24, 1992 and recorded in Book 596, Page 69.

By deed dated July 14, 1996 and recorded in Book 682, Page 15, Benjamin H. Coffin, IV and Hazel Coffin gave a deed of Lot 1D to Francis M. and Sarita C. Valenti. Said deed also included a specific grant to use the 30' "existing sandy gravel road" shown on the plan (W-482) for access to Watcha Path. Please note that said Lot 1D appears to also abut this private road. Please also note that there was no reservation of title in and to the

fee or said road contained in this deed as would be required to exclude conveying to the center line under the Derelict Fee Statute which took effect in January of 1972.

By deed dated October 3, 1996 and recorded in Book 686, Page 368, Benjamin H. Coffin, IV and Hazel Coffin gave a deed of Lot 1C (which includes locus) to themselves as trustees of Coffin Real Estate Nominee Trust (the "Coffin Trust").

The said Coffin Trust trustees then conveyed out Lot E on Plan W-509 to third parties by deed dated October 29, 1999 and recorded in Book 780, Page 533. Said deed includes the entire access road now known as Sarita Walker Road where Lot E is on both sides of the said way and to the centerline of the road for the balance. No specific reservation of rights or the fee in the said road is stated though there are references to the costs of maintaining it in paragraph 9. Paragraph 10 gives an easement of the said way, but as it included together with the fee conveyed as it is shown on plan W-509, it appears that the Coffin Trust may have landlocked itself by this deed. (Note: Although beyond the scope of what you asked me to opine to, this may be the case if this additional grant gave to the grantees anything more than only an easement to use the road from the end of their property along the said road to its terminus near Jone's Cove, which is the case on Plan W-509).

By deed dated July 13, 2017, Hazel T. Coffin as Trustee of the Coffin Trust conveyed Lot 2B-1 to Benjamin Howard Coffin V as trustee of a new trust. Said deed was recorded in Book 1443, Page 1068 and makes reference to the grantees "...right to use the roads as shown on said plan for all purposes for which roads are used..." The plan here specifically shows Sarita Walker Road as being more than just the traveled path. Further, Lot 2B-1 abuts it directly and again as there was no reservation made as to the fee in the said road, the Grantee would take to the center of it. The same would be true for Lots 2C and 2D conveyed by deed dated June 1, 2016 and recorded in Book 1407, Page 509, unlike the deed to the new trust referenced above, this second deed was for consideration to apparent third parties (the Walsdorfs).

Lot 2A-1.1 is shown on the plan recorded in plan Book 18, Page 83 as being on both sides of Sarita Walker Road. This is inconsistent with prior deeds referenced above. The Deed out of Lot 1D recorded in Book 682, Page 15 clearly shows the said lot abutting the "road" and as there was no specific reservation of rights to the road in the said deed, the grant should have run to the centerline of the road. The same would be true for the deed out of Lot E recorded in Book 780, Page 533. At best for Lot 2A-1.1, the deed for Lot E took the fee to the road, leaving the Lot to establish an easement by estoppel due to the road being shown on the land division plan. At worst, the deed for Lot E landlocked Lot 2A-1.1.

Under the Derelict Fee Statute the deed of Lot E included the fee in the said road where Lot E abutted Lot 2A-1.1, and as there is no specific reservation in the deed, and that as the road was shown on this and prior land division plans, a likely easement by estoppel was established. Access however is not the question here, but the fee to the area shown as the road within Lot 2A-1.1 is. Chapter 183, Section 58 makes clear that the reservation must be specific and there was nothing in the deeds even suggesting such a reservation never mind the making of a specific one. Both Kuczinski v. Gliniecki, 29 Mass.L.Rptr. 408 and Tattan v. Kurkan, 32 Mass.App.Ct. 239 clearly discuss and reinforce this point. Tattan goes on to say that even if the grantor's (Coffin Trust sic) intent was to retain the fee, something that cannot be ascertained from the record here, that intent is still not applicable absent an express reservation or exception of the fee in the road in the granting instrument; meaning the deed must include the reservation.

In conclusion, my opinion is clear that Lot 2A-1.1 as shown on a Plan as being 3.01 Acres is wrong to the extent it includes within it the entire area the so-called 30' wide Private way. Further, it appears that Lot 2A-1.1, broken off from the Lot it was established from, was already cut off from its "mother lot", by operation of the same statute.

