

FYI

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MICHAEL D. FORD
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August 15, 2025

Kevin Galligan, Chair, Orleans Select Board
Town Hall
19 School Road
Orleans, MA 02653

Re: Response to email of Mr. Karl Oakes dated August 4, 2025

Dear Mr. Galligan,

You have asked that I respond to the Select Board regarding the issues raised by Mr. Karl Oakes in his email dated August 4, 2025, and Mr. Oakes request that I review the case of *Smith v. Westfield*, 478 Mass. 49; 49, 82 N.E.3d 390 (2017), particularly headnotes 5 and 6 (summaries of the law).

In *Smith v. Westfield*, the SJC considered whether Article 97 of the Amendments to the Massachusetts Constitution applied to land originally acquired by the city through a tax taking. The Court held that Article 97 applied to the property because the city clearly expressed its intent to protect the property permanently and thus the city would have to obtain the approval of the General Court to change the use of the property for the construction of a school.

Article 97 establishes the right to a clean environment, including natural, scenic, historical, and aesthetic qualities. It also declares the conservation of natural resources as a “public purpose” and provides that land or easements subject to Article 97 shall not be used for other purposes or disposed of without a two-thirds roll call vote of each branch of the Legislature.¹

The Kent’s Point Conservation Area is clearly subject to the protections of Article 97. The Kent’s Point Conservation Area Management Plan dated 6/19/95 acknowledges that Kent’s Point is subject to Article 97. (See Management Plan Page 10).

The Town is not proposing to change the use of Kent’s Point from conservation purposes to another inconsistent use and, thus, the requirements of Article 97 (and M.G.L. c 3 §5A,),

¹ Mr. Oakes August 4th email references “M.G.L.A. Const. Amend. Art. 49 Art. XLIX (formerly Art. 97),” however, Article 97 had the effect of annulling Art. 49. See *Smith v Westfield*, footnote 10.

including, but not limited to, the requirement to obtain a two-thirds vote of the Legislature are not applicable.

My prior memos did not mention Article 97 or the *Smith v. Westfield* case because the Town was not and is not proposing to change the conservation use of Kent's Point.

Please let me know if you or other members of the Select Board have further questions.

Very truly yours,



Michael D. Ford

cc: Kimberly Newman, Town Manager
Select Board
John Jannell, Conservation Administrator ✓
Karl Oakes, Esq.