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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
DOCKET NO. 2581CV1914

CHARLES TEAGUE & others,¹

Plaintiffs

v.

CITY OF CAMBRIDGE,

Defendant

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

The parties are before the court on the Plaintiffs' Motion for a Preliminary Injunction and Temporary Restraining Order. The court held a hearing on August 25, 2025. The Plaintiffs have submitted approximately 400 pages of exhibits. The Defendant has submitted six affidavits as exhibits.

Upon consideration of the pleadings, arguments, exhibits, and appropriate legal standards as discussed herein, the Plaintiffs' Motion for a Preliminary Injunction and Temporary Restraining Order is **DENIED**.

BACKGROUND

In the 1980's the Massachusetts Bay Transit Authority (MBTA) extended its heavy rail Red Line subway train tracks from Harvard Square to Alewife Brook Parkway in the City of Cambridge (Cambridge). This Red Line expansion ran the subway from Harvard Square in Cambridge, through Porter Square, and through Davis Square in the City of Somerville

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(Somerville), ending in Alewife station in Cambridge. The Red Line expansion was funded by the Urban Mass Transportation Administration (UMTA) of the United States Department of Transportation. The train tracks were placed in underground tunnels. The MBTA determined that the surface of its right-of-way above the train tracks (the Property) should be available for passive uses by Cambridge and Somerville.

Establishment of Linear Park

In 1982-1983 plans were created for a park on the Property. The MBTA, with funding from UMTA, hired the landscape architectural firm Wallace Floyd Associates to design a park. Cambridge was consulted during the design phase, and the plans called for a pedestrian and bicycle pathway, seating, sodding, and lighting.

On April 2, 1984, the MBTA and Cambridge entered into an Agreement (Easement Agreement) pertaining to the Property. The Easement Agreement granted Cambridge a permanent surface easement on the Property to be used as "a walkway for pedestrians and bicyclists." In the Easement Agreement, the MBTA agreed to pay for design services and construction within the Property. Cambridge agreed to provide security and maintain the Property, including snow removal and road repairs necessary to maintain the Property as an emergency access / egress route. The Easement Agreement also mandated, "no vehicles shall be permitted on the Property other than emergency vehicles or vehicles required for the maintenance, repair, or reconstruction of the Property and MBTA facilities in and under the Property." The surface land subject to the Easement Agreement between Davis Square and Alewife MBTA stations was named Linear Park.

On October 17, 1985, Massachusetts Governor Michael Dukakis, Massachusetts Secretary of Transportation Frederick Salvucci, General Manager of the MBTA James O'Leary, Mayor of Cambridge Francis Duchay, and Mayor of Somerville Eugene Brune dedicated Linear

Park to Cambridge and Somerville for the enjoyment of their citizens. A bronze plaque was erected in Linear Park memorializing the dedication. In 1986, Linear Park won the Governor's Design Award.

On December 20, 1985, the MBTA bestowed a "Grant of Easement (Linear Park)" to Somerville relating to surface land above MBTA Red Line train tracks in Somerville. Like the previous Easement Agreement in Cambridge, the Grant of Easement to Somerville established that the Somerville property be used as "public open space by pedestrians and bicyclists," and that "no motor vehicles shall be permitted on the Property other than emergency vehicles or vehicles required for the maintenance, repair or reconstruction of the property and MBTA facilities in or under the Property." This Somerville Grant of Easement was recorded with the Registry of Deeds on September 11, 1987.

Historic Uses of Linear Park

Since its opening in 1985, Linear Park has contained a multi-use pathway to allow pedestrians and cyclists to travel and commute through Linear Park.

In 1989, Linear Park was presented with the Boston Society of Landscape Architects Merit Award for Park, Recreation and Open Space Design. In 1990, the Boston Horticultural Society gave Linear Park a Citation of Design, and in 2016, the Boston Society of Landscape Architects gave Linear Park the Landmark Award.

In 2018, Somerville reconstructed portions of Linear Park. This included maintaining granite bollards shielding pedestrian entrances to Linear Park.

The Cambridge portion of Linear Park at issue in this case consistently has been zoned as an Open Space district under Cambridge's Zoning ordinance.

