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March 8, 2006

MAR 13 2006

Mr. Timothy C. Smith  
Town Administrator  
Wellfleet Town Hall  
300 Main Street  
Wellfleet, MA 02667

Re: Town Landing, Blackfish Creek, Lieutenant's Island

Dear Mr. Smith:

We were asked to determine whether or not the Town has legal right of access to two Town Landings located on Lieutenant's Island; one on the southwest tip of Lieutenant's Island and the other on the northeast tip of Lieutenant's Island on Blackfish Creek. We have previously confirmed that the Town holds title to parcels in the southwest section of Lieutenant's Island by virtue of certain low value tax takings. We understand that there is some question as to whether the parcels taken by the Town still exist on the ground as we understand that there has been some erosion at that section of Lieutenant's Island.

Based on the information available at the Registry of Deeds, in our opinion, the Town does not have record title to the landing on Blackfish Creek.

The northeast corner of Lieutenant's Island is shown on a Plan dated March, 1967 recorded with Barnstable County Registry of Deeds as Plan 210, Page 55. We understand that the location of the Town Landing may be on land shown on this Plan as being owned by Cape Cod Realty.

We have reviewed Article 39 of the 1963 Annual Town Meeting which authorized acceptance of the road described as running "from Pond Street to the Town Landing on Blackfish Creek on Lieutenant's Island as laid out by Nickerson and Berger in December 1962

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as per Plan on file at the Town Office" (the "1962 Plan"). However, we have not been provided with any evidence that the Town actually recorded an easement or a deed for the road or a deed for the area shown as the Town Landing on this 1962 Plan. In addition, Article 39 only speaks of the road running from Pond Street to the Town Landing and does not lay out the Town Landing itself.

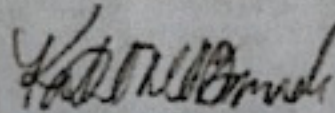
Common landings are laid out under G.L.c.88 §14. The process is similar to the layout of a public way in that the Board of Selectmen votes the layout of a common landing, and persons damaged by the layout or alteration of an existing town landing may recover damages under c.79. The Selectmen file a plan and a description of the common landing with the County Commissioners and with the Department of Environmental Management. The plan must then be recorded with the Registry of Deeds. We find no evidence that any of these procedures were followed with respect to the Blackfish Creek landing.

Given the passage of time, the Town may have acquired an access easement by adverse possession but such rights must be confirmed by the Land Court. In any event, sections of the road cross registered land and adverse possession actions will not lie against registered land.

In summary, we have been unable to locate record evidence of the Town Landing on Blackfish Creek at the Registry of Deeds.

If you have any further questions regarding this matter, please do not hesitate to contact us.

Very truly yours,



Kathleen M. O'Donnell

FD/dbl

Board of Selectmen

4/WELL/0051