

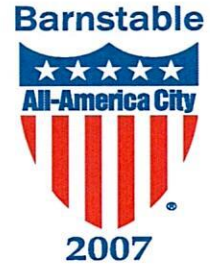


# The Town of Barnstable

## Office of Town Manager

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Mark S. Ells, Town Manager

M. Andrew Clyburn, Assistant Town Manager

April 14, 2023

**BY ELECTRONIC MAIL ONLY: [plpa@mass.gov](mailto:plpa@mass.gov)**

Rebecca Tepper, Secretary of Energy and Environmental Affairs  
Executive Office of Energy and Environmental Affairs  
100 Cambridge St., 9th Floor  
Boston, MA 02114

**Re: Notice pursuant to M.G.L. c. 3, § 5A, the Public Lands Preservation Act (“PLPA”) of the Town of Barnstable’s petition for special legislation authorizing a change of use of 5,803 square feet land within Mother’s Park, Barnstable, Massachusetts (“Mother’s Park”) and the addition of 9,288 square feet of replacement land to Mother’s Park, to result in a net increase the park area by 3,485 square feet of area**

Dear Secretary Tepper:

Pursuant to Chapter 274 of the Acts of 2022, codified at M.G.L. c. 3, § 5A, the Public Lands Preservation Act (“PLPA”) the Town of Barnstable (“Town” or “Barnstable”) is notifying you of its intent to submit the enclosed petition for a special act to the General Court for approval pursuant to the provisions of Article XCVII of the Constitution of the Commonwealth (“Article 97”).

The proposed Article 97 legislation would allow the change of use of 5,803 square feet of land within Mother’s Park, an approximately 31,369 square foot Town recreational area that rests within a triangular section of land bounded to the north by Phinney’s Lane, to the east by Mother’s Park Road (a discontinued county way), and to the west by North Main Street in Barnstable. Mother’s Park was bequeathed to the Town in 1924 by Howard Marston, whose will specified that it would be dedicated as parkland.

The enclosed Article 97 special act seeks authorization for the Town to use 5,803 square feet of land within Mother’s Park to reconfigure the intersection of Phinney’s Lane and North Main Street, while adding approximately 9,288 square feet of replacement land to Mother’s Park, thus increasing the area of the park by approximately 3,485 square feet. The Town concurrently will petition the Supreme Judicial Court or Barnstable Probate Court seeking an order for partial

deviation or *cy pres* pursuant to M.G.L. c. 214, § 10B, to allow the Town to change the park boundaries.

Simultaneously, the Town will construct a sewer pumping station within a portion of the adjacent discontinued Mother's Park Road. The planned sewer pumping station, one of six to be constructed as part of the Clean Water State Revolving Fund Project ID number 7305 (which project is a portion of Phase 1 of the Town's 30-year Comprehensive Wastewater Management Plan), does not require the use of any park land.<sup>1</sup> However, the proposed change of use of a portion of park land is integral to the construction of the sewer pumping station in Mother's Park Road, as the discontinuance of Mother's Park Road would eliminate that road as an alternative route, thereby forcing travelers to navigate the intersection of Phinney's Lane and North Main Street. That intersection has long been an identified safety concern due to its irregular geometry and poor sight lines. With the discontinuance of Mother's Park Road, the need to reconfigure that intersection to make it safer for those who travel on those roads, including those who may travel on those roads to use Mother's Park, becomes critically important – so important that if the park land cannot be used to make the necessary safety improvements to that intersection, the Town would have to pursue options to locate the sewer pumping station elsewhere. Due to technical considerations, however, there are very limited options for siting the sewer pumping station elsewhere, and the decision to locate it in Mother's Park Road was made after a significant public process in which the Town sought and received public input and consensus.

The Town is enclosing the following for your review:

1. Proposed Article 97 special act;
2. Alternatives analysis and documentation of its posting on the Town website;
3. Plan showing 5,803 square feet of land within Mother's Park to be used to reconfigure the intersection of Phinney's Lane and North Main Street and 9,288 square feet of land to be added to Mother's Park as replacement land, i.e., the "new park plan";
4. Appraisal report dated March 2, 2023 providing valuation of land for which a change of use is sought and for replacement land to be added to Mother's Park;
5. March 28, 2023 unanimous vote of the Town Conservation Commission finding that the Article 97 land is surplus to municipal, conservation and open space needs, in accordance with EEA's 1998 Article 97 Land Disposition Policy ("1998 Policy");
6. Proposed Order of Discontinuance of Mother's Park Road by Town of Barnstable and plan, to be voted by the Barnstable Town Council April 27, 2023 (Town Council Item 2023-132);

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<sup>1</sup> The selection of the site for the sewer pumping station within Mother's Park Road came after significant and prolonged negative public reaction to the Town's original plan to place this pump station on Town-owned land at 310 Main Street, Centerville, in late 2019.

7. Proposed of Order of Taking for abutters' interests in Mother's Park Road and plan, to be voted by the Barnstable Town Council April 27, 2023 (Town Council Item 2023-133).

The following will be promptly provided to you once they are available:

1. As-recorded copy of Order of Discontinuance of Mother's Park Road by Town of Barnstable, together with recorded plan;
2. As-recorded copy of Order of Taking for abutters' interests in Mother's Park Road, together with recorded plan;
3. Barnstable Town Council vote approving the change in use and authorizing the Article 97 petition to the Legislature; and
4. a copy of any necessary MEPA filing.

