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MICHAEL D. FORD
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Memorandum

To: John Jannell, Conservation Administrator
Cc: Kimberly Newman, Town Manager
From: Michael D. Ford Town Counsel
Date: March 28, 2024
Re: Kent's Point Petition

You advise that a petition has been sent to the Select Board and the Conservation Commission asking to limit the use of Kents Point by way of sticker parking (residents/taxpayers only). You have asked whether there has been any change in the law that would change my 2015 Kents Point opinion and to detail the steps the Conservation Commission would need to take to restrict access to the Kents Point Conservation Area. Upon review, I did not find any changes in the law that would require a change to the 2015 opinion.

The deed from Charlotte Kent conveyed the property to the Town of Orleans, acting through its conservation commission, under G.L. c. 40, §8C, IN TRUST ... "upon the express **public** trust by the grantee for open-space-conservation purposes (including the use of the land for a Town shellfish laboratory and a lease back to the grantor). When a grant of a parcel of land is impressed with a charitable trust, the grantor expresses an intent in plain words to create a trust in perpetuity in the subject parcel. Clearly, the Kents Point property is subject to an express public trust and can only be used for open, space and conservation purposes. The Town has incorporated the right of the public to use the Kents Point Management Plan.

It is not clear if the authority of the Commission to manage and control property under its jurisdiction includes the right to discriminate against non-residents. Further the Commission should be mindful that in the Agreement for Judgment in Barnstable Superior Court Case No. 95-420, the Town's right to allow the **public** to use Frost Fish Lane is acknowledged. The limit on use of the property was set in the Judgment by limiting the size of the parking area to 20 spaces. The question to be addressed is how a resident sticker requirement relates to management and control of conservation land. There would need to be a rational basis related to management in order to limit access to residents only. As noted in the 2015 opinion, it is possible that discrimination based on residency could be challenged as unconstitutional even with Town Meeting approval.

In order to proceed with any resident sticker plan, the Conservation Commission would need to consider the matter at public hearings and make detailed findings on the need to adopt a resident sticker requirement for the protection of the Kents Point Conservation Area. As part of this process the Kents Point Management Plan would also have to be reviewed and amended since it is referenced in the Judgment. Select Board and Town Meeting would follow any such amendment to the Management Plan.