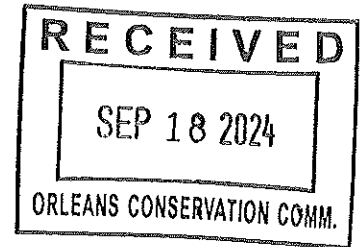


Karl Oakes  
21 Heritage Dr.  
Orleans, MA 02653

karloakes258@outlook.com

(585) 730-3720



September 18, 2024

Dear Conservation Committee,

Attached is a petition signed by 44 Orleans taxpayers, most of them year-round residents, asking you, in regard to the petition you received earlier this year to address "problems at Kent's Point," to take the following actions:

(1) FORMAL DENIAL OF THE PRIOR PETITION, on the ground that "overuse" has not been established.

(2) ERECTION OF EDUCATIONAL SIGNAGE AT THE ENTRANCE AND AT OTHER CRITICAL LOCATIONS, EXPLAINING THE SENSITIVITIES OF THE AREA, AND DEFINING BEHAVIORAL EXPECTATIONS. *Apart from reducing ignorant destructive behavior directly, this will empower resident allies to educate other users of the area. Evaluation of the effectiveness of such signage should occur after a year.*

(3) DEFERRAL OF ANY STUDY until simple, cheap and logical educational and remedial actions have been taken on the Conservation Committee's own initiative.

We would appreciate the opportunity to present our arguments before you at your early convenience.

Thank you,

A handwritten signature in cursive script that reads "Karl Oakes".

Karl Oakes

## PETITION

**To: Orleans Conservation Commission**

**Re: Denial of Previous Petition to Address "Problems at Kent's Point"**

Earlier this year, the OCC entertained a petition asserting "overuse" of Kent's Point, and asking that it be alleviated. Problems cited in the petition and during petitioners' presentations included:

- Vehicle congestion
- Overall ecological sickliness of the area
- Erosion
- An instance of a person allegedly being knocked over and injured by a dog
- An instance of an infant, allegedly being endangered by a dog
- Rogue trails

At the first OCC meeting regarding the petition, a leash requirement was urged, ostensibly to solve these problems.

### **BECAUSE:**

- The OCC considers vehicle congestion to be beyond its purview
- The area is visibly lush and vibrant
- Asserted erosion caused by loose dogs is undemonstrated by data, and has not been balanced against the potentially more significant erosive consequences of owners following their leashed dogs down embankments
- The asserted incidents of dog-related injury and near-injury are too counter-intuitive to justify finding that they occurred as described, given that petitioners bear the burden of proof and have failed to corroborate their accounts
- Rogue trails have partially healed over, and their use could easily be deterred
- Many visitors, especially tourists, are unaware of the area's ecological vulnerabilities
- Informative and prescriptive signage is almost nonexistent

### **THE FOLLOWING ACTIONS ARE REQUESTED:**

- (1) FORMAL DENIAL OF THE PRIOR PETITION, on the ground that "overuse" has not been established.
- (2) ERECTION OF EDUCATIONAL SIGNAGE AT THE ENTRANCE AND AT OTHER CRITICAL LOCATIONS, EXPLAINING THE SENSITIVITIES OF THE AREA, AND DEFINING BEHAVIORAL EXPECTATIONS. Apart from reducing ignorant destructive behavior directly, this will empower resident allies to educate other users of the area. Evaluation of the effectiveness of such signage should occur after a year.
- (3) DEFERRAL OF ANY STUDY until simple, cheap and logical educational and remedial actions have been taken on the Conservation Committee's own initiative.

Contact: Karl Oakes, (585) 730-3720 or [karloakes258@outlook.com](mailto:karloakes258@outlook.com)

**Petition to OCC  
Re: Denial of Previous Petition to Address "Problems at Kent's Point"**

**SIGNATURES OF PETITIONERS**

Name	Address	Year-round?
Catharine Wade	19 Lockwood Ln.	Y
Ryan Wade	19 Lockwood Ln.	Y
Erin Lagasse	34 Winslow Dr	Y
Erin Lagasse	34 Winslow Dr	Y
Kayleen Rosato	140 Portanimitcat Rd	Y
<del>Neil Smith</del>	17 Beach Plum Ln.	Y
FARRIE GIBSON	50 BAKERS POND	Y
TYLER GIBSON	50 BAKERS POND	Y
SHERY O'DONNELL	48 BAKERS POND	Y
JEFF O'DONNELL	48 BAKERS POND	Y
PARKER O'DONNELL	46 BAKERS POND	Y
JAMES BALLIETT	86 Great Oak	Y
ANDREA BALLIETT	86 Great Oak	Y
Melissa van Stenrei	P.O. Box 813, S. Orleans	Y
Stacy Kanaga	29 Sturbridge Dr.	Y
John Kanaga	29 Sturbridge Dr.	Y
Paul & Walter	30 Heritage Dr.	Y
Bonnie Hartung	30 Heritage Dr.	Y
Constance Hartung	14 Cove Rd #6	Y
Fusie Hartung	14 Cove Rd #6	Y

