

# WEST FALMOUTH VILLAGE ASSOCIATION

COMMUNITY ADVOCACY GROUP

January 21, 2026

Dear Falmouth Select Board and Town Manager,

The West Falmouth Village Association (WFVA) respectfully requests that the Select Board cancel the Request for Proposals (RFP) for the proposed development at 0 West Falmouth Highway.

In its effort to increase affordable housing opportunities, the Select Board recommended approval of Warrant Article 19 at the November 18, 2024 Town Meeting, authorizing the conveyance of all or a portion of two parcels at 0 West Falmouth Highway for that purpose. WFVA believes that insufficient due diligence was undertaken prior to advancing this article, particularly with respect to legal, safety, and historic considerations.

## Legal Considerations

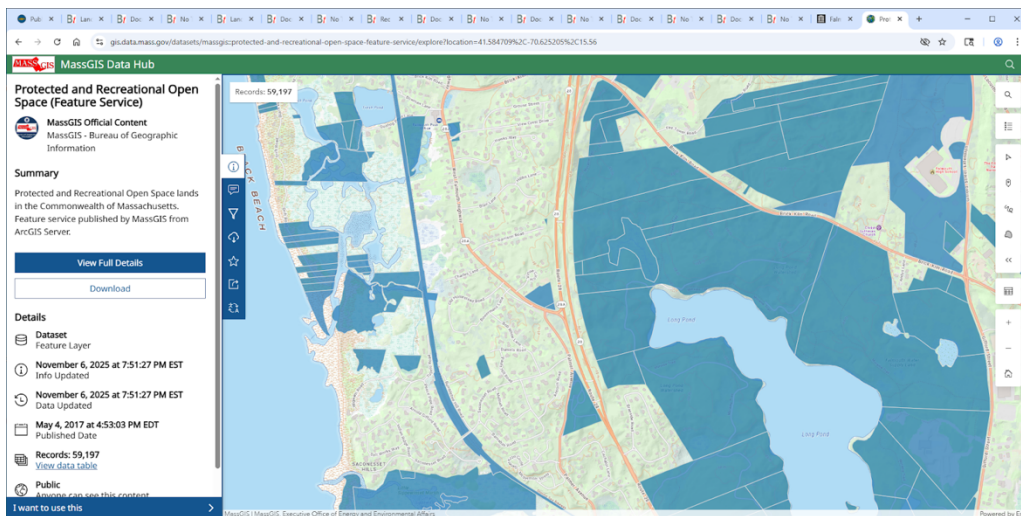
WFVA believes that the land at 0 West Falmouth Highway is likely already protected from development under Article 97 of the Massachusetts Constitution, approved by voters in 1972.

“Article 97 of the Amendments to the Massachusetts Constitution (Art. 97) establishes a right to a clean environment including its natural, scenic, historical, and aesthetic qualities for the citizens of the Commonwealth. Art. 97 also declares the conservation of natural resources a public purpose and provides that land or easements subject to Art. 97 shall not be used for other purposes or disposed of without a two-thirds roll call vote of the Legislature.” <https://www.mass.gov/info-details/article-97-an-act-preserving-open-space-in-the-commonwealth-mgl-c-3-ss-5a>

In *Smith v. City of Westfield* (2017), the Massachusetts Supreme Judicial Court (SJC) ruled that land may be protected by Article 97 even in the absence of a recorded deed restriction, provided the land was clearly dedicated to a specific protected purpose. More recently, in *Carroll v. Select Board of Norwell* (2024), the SJC reaffirmed that a “totality of the circumstances” test governs whether municipal land was “held for a specific purpose” sufficient to trigger Article 97 protections.

The circumstances surrounding the Town’s acquisition of 0 West Falmouth Highway strongly support the conclusion that the land meets this standard. It’s purchase was directed by Town Meeting following recommendations from a Town-created committee of water commissioners and forestry officials – The Committee on the Protection of the Long Pond Watershed-and approved at the February 1931 Town Meeting (Articles 70 and 71). Therefore, this land was acquired expressly for water preservation and forestation. It has since been held for that specific purpose and is consistently identified in state, Town, and nonprofit maps as protected public open space.

As further evidence that this land falls under Article 97 protection, please see the MassGIS database map of “protected open space lands in the state of Massachusetts.”



Town Counsel has indicated that this parcel was a “taking.” WFVA has found no evidence to support that conclusion. To the contrary, there is documentation indicating that parcel ID 26-04-057A-001 (2.56± acres) was *not* taken when State Route 28 was constructed. The Commonwealth took strips of land running north to south along the highway corridor while leaving the remaining land in the possession of the original owners. Please see the attached Commonwealth of Massachusetts Department of Public Works Layout No. 4795 and Order of Taking dated February 24, 1959, recorded at Book 1032, Page 20, Barnstable County Registry of Deeds on March 7, 1959.

## Safety Considerations

WFVA continues to have serious and unresolved safety concerns regarding any development at 0 West Falmouth Highway. These concerns were outlined in our July 27, 2025 letter to the Select Board. Although the Board elected to proceed with the RFP process, the underlying safety conditions remain unchanged. We summarize the key issues again here for the record.

Two months after the passage of Warrant Article 19, the Commonwealth conducted a Road Safety Audit of Route 28A from the Otis Rotary to its intersection with Route 28 in West Falmouth. The audit report, dated July 25, 2025, specifically identifies safety concerns at the precise location of 0 West Falmouth Highway:

“the participants expressed concerns about driver behavior and the effectiveness of existing traffic controls, leading to high-speed vehicle movements, particularly the vehicles exiting Route 28 southbound directly onto West Falmouth Highway. They noted that the location’s proximity to Route 28 limits driver reaction time and increases the risk of conflicts.”