Nothing in this opinion is a zoning opinion, and deals only with the size and bounds of Lot 2A-1.1.

Very truly yours,

**SHAPIRO & GREENE, P.C.**

By:   
Eric M. Greene  
EMG/mf

**SHAPIRO & GREENE, P.C.**  
**ATTORNEYS AND CONVEYANCERS**  
75 H STREET  
POST OFFICE BOX 986  
BELL, MA 02045-0986

Telephone: (781) 925-0040 Facsimile: (781) 925-6077  
E-mail: [ShanGreene@Aol.Com](mailto:ShanGreene@Aol.Com)

Eric M. Greene  
Marshall D. Shapiro, Senior Counsel

Marjorie Famiglietti,  
Office Manager

**RESUME OF ERIC M. GREENE, ESQUIRE**

**PROFESSIONAL:**

Admitted to practice in the Commonwealth of Massachusetts December, 1986.

Member of **Shapiro & Greene, P.C.** and **Shapiro & Greene, LLP**, 1999 to date  
President and Managing Partner since January, 2001. Duties also include closing attorney,  
principal title examiner; reviewing and preparing of title reports and title insurance  
underwriting. Responsible for all transactional work, representing Sellers, Buyers, and  
lending institutions. Supervises foreclosures. Responsible for Land Court cases.

Of Counsel to **The Law Offices of Shapiro & Greene**, 1994 - 1998

Associate of the **Law Offices of Marshall D. Shapiro**, 1986 - 1994

Appointed a Land Court Title Examiner by the Chief Justice of the Massachusetts Land Court  
Division of the Trial Court March 26, 1993

Professional Associations: American Bar Association;  
Massachusetts Bar Association;  
Real Estate Bar Association / Massachusetts Conveyancers  
Association

Teaching Assistant, **Purdue University**, Department of History, 1981 - 1983:  
Assisted Associate Professor Gordon D. Young, taught individual sections on selected  
subjects, graded all exams and generally assisted in the Ancient History Survey Course.

Teaching Assistant, **Purdue University**, Department of Political Science, 1982 - 1983:  
Worked with Professor Louis R. Beres, graded examinations and term papers in  
undergraduate course on International Relations and graduate course on International  
Relations and World Order.

**EDUCATION:**

**Suffolk University** Law School, Boston, Massachusetts. (Juris Doctor, Cum Laude, June 1986)  
Honors: Phi Delta Phi International Legal Honor Society  
Best Brief Award: Justice Thomas Clark Advanced Moot Court Competition, 1985  
Best Brief Award: First Year Moot Court Competition, 1984

**Purdue University**, West Lafayette, Indiana (Master of Arts, May 1983, areas of specialization:  
Modern European History, International Relations and Military History)  
Honors: Awarded full fellowship for graduate studies

University, West Lafayette, Indiana (Bachelor of Arts 1981, triple major in Modern European History, Political Science and General History)  
Inducted into both Phi Alpha Theta (History) and Pi Sigma Alpha (Political Science) national honor societies

Attending Legal Education programs offered by the Massachusetts Bar Association, Massachusetts Conveyancers Association/ Real Estate Bar Association and other organizations are regularly attended.

#### **COMMUNITY:**

**South Shore Charter Educational Foundation, Inc.** Board of Directors, October 2003 to date:  
Treasurer, March 2006 to date

**South Shore Charter Public School**, a Commonwealth Charter School and its development arm, **SSCS Foundation, Inc.** Norwell, Massachusetts:  
Board of Trustees Clerk, 1999 to October, 2002  
Member of the Board of Trustees, 1998 to October, 2002  
Served on Executive, Education, Finance and Nominating Committees  
Assistant Treasurer of Foundation, 2000 to October, 2002  
Parent Representative to All Parents' Group, 2005-2006 school year  
Member of Primary Council, 2002-2003 school year

**Temple Beth Shalom**, Hull, Massachusetts:  
Board of Directors, Finance (present Co-Chair), Strategic Planning and Ritual Committees  
2003 to date  
President, September 2001 to September, 2003,  
First Vice President and Co-Chair of the Ritual Committee, 1998 to August, 2001  
Third Vice President, 1996-1997  
Member of the Board of Directors and Chair of Educational and Youth Committees, 1995 to 2000