**Petition to OCC  
Re: Denial of Previous Petition to Address "Problems at Kent's Point"**

**SIGNATURES OF PETITIONERS**

Name	Address	Year-round?
Karl Oakes	21 Mentage Dr 02653	✓
Constance Chan	211 Rock Harbor Rd 02653	✓
Richard M. Miller	26 LITTLE MARSH LANE	✓
Sean Marshall	73 monument rd	✓
Sarah Smith	23 Frost Fish Lane	✓
Cynthia Bender	56 Old Colony Way	✓
Carmy J. Han	28 Grey's Lane	✓
Judith Kelly	46 Pershing Lane	✓
Maria Smith	39 River Rd	✓
Deane M. Wilson	26 Lowell Lane	✓
Barbara Bailey	19 River Rd, Orleans	✓
Joe Osborn	137 Rock Harbor Road #10	✓
Judy Saelmer	21 Crescent Ridge Way	✓
Gerry Pawczak	12 Juniper Hill	
Charity Spitzack-Olsen	8 Anchor Dr	✓
Manly Swartz	94 Hopkins Lane	✓
Monica Garland	9 Main St. 2Q	✓





## **ARGUMENT IN SUPPORT OF PETITION SEEKING DENIAL OF PREVIOUS PETITION TO ADDRESS “PROBLEMS AT KENT’S POINT”**

**Submitted by Karl Oakes, [karloakes258@outlook.com](mailto:karloakes258@outlook.com)**

### **PREFACE; EXECUTIVE SUMMARY**

This submission is long and wide-ranging. For convenience, I have sprinkled bolded summaries throughout. I collect them here as an executive summary.

I am a: Dog owner. Advocate for dogs’ needs to run and play, somewhere. Attorney. Administrative law expert. Point person for legal arguments in support of our petition, but just an individual as to any peripheral matters.

The Conservation Commission’s decisions should be rational, based on good information, taken in fair and unbiased proceedings, and coherently explained. Money should be spent according to fiduciary principles.

I don’t believe there is any unified view about parking stickers among Kent’s dog walkers. However, if the OCC does in fact disclaim jurisdiction as to vehicles, as is my impression, then this obviously can’t be a basis for an OCC ruling.

Dog-caused erosion is rare and minimal. Requiring leashes will likely make matters worse because owners, sometimes wearing hiking boots and the like, will follow their dogs down embankments to water. Signage to deter passage on embankments, in keeping with well-known best practices for conservation-area management, does not have this downside.

Looked at closely, the alleged incidents of dogs attacking or harming human beings are not credible. Given the number of visits, the absence of believable, documented incidents actually proves the area’s safety in terms of exposure to dogs. The OCC ignores the real safety problem at Kent’s: ruts and especially exposed roots, which ought to be removed or at least marked.

Both OCC members and original petitioners have been permitted to make intemperate remarks painting a picture of dog owners as rude, self-absorbed, irresponsible hedonists – as well as potential terrorists, which is totally beyond the pale – and portraying our dogs as savage dangerous, destructive beasts. Further, a fair public hearing is impossible in light of improper past manipulation of public opinion by town officials.

This is all too complex and fraught with the impact of past political fighting and maneuvering for the OCC to try to manage, especially when your land management choices are part of the ecological problem, and some of the issues, such as impact on tourism, are outside of your bailiwick. Dog owners have reached out to Kent’s Point locals in the past. Encourage us to work all this out on our own like adults.

## INTRODUCTION

### • Who Am I?

***Summary: Dog owner. Advocate for dogs' needs to run and play, somewhere. Attorney. Administrative law expert. Point person for legal arguments in support of our petition, but just an individual as to any peripheral matters.***

I am a dog owner in Orleans. I have a small, inoffensive terrier. I walk at Kent's Point every day and have been there at least 3,000 times. I understand the general need for dogs to be under control, but also honor their needs to run and play, and firmly believe that a "rural" town like Orleans can and should make an accommodation for that.

I am also an attorney, NYU Law 1980, NYS Bar 1982, officially retired from legal practice. I am an author/editor of legal encyclopedias, and have written/edited tens of thousands of pages focused on administrative proceedings. I am an expert in administrative law, including matters of procedural due process, bias, and the sufficiency of evidence. In the past four years, I have twice been quoted by two federal courts, including the District of Columbia Circuit Court of Appeals.