Critically, there is no viable egress from the parcels at 0 West Falmouth Highway via Virtue Circle onto Route 28A. Any access from the site would be forced directly onto this already hazardous stretch of roadway. Placing housing on this parcel would likely exacerbate MassDOT-identified safety risks and could complicate or preclude future roadway safety remediation.

Traffic volumes along this corridor are substantial, serving vehicles traveling to and from West Falmouth, Sippewissett, Quissett, and Woods Hole. The Road Safety Audit documented “multiple near misses” between vehicles exiting Palmer Avenue and those entering from the Route 28 southbound off-ramp, as well as two recorded crashes—one angle crash (Crash #56) and one rear-end crash (Crash #17).

Since the audit, additional crashes have occurred, including one in late August, another at midday on November 9, and yet another on November 13—coinciding with precinct meetings where the dangers of development at this location were being discussed.

Beyond vehicular traffic, serious consideration must also be given to increased pedestrian activity, including school bus traffic, at a location with no sidewalks and already identified by the Commonwealth as posing significant safety risks.

### **Historical Considerations**

The historical significance of this land cannot be overstated. It is among the first settled land in Town, marks the entrance to the West Falmouth Historic District, contains a historic stone wall, has been public Town land for nearly 95 years, and provides an essential green buffer between a historic neighborhood and a high-speed state highway. This historic significance is clearly identified in Town maps and warrants additional protection.

### **Town Meeting Considerations**

It was clear to WFVA Board members present at the November Town Meeting that a majority of Town Meeting Members were questioning their prior vote on this matter. We believe the article proposing transfer of the land to the Conservation Commission would have passed had comments made by Town Counsel not resulted in town meeting members questioning the ability to rework the dangerous intersection.

Please see the Town Meeting recording at 4:53, where Town Counsel stated:

*“If this article passes, there is a complicated pathway forward to transferring to the conservation commission anyway. If ConComm does take control and custody of this property, it would make it very difficult to change the layout of that intersection because the land would immediately fall under the protection of Article 97 which prohibits construction and activity unless you fulfill certain obligations with the State.”*

Numerous Town Meeting Members subsequently expressed regret and concern, including:

*Vicki Lowell, Precinct 1 (4:51) said, “when this came up at the town meeting it was late like this so you don’t always get the best consideration and I decided not to speak. This was a package of 4 parcels that was being considered for affordable housing. Having lived in Sippewissett for 50 years, that intersection should actually at some point be redesigned. It’s so different from all the other exits in Falmouth and there’s no slope. You immediately have to slow down. I just think having housing so close to it is not a good idea. Also we should have the foresight to let it lie in case at some point they do decide to upgrade that exit. The housing would be interfering with it. So this raises a question...if we put it under conservation, would it be very difficult to then approve it for exit improvement? I should have spoken against it at the April Town Meeting, but again it was after 11 and everyone wanted to go home. I hope when you get the RFP, you don’t actually have to accept it. I just think it would be very wise for the town not to develop this. It’s just 2 acres. A little peninsula between 28A and route 28. Cars are going very fast along there.”*

*Rich Lattimer, Precinct 1 (4:54) said, “We voted for this last Town Meeting for affordable housing. But, we weren’t told that it was originally actually taken for conservation land. We weren’t told that. We were told it was for a tax taking. Now the gentlemen has documented that it was taken for conservation land. So, I think we voted in error when we voted for it for affordable housing. The gentlemen has also given us additional reasons why it should not be affordable housing given the traffic situation where there’s been 3 accidents in this location within*

*the past year. We don't want to be adding traffic to this location. I would suggest that we pass this article. Thank you."*

*Catrina Nevin, Precinct 6 (4:57) said, "If we are talking about precedent, it would seem to me that the town purchasing the land for conservation in 1931 takes precedence over last April. And we are people who make mistakes and it's possible that we would like to change our minds. Mr. Moderator would it be possible to rescind our previous vote which would then return the land exactly to the state it was before?"*

*Mark Finneran, Precinct 2 (5:00) said, "It seems that they've made a pretty good case that a mistake was made here. Would it be possible to amend this article to leave a sufficient amount in case they do decide to improve the road for safety reasons?"*

*Joe Netto, Precinct 9 (5:01) said, "You make decisions based on facts. And I think last year as Eric pointed out it was late and we didn't have all the facts. I wholeheartedly support this article after listening to the proponents argument."*

The article failed by only four votes, with additional members having already left due to the late hour. It is clear that opinions shifted as new facts were presented. Notably, Select Board member Mr. Richardson publicly changed his position as a private citizen on the Town Meeting floor in light of this information.

The Town Meeting process, and Town Meeting Members themselves, deserve respect. They should be afforded the opportunity to consider facts that were not fully understood when Article 19 was approved on November 18, 2024.

WFVA strongly believes it would be a mistake to wait for RFP submissions before reassessing this matter. Doing so is unfair to potential bidders and places the Town at risk should a compliant proposal be submitted. The RFP explicitly states that the Town Manager "reserves the right to accept or reject any and all proposals" and that "The Town may cancel this RFP, in its entirety or in part, if it is in the best interest of the Town."

It is our firm belief that cancelling the RFP NOW is in the Town's best interest. Failure to do so risks erosion of public trust in the Town Manager, Select Board, Town Counsel, Town Planner, and others who are working diligently and admirably on behalf of the Town.

Thank you for your serious consideration of these matters.

Sincerely,

Jim Gray, President

Tammy Gilbert, Secretary

On behalf of the West Falmouth Village Association Board of Directors