**Nantasket Youth Center**, Hull, Massachusetts:  
Treasurer and Building Manager, September 2000 to date  
Assistant Treasurer, 1996 to September 2000  
Member, Board of Directors, 1996 to date

**South Shore Brotherhood**, Hull, Massachusetts:  
Founding Co-Chairman, 1994 to 1999, Member of Board 1994 to 2005

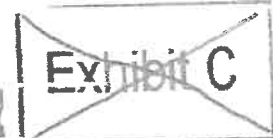
**Boy Scouts of America**, Troop 225, Newton, Massachusetts:  
Assistant Scoutmaster, 1984-1993  
Member of Troop Committee, 1977 to 1993

**Hull-Nantasket Chamber of Commerce:**  
Member, 2000 to date

**Hull United Youth Soccer:**  
Various coaching positions 1998 to 2008.

**EXHIBIT E**

**AFIDAVIT OF PROFESSIONAL LAND SURVEYOR BRIAN MURPHY, LICENSED LAND SURVEYOR DATED  
APRIL 26, 2019 OPINING LAND OWNED BY OTHERS INCLUDED IN COFFIN REAL ESTATE NOMINEE  
TRUST PLAN ON SAME PLAN AS EXHIBIT A ATTACHED HERETO**



...VEYOR'S AFFIDAVIT

I, Brian Murphy, upon oath do depose and state the following:

1. I am a Professional Land Surveyor in good standing in the Commonwealth of Massachusetts and have been licensed since 1995.
2. I am employed by the firm of Farland Corp, located at 401 County Street, New Bedford, Massachusetts.
3. I make this affidavit upon facts of my own personal knowledge.
4. I have reviewed the attached "Plan of Land in West Tisbury, Massachusetts prepared for Coffin Real Estate Nominee Trust, Scale 1"=80', dated July 12, 2017 by Sourat Engineering Group and signed by Charles Gilstad on July 12, 2017 recorded at the Dukes County Registry of Deeds in Plan Book 18, Page 83" (the "Plan")
5. The Plan is a FORM A or Approval Not Required ("ANR") plan which does not include approval of zoning requirements, other than frontage.
6. I was asked to calculate and confirm the acreage of Lot 2A-1.1 (the "Subject Lot") as shown on said Plan.
7. The Subject Lot is situated near the Northwesterly terminus of Sarita Walker Road and shown on the Plan to be 3.01 acres of land.
8. Office Calculations verify that the area of 3.01 acres shown on said plan is accurate.
9. The Subject Lot contains a 30-foot-wide private road, known as Sarita Walker Road.
10. I was asked to calculate and remove the area of this private road from the total Lot area.
11. Based on information shown on the record Plan, I was able to calculate the area of this private road to be approximately 0.77 acres.
12. By removing the area of this roadway, the remaining area of the Subject Lot would be 2.24 Acres.
13. West Tisbury Zoning By-laws dated 2018, Section 4.2-2 states "For lots in all zoning districts, no part of a public or private way may be included in the lot area required for zoning compliance."
14. Lastly, the Subject Lot with the acreage shown (3.01 acres) on the above-mentioned plan, INCLUDES land owned by others pursuant to M.G.L. c. 183 §58 (Derelict Fee Statute), see Deed recorded in Book 1407 Page 509.

Signed under the pains and penalties of perjury this 26<sup>th</sup> day of April 2019.



*Brian Murphy*  
Brian Murphy  
Professional Land Surveyor  
License No.38387



**EXHIBIT F**

**NOTICE OF ENCROACHMENT LETTER FROM GEOFFREY GUND TO SOURATI ENGINEERING GROUP**

FREDERIC THEISE LAW ASSOCIATES LLC  
Street Address for Delivery: 19 Locust Lane, Aquinnah, Ma. 02535  
Mailing Address: PO Box 755, Chilmark, Ma. 02535  
Telephones: Office: 617-482-8300, Cell: 617-930-1575, E-Fax: 617-391-3027  
E-mail: [ift@theiselaw.com](mailto:ift@theiselaw.com)