My first foray into the matter of dog regulations in Orleans was in early 2019, when I noticed recent restrictions after adopting my dog, and wrote to the Select Board encouraging a friendly meeting of all stakeholders to sort things out in a spirit of compromise. When the Board ignored my letter and proceeded to close Wildflower, repeatedly violating the Open Meeting Law in the process – as to both notice and the requirement of actual public deliberation – I became active in opposition to the Select Board on this issue. In particular, I opposed the efforts of certain Board members to move dogs off all public lands and then apply to a charitable foundation for funds to build a fenced in dog park near the sewage treatment plant, essentially using a pro-dog charity to fund a restriction in dogs' opportunities to run and play, which was contrary to its mission. One of my concerns was that this might brand Orleans as a bad actor in the grants "universe," making it difficult for the town to attract funds for other potentially beneficial purposes. In 2022, I objected to the Select Board's invitation of Police Chief McDonald to a Select Board meeting to declare, in his uniform, that he "recommended" a leash law, an act which I consider to have been a serious violation of separation of powers. These are merely highlights of my ethical concerns about how the matter of dog regulations has been handled in Orleans since 2019. I am here before you now because I have concerns about multiple aspects of the proceedings on the original Kent's Point petition, including an overall concern that the OCC is being used as a tool by the same individuals who were behind previous efforts to close public spaces to dogs.

I am the point person for the legal aspects of our petition. Other petitioners are likely to have comments on other aspects, and I do not speak for them on any matter not squarely within the boundaries of our petition as submitted.

• **What Standards Should Be Applied to the Conservation Commission’s Proceedings?**

*Summary: Decisions should be rational, based on good information, taken in fair and unbiased proceedings, and coherently explained. Money should be spent according to fiduciary principles.*

While the OCC is not subject to the formal requirements of the Administrative Procedure Act, it is subject to the requirements of due process, as well as the Orleans Town Charter, and the Massachusetts Guide for Members of Public Boards and Commissions.

Due process requires that persons affected by an administrative action such as “imposing a remedy for ‘overuse’ of public lands” have notice and an opportunity to be heard; **that decisions be made rationally, rather than arbitrarily and capriciously; that the proceedings be fair and free of bias; and that any remedy be within the commission’s jurisdiction, proportional to the harm, and reasonably adapted to curing the harm.**

The Introduction to the Orleans Town Charter embraces “transparency in government; that is ... providing the rationale for [governmental] decisions to inhabitants of ... Orleans.” Implicit in this requirement is that there has to be a rationale in the first place. **Decisions have to be made on the application of logic and expressed values to known or reasonably found facts, not gut feelings or loyalty to a particular group of people.**

The Massachusetts Guide for Members of Public Boards and Commissions, Practices for Effective Board Members states in Section 3, that “Adhering to fiduciary principles will help the board recognize that it is a steward of the public funds entrusted to the organization.” This will be relevant in the discussion of hiring and paying for an ecological expert to study Kent’s.

In Section 4, the Guide states that “To be an active and effective board member, you must be informed. Consequently, before your board meets, arm yourself with accurate information to make thoughtful decisions.” It also states, “Public discourse, analysis and debate are expected .... When your board meets, **ask probing questions that are relevant to the issue and debate the issue at hand during meetings to get information that will help you make informed decisions.**” This will be relevant in the discussion of the evidence for the asserted instances of dog-caused harm to human beings and the environment.

**ARGUMENT AS TO PARTICULAR GROUNDS FOR ORIGINAL PETITION:**

• **The OCC considers vehicle congestion to be beyond its purview**

*Summary: I don’t believe there is any unified view about parking stickers among Kent’s dog walkers. However, if the OCC does in fact disclaim jurisdiction as to vehicles, as is my impression, then this obviously can’t be a basis for an OCC ruling.*

My understanding, based on OCC member comments, is that the OCC disclaims jurisdiction over vehicles. I haven’t actively opposed the sticker remedy, provided it’s seasonal, because I anticipate parking lot overflow problems in the near future. I know that other signatories to our

petition oppose stickers. If this ever gets narrowed down to a truly “stickers only” conversation, there should be another opportunity to comment.

