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VIA E-MAIL

September 12, 2026

Heather M. H. Goldstone, Chair
Falmouth Select Board
59 Town Hall Square
Falmouth, MA 02540

RE: Article 97 Status of 0 West Falmouth Highway

Dear Ms. Goldstone and Members of the Select Board:

This Firm represents Ed Hughes, Susan Hughes, Robin Rustad, and Eric Hryniewicz, each a resident of the Town of Falmouth, Massachusetts.¹ They assert that the parcels 26 04 057A 001 and 26 04 062A 000, identified as 0 West Falmouth Highway (the “Property”), are to be preserved as conservation land under Article 97 of the Amendments to the Massachusetts Constitution (“Article 97”).

Article 97 states that:

[t]he people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

¹ Ed Hughes and Susan Hughes live at 35 Bowerman’s Lane, Falmouth, MA 02540; Robin Rustad and Eric Hryniewicz live at 243 West Falmouth Highway, Falmouth, MA 02540.

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Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court.

Mass. Const. art. XCVII. Forestation is a land use that is specifically protected under this Article 97. Such land must be specifically obtained by a municipality for such conservation purposes.

The Town obtained the portion of the Property identified with parcel ID 26 04 057A 001 by purchase authorized at a Town Meeting in 1931, particularly for the purpose of forestation. We understand also that the Town has held the portion of the Property identified with parcel ID 26 04 062A 000 as “Town Forest” since its acquisition.

Article 97 requires a parcel-by-parcel analysis, and the fate of one, adjacent parcel does not indicate the fate of another.² Route 28 in Falmouth was planned, designed, funded by the Legislature, bought (taken by eminent domain), and built in the late 1950s. However, this development did not determine the Article 97 fate of the Property, which remained a “pocket forest”, utilized by the public for such conservation purposes.

Further, acts of the municipality or Legislature that predate the passage of Article 97, which a party claims take land out of Article 97 protection, must still be evaluated under the prior public use doctrine. The prior public use doctrine does not require a two-thirds vote of the Legislature but otherwise requires an analysis very similar to the examination required under Article 97, albeit with a majority vote.³

The Falmouth Housing Trust (the “Housing Trust”) argues that the Town’s use of the Property changed decades ago. However, the use of the Property for forestation, a use protected under both the prior public use doctrine and Article 97, was never specifically terminated by a majority vote of the Legislature.

There has been no specific transfer of the Property for a non-forest purpose. In *Emerald Necklace Conservancy*, the Supreme Judicial Court took the view that both of the state legislative acts in that case, when taken together, indicated a specific transfer of the White Stadium lot from parkland to a non-specific school purpose.⁴

The Property, while not specifically transferred to the Town of Falmouth Conservation Commission (the “Conservation Commission”) for an Article 97 purpose in November 2025, as the Housing Trust argues, was never transferred to or held by the Select Board specifically for a

² See *Emerald Necklace Conservancy, Inc. v. City of Bos.*, 498 Mass. 183 (2026) (finding that the park surrounding the Stadium parcel, Franklin Park, is deemed to still retain Article 97 status).

³ *Id.* at 196.

⁴ See *id.* (finding that one Act indicated the municipality’s authorization to transfer land to The White Fund for non-specific purposes, while the other Act specifically identified the disputed lot for such purposes).

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non-Article 97 purpose. The November 2025 Falmouth Town Meeting (the “Town Meeting”) never enacted such a change.

Indeed, the process followed in that Town Meeting indicates that the land is currently held as Article 97 forest land, as the Town Meeting Members notes that the Article to transfer the Property to the Conservation Commission failed as a result of not receiving two-thirds votes in favor of such transfer, a supermajority only required for specific acts of the Legislature, notably the transfer of Article 97 land.

With these facts in mind, a transfer of the Property to the Conservation Commission would make the current status of the Property clear – it is to be held for conservation purposes. Such transfer would not, from a legal standpoint, change much as compared to the Property’s current protections, as it was acquired for and subsequently maintained as forest land.

In summary, the Property is already protected at present as conservation land, as forest land, under Article 97. The transfer of care and control of the Property to the Conservation Commission will not change this status. It is an appropriate delegation of such control.

Sincerely,



Taylor Donahoe

Gregor I. McGregor

Cc: Colin W. Reed, Vice Chair and Clerk of the Select Board
Douglas C. Brown, Board Member of the Select Board
Robert P. Mascali, Board Member of the Select Board
Elizabeth Klein, Board Member of the Select Board
Maura O'Keefe, Town Counsel
Laura M. Moynihan, Executive Director of the Falmouth Housing Trust