To: The Coffin Real Estate Trust (the Coffin Trust), Hazel Coffin Trustee, of 560 George Street S. Tarpon Springs, Florida, and PO Box 2640, Vineyard Haven, MA, 02568, and Sourati Engineering Group, George Sourati, and Charles R. Gilstad, whose business address is 107 Beach Road, Suite 202, Vineyard Haven, MA, 02568

From: On behalf of Geoffrev Gund (Gund), by his counsel, Jav F. Theise of Jav Frederic Theise Law Associates LLC, P.O. Box 755, Chilmark, MA, 02535 (Street Address: 19 Locust Lane, Aquinnah, MA 02535)

RE: Notice of Intention to Prevent Adverse Possession of those certain portions of Gund land on West Tisbury Assessor's Parcel 38-7.4 as more fully shown on a sketch on a plan entitled Coffin Real Estate Coffin Trust prepared by Sourati Engineering Group dated November 2, 2021 and recorded at Dukes County, MA, Registry of Deeds on November 23, 2021 at Book 19, Page 106 (the "Plan")

Date: December 10, 2021

To all of the above.

Take notice that the Plan as certified and stamped by Charles R. Gilstad depicts a 6.3 acre parcel of land that includes portions owned by Gund, as shown in red on the copy of said Plan attached hereto as (incorrectly) owned by the Coffin Trust.

Demand is herewith made that the Plan be immediately withdrawn, and the Coffin Trust deliver to the Dukes County Ma. Registry of Deeds a sufficient document to expunge the same, and in any event note be cancelled, with a copy of the same provided to the undersigned. If you fail so to do within 30 days from today, this notice shall be duly served upon you and recorded as provided by statute.

Note for informational purposes that additional land not owned by Gund but by others is also included on the Plan, as more fully set forth on a sketch also attached hereto.

Accordingly, this notice is a Notice of Intention to Prevent Adverse Possession, sent by Mr. Gund's agent.

It is more than shocking that these encroachments are land conveyed by the Coffin Trust, previously out on notice as on Gund land as a result of the operation of law popularly known as the Fee In The Way Statute, M.G.L.A. c.183, section 58 (The Derelict Fee Statute), as established by a deed recorded at Dukes in Book 1407, page 409, by documents and opinions, including by a Massachusetts Land Court Examiner in prior proceedings commencing in 2019 in which the Coffin Trust appeared and was represented by Counsel and in which Mr. Sourati also participated.

This notice is focused on title to the red marked portions of the Plan. (Note: not to exact scale but per statute intended to mean to the midpoint of the Way for the linear length of the Gund bound at the two