**Background.** By its vote on December 21, 2022, the Barnstable County Commissioners voted pursuant to M.G.L. c. 82, § 5 to discontinue a section of county highway, namely, Mother's Park Road, as described in the Commissioners' January 9, 1912 taking No. 642 of Phinney's Lane and North Main Street and Mother's Park Road in Barnstable. Upon recordation of the Commissioners' order with the Barnstable County Registry of Deeds in Book 35649, Page 168 on February 23, 2023, ownership of the fee in Mother's Park Road devolved to the Town free of the County's interest.

On April 27, 2023, the Barnstable Town Council will vote whether to discontinue and abandon the Town's interest in Mother's Park Road. Upon recordation of the Town's discontinuance order, the fee interest in Mother's Park Road will devolve to the abutters to the way to the center line of the way. In a contemporaneous vote at its April 27, 2023, meeting, the Town Council will vote whether to authorize a taking of the fee of the abutters' interests in the discontinued Town way and to appropriate funds for such taking.

On April 27, 2023, the Barnstable Town Council will also vote whether to authorize the enclosed Article 97 petition to the Legislature requesting a change in use of a portion of Mother's Park. The Town Council agenda will be posted in accordance with the requirements of the state Open Meeting Law no later than April 25, 2023, and will be available to the public on the Town's website.

**Proposed Article 97 Action and public purpose that it will serve.** Upon recordation of the Town's order of taking in the Barnstable Registry of Deeds, the Town will hold title to 18,151 square feet of land contiguous to Mother's Park. Of this, the Town intends to hold 8,863 square feet of land for general municipal purposes. The remaining 9,288 square feet of land would be held for park purposes in perpetuity, an area that would be 3,485 square feet greater than that used to realign the intersection. In addition, crosswalks and sidewalk extensions will be added to accommodate pedestrian access from existing sidewalks on Phinney's Lane to the park.

**Value of replacement land.** As documented in the enclosed March 2, 2023 appraisal report, the 5,803 square feet of Mother's Park land to be used for the roadway intersection

realignment is valued at \$12,300.00 and the 9,288 square feet of land to be added to the park is valued at \$19,700.00. As required by M.G.L. c. 3, § 5A (a)(i)(B), the replacement land is of equal or greater acreage – in this case, greater acreage (as shown on the enclosed new park plan). The replacement land is of greater monetary value than the land for which a change of use is contemplated, as determined by an appraisal of the fair market value or value in use. Because the replacement land abuts Mother’s Park Road, it is in a comparable location. As required by the PLPA, the land added to Mother’s Park will be dedicated in perpetuity for Article 97 purposes.

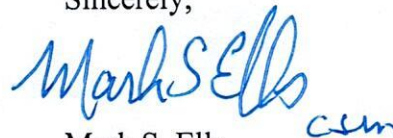
**Alternatives analysis demonstrating that all other options to avoid or minimize the Article 97 Action have been explored and no feasible or substantially equivalent alternative exists.** In accordance with M.G.L. c. 3, § 5A (a)(i)(A), the alternatives analysis conducted by the Town, along with a description of the project and the replacement land, will be posted on the Town website shortly, inviting public comment, and will be included in the Town Council agenda for the April 27, 2023 meeting. We will confirm the posting with you.

**Conclusion:** As demonstrated, the Town’s proposed change of use of Article 97 land satisfies the requirements of the PLPA and the 1998 Policy because the Town has identified 9,288 square feet of replacement land not already subject to Article 97 within the discontinued Mother’s Park Road to offset the 5,803 square feet of land within Mother’s Park to be used for the reconfiguration of the intersection. The replacement land is in a comparable location because it is contiguous to the existing park. The replacement land further satisfies the requirements of M.G.L. c. 3, § 5A because it is of equal natural resource value as the park land for which change of use is sought, is of greater acreage than the park land for which change of use is sought, and is of equal or greater monetary value to the land to be replaced. The replacement land will be added to and become part of Mother’s Park and will be dedicated in perpetuity for Article 97 purposes, i.e., as park land.

If you believe any changes are needed to the enclosed Article 97 petition, please let us know, if possible, by April 24, 2023, so that we may make any necessary changes prior to the date on which the April 27, 2023 agenda must be posted in accordance with the Open Meeting Law.

If there is any additional information you need, or if you would like to discuss this further, please do not hesitate to contact Town Attorney Karen L. Nober or Senior Counsel Charles McLaughlin at (508) 862-4620 or by email at [karen.nober@town.barnstable.ma.us](mailto:karen.nober@town.barnstable.ma.us) or [charles.mclaughlin@town.barnstable.ma.us](mailto:charles.mclaughlin@town.barnstable.ma.us). Thank you for your attention to this important matter.

Sincerely,



Mark S. Ells  
Town Manager

cc: Senator Julian Cyr (by electronic mail only) [julian.cyr@masenate.gov](mailto:julian.cyr@masenate.gov)  
Representative Kip A. Diggs (by electronic mail only) [Kip.Diggs@mahouse.gov](mailto:Kip.Diggs@mahouse.gov)  
Daniel Santos, Town Director of Public Works  
Griffin Beaudoin, Town Engineer  
Robert Steen, Town Deputy Director of Public Works