In regard to “original petitioner” comments on September 3 that Keziah’s is private and that fixing it costs the residents money, my personal observations are:

- The residents choose to keep the road private. No one is preventing them from dedicating it to the town.
  - Kent’s is on Keziah’s and therefore traveling there on Keziah’s is legal, as far as I can determine. (It may be that the original petitioners have no right to prevent any vehicular traffic, regardless of destination, but there is no need to explore that here.)
  - Years ago, I offered to donate money to an escrow account to offset my use of the road. Neither my offer, nor my invitation to sit down and discuss problems at Kent’s, was acknowledged.
- **Asserted erosion caused by loose dogs is undemonstrated by data, and has not been balanced against the likely more significant erosive consequences of owners following their leashed dogs down embankments.**

*Summary: Dog-caused erosion is rare and minimal. Requiring leashes will likely make matters worse because owners, sometimes wearing hiking boots and the like, will follow their dogs down embankments to water. Signage to deter passage on embankments, in keeping with well-known best practices for conservation-area management, does not have this downside.*

An OCC member insisted back at the April 2 meeting that dogs were creating lots of erosion and “destroying our lands.” Postponing discussion of the corrosive effect this has had on the proceedings (see DEFECTS IN THE PROCEEDINGS, below), the Chair ought to have required this member to (1) provide evidence, or (2) retract the statement. Factual assertions need to be tested and proved or disproved. This is inherent in the concept of a rational decision-making process.

As a daily visitor to Kent’s I have observed the following. If there is any material on top of the dirt, dogs do not exert an erosive influence, any more than foxes do, for example. Big dogs climbing uphill on dirt may slightly disturb the surface, making it more likely to get washed away in a rainstorm. Typically, dogs going downhill on dirt barely disturb the surface. However, when owners follow their leashed dogs downhill on dirt, they tend to lean back to stay upright and resist the dog’s pull by scuffing their feet as they descend, causing damage perhaps on the order of hundreds of dogs passing, particularly when they are wearing footwear with aggressive soles such as those found on hiking boots. Thus, **there is a very real possibility that leashing dogs will increase erosion.** The only way to disprove this possibility would be to prove that the reduction in dog passages down the banks due to leashing is greater than the ratio of shoe damage to paw damage, and gathering the data to make such a calculation is insurmountably impractical.

The main problem here is the fact that a lot of ignorant visitors go around the fence preceding the beach access point. This has happened so much that there is the beginning of a rogue trail at that

spot, and the appearance of a trail attracts more passage. There is also no sign at the parking lot (*HELP US PRESERVE KENT'S FOR FUTURE GENERATIONS Stay off the fragile banks and keep your dogs off of them There is water access at the beach*) or at this location (*KEEP LEFT OF FENCE The banks are fragile. Please also keep your dogs off*) to prevent this. See, in this regard, the discussion of signage as a best conservation practice below.

Thus, the remedy of leashing, if the justification is erosion, does not meet the test that the remedy must be reasonably adapted to cure the harm. **Leashing may make things worse, whereas signage is a best practice and carries no such risk.**

- **The asserted incidents of dog-related injury and near-injury are too counter-intuitive to justify finding that they occurred as described, given that petitioners bear the burden of proof and have failed to corroborate their accounts.**

*Summary: Looked at closely, the alleged incidents of dogs attacking or harming human beings are not credible. Given the number of visits, the absence of believable, documented incidents actually proves the area's safety in terms of exposure to dogs. The OCC ignores the real safety problem at Kent's: ruts and especially exposed roots, which ought to be removed or at least marked.*

When surrounding circumstances are considered, neither event, as described, can reasonably be found to be “more probable than not” (the default legal standard in administrative proceedings), and thus both events should be stricken from the record, removing another basis for the original petition.

#### – The “Baby Attack”

One petitioner asserts that a dog jumped up on his wife when she was carrying their baby in a front-mounted carrier and pawed at the baby. This would be a terrifying and traumatic event that one would tend to remember, and one's memories of which would be refreshed by the many conversations one would have about it with one's spouse after the fact. Yet, when I texted the petitioner the following question:

*Do you remember details about your experience with the dog jumping on your wife? For instance, precise location, general description of dog, general description of person or persons walking with dog?*

This was his response (February 3, 2024):

*It was a couple of years ago so **don't remember** and our goal was just to walk away as quickly as we could. So **I don't remember** ...[I]t's just hard to figure out what dog is which and who is who when your goal is just to walk away and kind of diffuse the situation.*

So, absolutely no recollection of any detail. Not even, the dog was black, or it was wet, or this happened down at the beach, or the owner was super apologetic. Nothing whatsoever. Speaking for myself, this answer makes it impossible for me to believe that the attack occurred.

I remember a far less intense incident involving a family meeting the description of petitioner's family, and the father getting furious at us because he had been startled by my friend's dog coming around a corner, and it seems likely to me that this may be the incident in question, embellished to serve the objectives of the original petition.

Beyond that, we live in an atmosphere of tension about the area, in which it's reasonable to assume that if anyone in favor of dog restrictions had witnessed this or heard about it later, they would have made a big deal about it. After all, it's challenging to argue against restrictions when there are *babies* involved. And yet not a peep from anyone, for years. Adding this to the previous reason for skepticism makes it impossible, in my expert legal judgment, to find it "more probable than not" that the event happened as described, at least in the absence of some corroborating evidence.