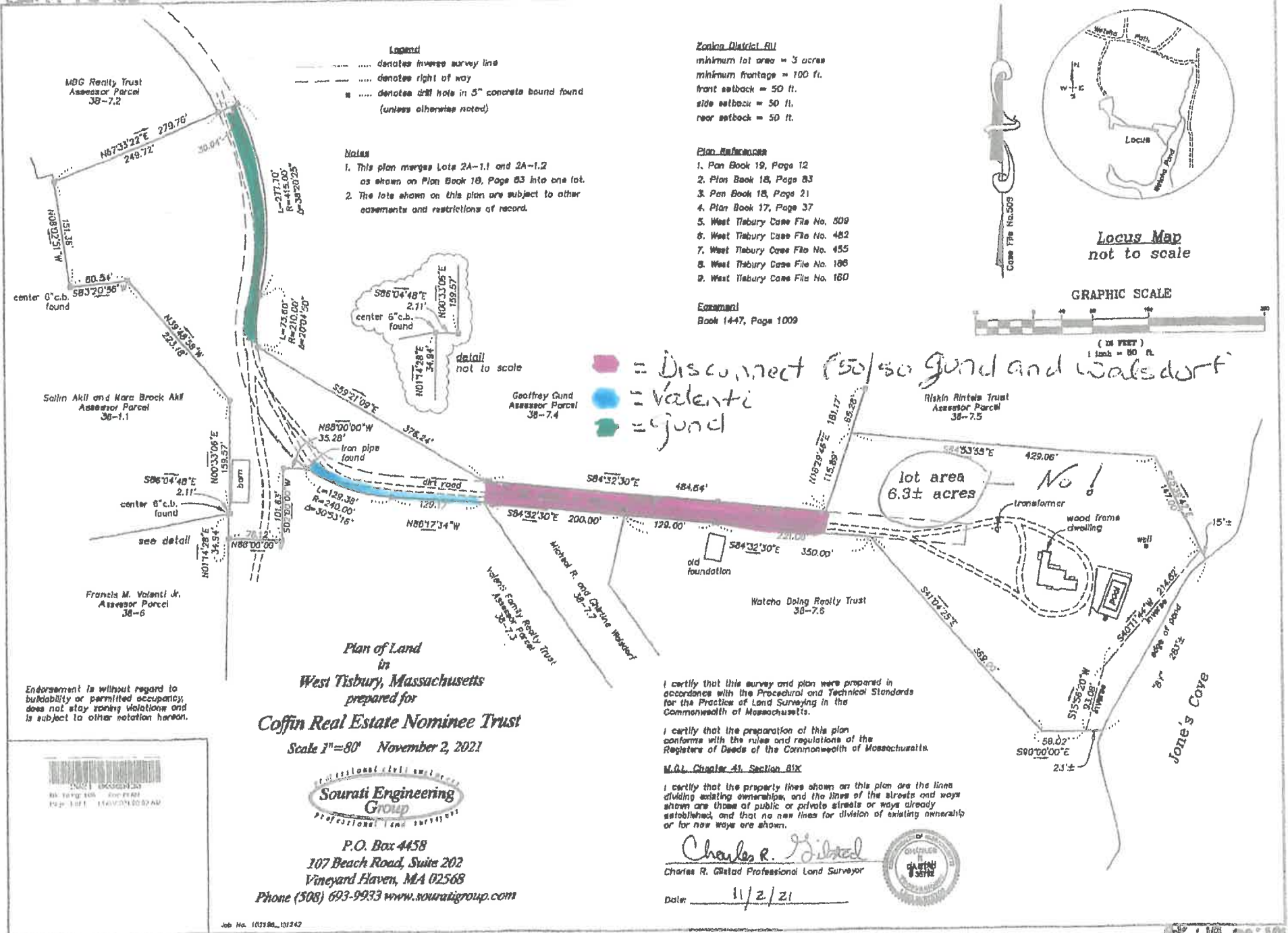
marked points.) Without prejudice, nothing otherwise set forth herein deals with the issue of rights of passage. only title.

However, to the extent that M.G. L. c.187, section 3 applies to this notice, it shall be posted on the adjoining property lines for six successive days, and served if necessary. This notice is sent by an authorized agent, and if not voluntarily complied with may be recorded at Dukes Deeds, in accordance with said statute.

Geoffrey Gund by his agent, duly authorized.

A handwritten signature in cursive script, reading "Roy F. Theise". The signature is written in dark ink and is positioned above a horizontal line.

Roy F. Theise



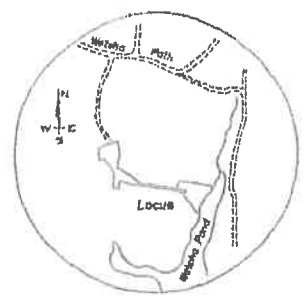
**Legend**  
 ..... denotes inverse survey line  
 - - - - denotes right of way  
 \* ..... denotes drill hole in 5" concrete bound found (unless otherwise noted)

**Notes**  
 1. This plan merges Lots 2A-1.1 and 2A-1.2 as shown on Plan Book 18, Page 83 into one lot.  
 2. The lots shown on this plan are subject to other easements and restrictions of record.

**Zoning District A11**  
 minimum lot area = 3 acres  
 minimum frontage = 100 ft.  
 front setback = 50 ft.  
 side setback = 50 ft.  
 rear setback = 50 ft.

- Plan References**
1. Plan Book 19, Page 12
  2. Plan Book 18, Page 83
  3. Plan Book 18, Page 21
  4. Plan Book 17, Page 37
  5. West Tisbury Case File No. 509
  6. West Tisbury Case File No. 482
  7. West Tisbury Case File No. 455
  8. West Tisbury Case File No. 198
  9. West Tisbury Case File No. 180

**Easement**  
 Book 1447, Page 1009



Locus Map  
 not to scale



Handwritten notes in blue, green, and pink ink:  
 Pink: Disconnect (50/50) Gund and Waldorf  
 Blue: Valenti  
 Green: Gund

lot area 6.3± acres  
 No!

