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Land Court Issues Ruling

By JULIA WELLS

A Massachusetts Land Court judge last week dismissed the central claim in a complicated property rights case that centers on an attempt by a group of developers to open up access to a vast area of landlocked lots off Moshup Trail in Aquinnah.

If it is allowed to stand, the ruling by the Hon. Mark Green may block development on over 100 acres that includes a rare, windswept coastal heathland off Moshup Trail.

Attorneys for the town of Aquinnah and the Vineyard Conservation Society (VCS) called the decision an environmental victory.

"This has far-reaching consequences; it's a very important environmental decision," said Aquinnah town counsel Ronald H. Rappaport.

"There is no question about the environmental significance of this," said VCS executive director Brendan O'Neill.

"We're pleased that Judge Green saw it our way," said Jennifer Roberts, a Boston attorney who represented VCS in the case.

VCS, the town of Aquinnah and a long list of private property owners are defendants in the case.

Plaintiffs in the case are Bear Realty Trust, controlled by James DeCoulis and Maria Kitris, and Gossamer Wing Realty Trust, controlled by Benjamin Hall Jr.

Attorneys for the plaintiffs had no comment on the ruling.

Issued on June 4, the 18-page decision can be summed up in a single sentence: There is no legal access to well over 100 "setoff" lots located off Moshup Trail.

The entire town of Gay Head (now named Aquinnah) was divided into setoff lots in the late 1870s, the period that marks the beginning of all title research in the town.

The ruling is written in dense legal language, but the case turned on three central facts:

* The land court had previously determined that landlocked setoff lots are accompanied by what is known as an easement by implication, or an easement by necessity, but the easement must run to a road that was in existence at the time the lots were created.

* State Road was the only road in existence when the Moshup Trail setoff lots were created in the late 1800s.

* An easement by necessity from the Moshup Trail lots to State Road must run to the north through the Wampanoag Tribe of Gay Head tribal lands, but Judge Green found there can be no easement through the tribal lands because all the rights were wiped out nine years ago when the United States government, acting as a trustee for the tribe, took the land. Also, efforts to join the U.S. government as a party in the case were unsuccessful (in order to establish an easement by necessity, a landowner must bring into court every abutting landowner affected by the implied easement).

"The easement cannot be placed on land of the United States," Judge Green concluded.

The judge acknowledged the weight of his ruling. "I am aware that the dismissal likely precludes plaintiffs' opportunity to prosecute their claims of an easement by necessity. . . . [I]n mitigation of the apparent harshness, I note that plaintiffs (and their predecessors in title) waited to present their claims for more than 100 years . . . and for nine more years after the United States acquired [the tribal lands]," he wrote.

The ruling could have an impact on the value of the landlocked setoff lots.

It also has clear implications for a Moshup Trail conservation project begun by VCS about five years ago. The project involves protection of about 50 acres of coastal heathland, a rare habitat that is home to orchid bogs, northern harriers and spotted turtles. To date VCS has acquired about 25 setoff lots at a cost of some \$3 million.

"This gives us renewed confidence in moving forward, because this project is not done," Mr. O'Neill said.

He also said the court decision underscores the advocacy role of VCS in the land protection movement on the Vineyard. "We like to frame the question: Who speaks for the land? As the stakes increase, an environmental defense fund will be pivotal," Mr. O'Neill said. He added:

"This is an important role that VCS plays in the land protection movement on Martha's Vineyard, which is advocacy on behalf of the land. With the Moshup Trail project, we are here to protect the last vestige of this coastal heathland."

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