### – The Disappearing “Barging Canine”

Another petitioner asserted that she had been knocked down by a dog, from behind, if I remember correctly, but that she never saw it. This is inherently a bit improbable, but what makes it considerably more improbable is that the area is full of exposed roots, as well as the occasional rut, and that I and a number of my friends have occasionally face-planted on them. Therefore, there is a perfectly reasonable alternate explanation which is known to have occurred a number of times. Finally, the petitioner claims that her story is validated by the fact that her injury is “consistent with a high-speed crash.” This requires more questioning. Was the injury an ACL tear? Because:

*Women are four to eight times more likely than men to suffer an ACL injury with anatomical, biomechanical and neuromuscular differences that are believed to be behind the gender disparity. They tend to occur during contact sports, cutting and twisting movements, or even just stepping in a small rut.*

<https://frederickpt.com/2016/08/11/acl-injury-and-prevention/>

Was it a PCL or MCL injury, or a kneecap fracture, which results from the knee hitting a dashboard, which could logically also happen from a knee hitting the hard ground? Or was it a knee dislocation, which may be caused by motor vehicle collisions, high-velocity sports-related injuries, and falls (such as a fall from tripping on a root)?

<https://www.ncbi.nlm.nih.gov/books/NBK470595/#:~:text=Motor%20vehicle%20collisions%2C%20high%2Dvelocity,rotatory%20dislocations%20are%20also%20possible.>

Unless there is some sort of cross-examination which takes us to a knee injury consistent uniquely with impact from behind, and absolutely not from any negative result of coming across an exposed root or a rut, we have to conclude that this supposed dog-related injury also fails to meet the standard of “more probable than not.”

I hasten to remind you, in case you think it would be inappropriate to cross-examine on assertions such as these, that you are expected during meetings to **ask probing questions that are relevant to the issue**. However, your hesitation is understandable: No one wants to be the person testing the credibility of a person presenting as a victim.

– **Fears Are Not Facts; The Petitioners Inadvertently Prove The Area’s Safety**

I will stipulate, by the way, that the incidents alleged by petitioners express the type of fear some people carry about walking at Kent’s, but there are two problems First, the proceedings have been contaminated by treatment of these incidents as actually factual (see DEFECTS IN THE PROCEEDINGS, below). Second, the more important takeaway from the facts that (1) there are tens of thousands of visits a year and (2) two dubious accusations of harm is the best the petitioners could come up with is that **the area is apparently vastly safer than the worst perceptions would suggest**.

– **The Real Danger, Which Is The Presence Of Roots And Ruts, Is Being Ignored**

From time to time, ruts are created by digging dogs. I always fill them, and try to educate the owner if I see it happening, This would be a good matter to include in instructional signage, partly because signage would support our efforts to police the area through persuasion. More significantly, there are many dangerous exposed roots. Years ago, these were spray-painted for visibility, but that hasn’t happened in a while.

In my judgment, **the risk of tripping on a root and falling on one’s chest is so great that *no one should walk at Kent’s with a baby in a front-mounted carrier, ever***. Also, **elderly people with fragile bones would be well-advised to carry hiking poles**. If safety is really the issue here, and we don’t want infants subjected to serious injuries, this is where our attention ought to be focused. An interesting question might be: “why isn’t it?”

• **Rogue trails have partially healed over, and their use could easily be deterred; many visitors, especially tourists, are unaware of the area’s ecological vulnerabilities; informative and directive signage is almost nonexistent**

***Summary: Signage, which is a known conservation best practice, and consistent with the education effort applied to the Outer Beach, is likely to help at Kent’s, and needs to be employed before we spend money on a study of the area.***

Let’s handle these items all together. As a preface, **let’s define the vague term, “overuse,”** employed by the original petitioners to describe the situation at Kent’s. Presumably, we’re talking about degradation of the area which is not fixable without thinning out the visitors, because if we’re talking about negative effects that *can* be remedied without thinning out the visitors, then, with all due respect, we’re talking about ineffective management rather than overuse. **So the questions are, how degraded is the area, and what can we do to help it?**

As to the first question, I’d say the area looks pretty good after all the rains, and I think this is obvious enough that it doesn’t need to be proved formally. The OCC should take administrative

notice that **there has been a substantial revitalization of the vegetation. There is no current ecological emergency.**

As a side note here, let's quickly consider the argument that we need to know if there has been a loss of species at Kent's. Supposing that there has been, and supposing further (only for purposes of argument) that leashing dogs might ameliorate that loss, would this mean that dogs should be leashed at Kent's? In order to answer intelligently, we need to ask what the OCC's position is regarding where dogs should then be able to run in Orleans year-round. I see two options:

- (1) there needs to be a fenced-in dog park, or
- (2) dogs shouldn't be able to run anywhere in Orleans year round.