Plan of Land  
 in  
**West Tisbury, Massachusetts**  
 prepared for  
**Coffin Real Estate Nominee Trust**  
 Scale 1"=80' November 2, 2021

Endorsement is without regard to  
 suitability or permitted occupancy,  
 does not stay zoning violations and  
 is subject to other notation hereon.



**Sourati Engineering Group**  
 P.O. Box 4458  
 107 Beach Road, Suite 202  
 Vineyard Haven, MA 02568  
 Phone (508) 693-9933 www.souratigroup.com

I certify that this survey and plan were prepared in accordance with the Procedural and Technical Standards for the Practice of Land Surveying in the Commonwealth of Massachusetts.

I certify that the preparation of this plan conforms with the rules and regulations of the Registers of Deeds of the Commonwealth of Massachusetts.

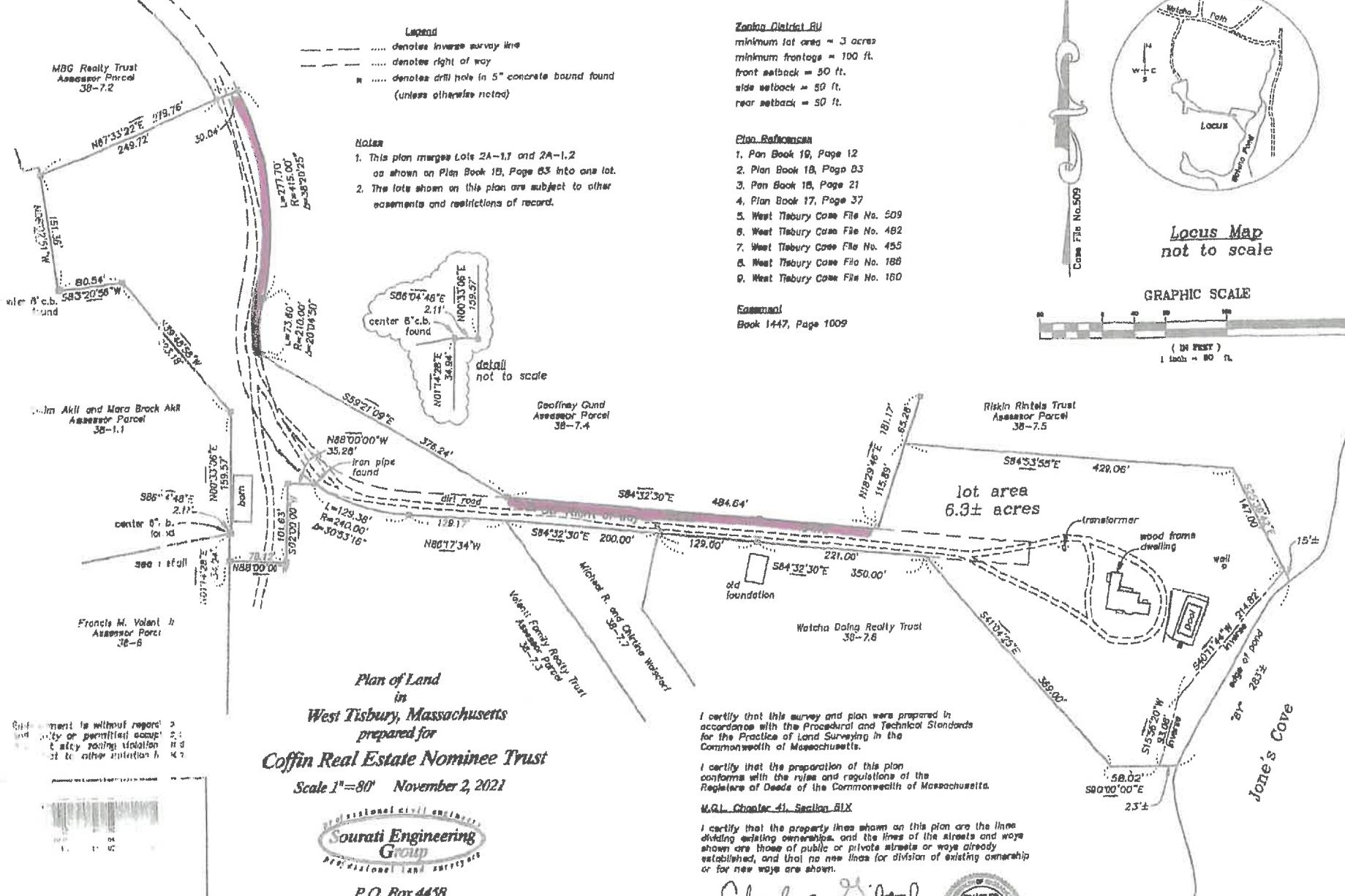
M.G.L. Chapter 41, Section 81K

I certify that the property lines shown on this plan are the lines dividing existing ownership, and the lines of the streets and ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown.

Charles R. Gistard  
 Charles R. Gistard Professional Land Surveyor



Date: 11/2/21



**Legend**

- ..... denotes inverse survey line
- denotes right of way
- ⊙ denotes drill hole in 5" concrete bound found (unless otherwise noted)

**Notes**

1. This plan merges Lots 2A-1.7 and 2A-1.2 as shown on Plan Book 18, Page 83 into one lot.
2. The lots shown on this plan are subject to other easements and restrictions of record.

**Zoning District R1**

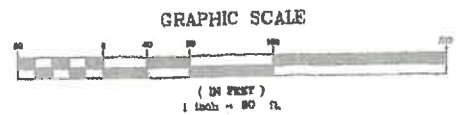
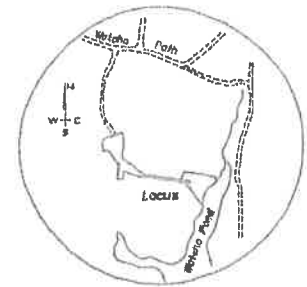
minimum lot area = 3 acres  
 minimum frontage = 100 ft.  
 front setback = 50 ft.  
 side setback = 50 ft.  
 rear setback = 50 ft.

**Cite References**

1. Plan Book 18, Page 12
2. Plan Book 18, Page 83
3. Plan Book 18, Page 21
4. Plan Book 17, Page 37
5. West Tisbury Case File No. 509
6. West Tisbury Case File No. 482
7. West Tisbury Case File No. 455
8. West Tisbury Case File No. 188
9. West Tisbury Case File No. 160

**Easement**

Book 1447, Page 1009



**Plan of Land**  
 in  
**West Tisbury, Massachusetts**  
 prepared for  
**Coffin Real Estate Nominee Trust**  
 Scale 1"=80' November 2, 2021



P.O. Box 4458  
 107 Beach Road, Suite 202  
 Vineyard Haven, MA 02568  
 Phone (508) 693-9933 www.souratigroup.com

I certify that this survey and plan were prepared in accordance with the Procedural and Technical Standards for the Practice of Land Surveying in the Commonwealth of Massachusetts.

I certify that the preparation of this plan conforms with the rules and regulations of the Register of Deeds of the Commonwealth of Massachusetts, M.G.L. Chapter 41, Section B1X

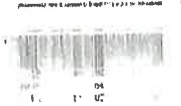
I certify that the property lines shown on this plan are the lines dividing existing ownership, and the lines of the streets and ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown.

*Charles R. Gilet*  
 Charles R. Gilet Professional Land Surveyor



Date: 11/2/21

Confirmation is without regard to any or permitted usage, and any zoning violation is subject to other regulation.



**EXHIBIT G**

**LETTER TO RICHARD ROONEY DATED NOVEMBER 29, 2021**

FEDERIC THEISE LAW ASSOCIATES LLC

OFFICE FOR DELIVERY: 19 LOCUST LANE, AQUINNAH, MA. 02555

ADDRESS: PO BOX 753, CHILMARK, MA. 02555

PHONE: OFFICE: 617-462-6300, CELL: 617-930-1575, E-FAK: 617-391-3027

WWW.FTLLAW.COM

Richard Rooney, individually and as President of Rooney and Company or Marina's Vineyard, Inc., by email attachment addressed to [richard@rooneyandcompany.com](mailto:richard@rooneyandcompany.com).