The problem with answer (1) is that building a dog park will completely offset the return of some species to Kent's by destroying habitat, so leashing dogs then building a park is pointless if we're concerned about species loss.

The problem with answer (2) is that this change in what dog ownership means in Orleans is vastly too significant to be taken by the OCC, as opposed to Town Meeting. (See more on this point in DEFECTS IN THE PROCEEDINGS, below.)

Turning to what can be done, I am about to present information which, in my expert judgment, will require you as a commission to acknowledge that:

- **informative signage is a best practice for conservation areas**
- you make no serious effort to follow that practice
- there must be negative consequences to that failure
- those negative results are unquantifiable
- until you zero out those effects by following best practices, any results you get from a study of the area will be meaningless (because it won't be clear how much of any negative factor is attributable to ineffective management)
- therefore it is wasteful to spend money on such a study now, meaning that to do so would violate your fiduciary duties (mentioned in the Introduction)

I've commented before that people who visit Kent's from elsewhere can be surprisingly clueless about environmental issues. In a supreme example of the counter-productive ecological impact of leashing, I recently met a man who had approached the one marked fragile bank from the East, meaning that he hadn't seen the "keep off" sign, and who had followed his dog to the bottom. When I asked to speak with him, he clambered up the bank as though it were a prison wall, kicking down who knows how much material in the process. Very friendly guy, but he had no idea erosion was an issue, and he also didn't know he could have let go of the leash.

My stories about unconscious visitors is backed up by a **literature review, conducted at the University of Toronto and published on their website, of studies that have researched signage and how those signs affect behavior:**

*Evaluating the Effectiveness of Signage in Conservation Areas, Natural Areas and Zoos to Enhance the Education of Eco-tourists*

chrome-

extension://efaidnbmnnnibpcajpcgiclfndmkaj/https://tspace.library.utoronto.ca/bitstream/1807/99610/1/Scane\_Capstone.pdf

Key excerpt:

*Natural areas are used around the world by millions of people each year who seek to make a connection with nature. Most of these areas are easily accessible and many of them can accommodate a large number of people at any given time. However, with an increasing number of people visiting these areas each year, there is an increased risk that some of these visitors will not behave appropriately and be less than model conservation stewards. **Potentially inappropriate behaviour in conservation areas is often not conscious. Some people genuinely do not know how to behave or understand the consequences of their actions towards the natural environment. Not only can signage be used to help influence and deter unwanted behaviour in such situations, but it can also help provide important information and teach people.***

I want to stress something very important here, speaking as an expert in administrative law. As members of the Commission, **you are required to acknowledge that this is in the realm of expert opinion**, inherently superior to any gut feeling you might have that “signs probably don’t work.” You are free to try to find expert counter-opinions if you like. However, if you find nothing equally weighty to contradict this, and if you take into consideration my experiential observations that many people have no clue about the ecological realities at Kent’s, then you are simply not permitted to ignore the implications, no matter how annoying some members may find them to be.

In addition, we live in a town which requires people to sit and watch an instructional video before going out on the outer beach. We do that because we believe that education influences behavior. If you choose to regulate behaviors without having made any realistic effort to educate, your actions will be saying, as an arm of the town, “education is pointlessly ineffective.” **That will put the town in the position of simultaneously (1) imposing a rigorous education requirement at the outer beach and (2) implying that education is pointless at Kent’s.** Have you checked with the Select Board to make sure they are willing to dump the video requirement for the outer beach to make the town’s policies consistent? Or do you consider that Kent’s is an exception to the general rule that education is a valuable conservation tool? If your position is the latter, then you are required to explain it. (Remember from the Introduction that the Orleans Town Charter embraces “transparency in government; that is ... providing the **rationale** for [governmental] decisions to inhabitants of ... Orleans.”)

**Signage at Kent’s Point is nearly nonexistent.** There is a sign on the right at the entrance which one barely sees because one’s eyes are already scanning for pedestrians, dogs, and parking spaces to the left by the time one is close enough to make out the smaller print. There are rules posted in normal document-sized type on a sheet of paper at the front, which amount to “fine

print” in this context, and which refer to staying on “designated” trails without explaining how to determine which trails are designated. There is nothing indicative out in the woods, so the only possible designation is on the map, but that’s hardly obvious. And then one is supposed to take a photo of the map and refer to it while walking? Maybe that would fly if you had conspicuous notices telling people to “LOOK HERE” and “TAKE A PHOTO OF THE MAP,” etc., but in the absence of that, any defense of your signage would be frivolous. **It’s utterly ineffective.**

So going back to the bullets above, it’s a simple logical chain from “your signage is utterly ineffective” to **“it would be prudent not to waste money on an expert study until you’re following best practices, including really effective signage, perhaps informed by a reading of the sources in the Toronto study’s bibliography.”**

To add a brief note about rogue trails, **it would be simple to supplement signage with a little token of some kind at the entrances to rogue trails, reminding people to stay off, and equally simple to cover rogue trails with dead leaves, to remove the visual “invitation” to walk there. I have made these suggestions to you before, and offered to pay for the expenses involved. You have not acknowledged my communications.**

#### **ADDENDUM: DEFECTS IN THE PROCEEDINGS; FAIRNESS/BIAS**

***Summary: Both OCC members and original petitioners have been permitted to make intemperate remarks painting a picture of dog owners as rude, self-absorbed, irresponsible hedonists – as well as potential terrorists, which is totally beyond the pale – and portraying our dogs as savage dangerous, destructive beasts. Further, a fair public hearing is impossible in light of improper past manipulation of public opinion by town officials.***

One of the aspects of due process I referred to earlier was fair, unbiased proceedings. This is a problem here in two respects:

**First, dogs and dog owners have been subject to highly intemperate remarks from OCC membership and the OCC has tolerated intemperate remarks from witnesses. Specifically:**

It has been asserted by an OCC member that to say something in favor a leash requirement is to risk having one’s house fire-bombed by crazy, rage-filled dog owners.

***“I know that there will be immediate screaming and yelling, and probably a bombing of my house at night.” (2:09:24, probably at the April 2, 2024 meeting)***

Those comments should have been shut down by the Chair immediately. The fact that no one said anything about them raises real questions about bias. I doubt that there is any precedent in Orleans’ history for a commission member referring to citizens of the town as terrorists. Yes, we got mad when the Select Board violated the Open Meeting Law. That doesn’t reflect on us; it reflects on the 2019 Select Board. Incidentally, one member of that Board took the liberty of publicly impugning the integrity of those of us who served on the dog regulation task force, while serving in the supposedly impartial role of liaison of that task force, so this is not the first time that we’ve had to contend with this kind of public disparagement by town officials.

**It has been asserted by the same OCC member, without a shred of evidence, that dogs are destroying our precious public lands.** Like the other comment, this is rabble-rousing. It appeals to emotions such as fear and anger, and it's disrespectful to people like myself, who pay taxes and take responsibility for our dogs' actions. It's also the same assertion that was used as a pretext to close Wildflower, so that's another parallel to previous comments, suggesting that we may be dealing with the same group of people, running the same political play that worked for them once before.

Further, the Committee has sat silent while **petitioners say things like “they don't respect our lands,” instead of stating facts**, such as “sometimes poop bags aren't picked up” or “some walkers don't stay on the major trails.” This kind of negative projection is intellectually baseless, emotionally toxic, and needlessly divisive.

More recently, near the end of the September 3 meeting, there was this comment: “The number of people I see driving in every day with noise-cancelling headphones because their dogs are barking so loud. It's actually kind of humorous and comical.” **Further, Kent's Point was likened to the Burning Man festival, and it was stated that “the only rule is that there are no rules.”**

I have witnessed perhaps 15,000 arrivals at Kent's Point. I have never *once* seen someone with noise-cancelling headphones arrive – not a single time. Further, the average age of the regulars at Kent's Point is almost certainly over 60, if not over 65. We like and respect each other, and don't put each other in danger. On the rare occasions when someone is bringing a dog who shouldn't be there, we talk to them about it. It would be vastly easier for us to police the area if we were supported by signage. Some of us still believe that Kent's was deeded to the town “so that dogs could run free,” and this misconception drives some inappropriate behavior, and especially insensitivity to the concerns of locals. Lack of awareness of the strict liability law in Massachusetts, making dog owners absolutely liable for all damages caused by their dogs, is another problem. **By its passivity in terms of educating people, the OCC substantially handicaps our efforts to police ourselves**, and this applies especially to our efforts to inform out-of-towners during the summer. That's why things aren't better than they are – not because we're drugged-out narcissistic hedonists, or whatever the Burning Man reference is meant to evoke.

Another problem with these comments is that **in mid-September, I observed an original petitioner walking his dog off-leash at Kent's**. His dog is roughly the same size as mine. I'd like to understand why it's apparently “reasonable” for him to do that (his common characterization of himself), but when I do the exact same thing, it's Burning Man.