Myself, Frederic Theise, Attorney for the MBG Realty Trust, Myron Garfinkle Trustee

RE: Your and the Company's Knowing Advertisement of Property ID 76, the so-called Hazel Coffin lots, and Other Matters As Set Forth Below

Date: November 29, 2021

To: Mr. Rooney.

Put you on notice on behalf of my Client that your advertisements of the so called Hazel Coffin lots in West Tisbury, described as, "...6.3 water front acres..." is as you have actual knowledge or untrue both as to water frontage as concerns the so called "Barn Lot", and as to total acreage described as 6.3

Further attach hereto a copy of my brief entitled Opposition Brief to Notice of Appeal by Franken and Trustee submitted to the West Tisbury Town Clerk under cover of November 22, 2019 with attachments, a document of public record, which I believe you also have actual knowledge of.

In respect as a licensed real estate broker you will inform any potential buyer of the Barn Lot that it is not a Pool Lot, is not connected to the so called "Pool Lot", has been the subject of a revoked building permit, does not conform to the West Tisbury ordinance lot requirements, the Lotin Trustee appeal of that revocation was withdrawn on the eve of the ZBA hearing, and further provide a copy of the attached Opposition Brief with all of its exhibits to any such interested party.

Further put you on notice that it is my Client's stated intention to oppose any and all attempts to develop the Barn Lot, and will so inform the various West Tisbury authorities and others who have or may have jurisdiction over this property of MBG's intention, and request notice of any filing in connection therewith.

To be perfectly clear, my Client has no issue with anyone who wishes to purchase the actual Barn Lot and/or Pool Lot, but does reserve all rights to contest any building permits on either or both lots after an examination of any filings for either or both, and does not by this notice limit any rights to only the

rights set forth in the ZBA Appeal Opposition attached, and specifically reserves any and all other rights in addition to those raised in filings to date.

This notice is further sent without prejudice to any and all rights my Client has, including against any person and/or entity (entities) against whom and/or which Client may have such claims.

Very yours,

Mark H. [unclear]



**EXHIBIT H**

**SHORT BIBLIOGRAPHY OF LEADING MASSACHUSETTS CASE LAW IN SUPPORT**

EXHIBIT G

A PARTIAL LIST OF ANNOTATED MASSACHUSETTS CASE LAW SUPPORTING OBJECTORS ARGUMENTS

1. White, Trustee, Et Als v. Town of Weston ZBA, Et Als, MISC 381210, November 19, 2008; No estoppel from enforcing laws from previous actions of its agents and public entities where to do so would negate requirements of law intended to protect public interest: past practice of building inspector does not estop building inspector from applying and enforcing bylaw; conduct not arbitrary or capricious.

2. Shea v. Board of Appeal of Lexington, 622 NE 2d 1382, 35 Mass. App. Ct. 519 (1993); Required to issue building permit actual Way must be constructed on the ground, not just a depiction on a plan.

3. Johnson v Edgartown, 425 Mass. 17 (1997), upholding three acre zoning to protect Edgartown Great Pond justifiable.

4. Tatten v Kurlan, 32 Mass. App. Ct. 239 (1992); MGLA c.183, section 58, Fee in the Way Statute requires words of express reservation to prevent automatic conveyance of some or all of the Way to abutters, instrument of conveyance only evidence, Plan not sufficient or admissible. See also on the same subject Knapp v. Powicki, 90 Mass. App. Ct. 1107 (2016); For purposes of the Fee in the Way statute, Way does not have to be in existence provided it's sufficiently designated and contemplated; Hansen v Caldwell, 66 Mass. App. Ct. (2006); only express language stops operation of statute; Rowley v. Mass Electric, 438 Mass. 798 (2003); without express reservation language in the deed, title to real estate bounded by a Way includes the interest of the Grantor.

5. Meyer v. Planning Board of Westport, 29 Mass. App. Ct. 167 (1990); Planning Board waivers require evidence of implied conscious waiver.

6. Gifford v. Nantucket, 367 Mass. 801 (1978); an ANR plan is not a subdivision, every lot must have frontage on a public way or a way which the town clerk certifies is maintained and used as a public way.

**NOTE: THE ABOVE LIST IS HARDLY EXHAUSTIVE. AND REPRESENTS ONLY SOME OF THE LEADING CASES SUPPORTING OBJECTORS POSITIONS IN THEIR BRIEF.]**