The primary problem with allowing comments like these, though, is that it poisons the well if we ever get to a public hearing stage. People who have watched these proceedings and been fed a steady diet of “dog owners are wild, irresponsible, rude, and ridiculous, and some of them may also be terrorists” are not going to form reasoned opinions about the matter. **Letting someone spew this kind of stuff on your communications channel, without calling them out and controlling them, lends an air of official endorsement to these statements, and puts dog**

**owners who regularly walk at Kent's at a tremendous disadvantage in terms of being able to persuade.**

Beyond all of that, if this ever gets to a public hearing, we are still less than three years away from the spectacle of the Police Chief, **in uniform**, recommending a leash law and having that reported by local media. Inviting him to do that before the Select Board was unconstitutional and corrupt, in my judgment, and I don't see any reason why we should have to contend with the lingering influence of that maneuver in a public hearing setting. From my prior conversations with the Chief, I understood that enforcing a leash law was contrary to his philosophy of policing, and that he sees his job as enforcing laws, not making policy. If someone influenced him to make comments which were contrary to both of those perspectives, let's get to the bottom of that and have a conversation about what it's going to take to guarantee the Chief's freedom to do his job according to his training, philosophy, and conscience. I know this is probably uncomfortable to read, but I didn't create this situation, and I don't owe it to anyone to keep quiet about it, either. We have a governance problem here, and we need to come to terms with it.

In the same vein, I have concerns, partially based on what seems to me to have been use of the Police Chief as a mouthpiece, that the original petitioners may have coached by others let's say, spice up their assertions. If this process goes any further, I think we need to keep in mind that we may in fact be dealing with a behind-the-scenes group. **If other people influenced the contents of the petition, their names should have been on it.** Hiding behind proxies enables people's lower impulses, and should not be enabled or condoned.

#### **DECLINING JURISDICTION; PROMOTING A CITIZEN-GENERATED SOLUTION**

*Summary: This is all too complex and fraught with the impact of past political fighting and maneuvering for the OCC to try to manage, especially when your land management choices are part of the ecological problem, and some of the issues, such as impact on tourism, are outside of your bailiwick. Dog owners have reached out to Kent's Point locals in the past. Encourage us to work all this out on our own like adults.*

In light of all the above, I urge you to deny the initial petition, or else to decline jurisdiction. In a technical sense, you manage Kent's and it may be that you have authority to impose a leash requirement on one of your properties if good reasons exist to do so. However, the fact that Kent's is the only year-round place left in Orleans where dogs can have an opportunity to exercise and play brings in a whole raft of considerations that are not within your charge and which you're not qualified to evaluate. For instance, how will community relationships be affected by policing of the leash requirement, given that there will certainly be noncompliance? What will be the impact be on tourism? How will the physical and emotional health of dogs be affected?

It's also a problem for you to be presiding over a process which may restrict the liberties of a certain group when you yourselves are responsible for some of the ecological problems at the area. (No offense. You're volunteers and you have a lot on your plate, but we need to be honest about what's working and what isn't.) Combined with the "perception of bias" referred to in the DEFECTS IN THE PROCEEDINGS section, this will make it difficult for you to restrict

people's rights without blowback. I'm not referring to expressions of anger; I'm referring to noncompliance, and to potential efforts to limit your jurisdiction or subject your decisions to some form of review. These would be reasonably foreseeable consequences, in my judgment, were your decision to be widely perceived as corrupt.

Moreover, the broader questions of ethics and good governance that will inevitably take center stage if there is a public hearing are going to be a challenge for you to manage. You've already demonstrated difficulty handling some performative and inappropriate comments in the context of only one side presenting its case. It's not realistic that you're going to be able to handle issues such as "how do we factor out the distorting influence on public opinion of the Chief's remarks, and who was really behind all that anyway?" My unsolicited advice is that you not put yourselves in that impossible position.

Instead, I suggest that you just tell us to work this out, like adults. In a recent email to interested parties, I said the following:

*There are people on "my side" who are behaving poorly because they believe a myth that Kent's was given to the Town "so that dogs could run free." There are people on "your side" who are understandably frustrated that they can't walk at Kent's under circumstances comfortable for them. I get that, and I can influence others to get it. At the same time, I'm hard core on the idea that dogs need an opportunity to run, and that a fenced in park near the sewage treatment plant (this was being pushed back in 2018-2020) isn't an appropriate option. I think there is room in the middle, and I'm willing to meet you there and bring others with me to do the same.*

To date, I have not received a response. However, if you tell the original petitioners that they need to make a serious effort to work with us before soliciting governmental intervention, then perhaps they will engage us and we can start making things better.

Respectfully,

Karl Oakes

Cc: Kimberly Newman, Town Manager  
Andrea Shaw Redd, Select Board Liaison