The Project

By 2021, the existing paved pathway surface in Linear Park had deteriorated. The pathway, originally paved around 1985, had become uneven and difficult to traverse in places. The irrigation system to water Linear Park's trees and grass had become inoperable. The pathway and Linear Park suffered from poor drainage resulting in the pooling of water and ice that were dangerous to pedestrians and cyclists. The light poles were old and provided poor illumination to Linear Park, generating safety concerns. The 10-foot width of the pathway provided bicyclists and pedestrians limited space to pass or maneuver.

On November 15, 2021, Cambridge entered into an Agreement with HDR Engineering Inc. (HDR Contract) for work on two separate off-road open space and pathway projects. The HDR Contract was based on HDR's scope of work plan, which outlined two tasks. Task 1 was the construction of a new multi-use connector path along an abandoned Watertown Branch railroad right-of-way to be called the Danehy Connector Path. Task 2 was the rehabilitation and redesign of Linear Park, the Project at issue in this lawsuit. Cambridge referred to this as a "re-imagined Linear Path."

Cambridge engaged in a two-and-a-half-year design process for Linear Park. In developing the Project, Cambridge engaged in public outreach that included conducting user surveys, holding in-person public events, and holding online remote and in-person meetings on the proposals. Cambridge received hundreds of survey responses and suggestions, feedback which was taken into account in developing the scope of the Project's design goals.

The HDR scope of work for Task 2, Linear Park, involved widening the existing paved pathway, creating additional gravel pedestrian walkways in certain places, new lighting systems, a new irrigation system, the installation of emergency call boxes, landscape plantings, the

planting of over 100 new trees, stormwater and green infrastructure, the placement of public art, and the incorporation of “elements of play and playfulness for all ages while ensuring pathway requirements are met.”

Specific to the Linear Park pathway, the Project entails an expansion of the existing paved bicycle and pedestrian pathway. The Project increases the width of the existing paved pathway from ten and half feet to fourteen feet. Additionally, the Project calls for two two-foot shoulders along the paved pathway consisting of stabilized stone dust on a compacted gravel base.

Cambridge engaged in a community vetting process which included public outreach, public meetings, stakeholder meetings, agency coordination with the MBTA and the Cambridge Committee on Public Plantings, and meetings between the Bicycle, Pedestrian, and Transit Committees. Work on the Project was scheduled to begin in August 2025. On August 6, 2025, the Plaintiffs filed their Verified Complaint, and on August 13, 2025, the Plaintiffs filed the instant motion.

DISCUSSION

The Plaintiffs’ Verified Complaint consists of six counts. In Count I (Non-Compliance with Article 97 and the Massachusetts Open Space Act), the Plaintiffs request that the court determine that Linear Park is subject to Article 97 and the Open Space Act, and therefore the Project cannot proceed absent compliance with such processes. In Count II (Non-Compliance with the Massachusetts Oil and Hazardous Material Release Prevention and Response Act), the Plaintiffs request the court determine that the Project requires compliance with G. L. c. 21E and the Activity and Use Limitation (AUL) issued for the former W.R. Grace site, and the Project cannot proceed absent same. In Count III (Declaratory Judgment), the Plaintiffs request that the

court determine that the Project requires a use variance from the Cambridge Board of Zoning Appeal (BZA) before it can proceed. In Count IV (Immediate and Irreparable Damage to the Environment), the Plaintiffs request the court determine that damage to the environment is imminent should the Project proceed, and they ask the court to issue a temporary restraining order and preliminary injunction to prevent the Project from proceeding. In Count V (Ten Taxpayer Action), the Plaintiffs bring action under G. L. c. 40, § 53 and request that the court order the City to stop all expenditure of taxpayer funds on the Project. In Count VI (Mandamus), the Plaintiffs request that the court issue a writ of mandamus obligating the City to act in accordance with applicable law.

To obtain a preliminary injunction, the moving party must show: (1) a likelihood of success on the merits of its claim; and (2) that it will suffer irreparable harm if a preliminary injunction does not issue. *Packaging Indus. Grp., Inc. v. Cheney*, 380 Mass. 609, 616-617 (1980). If the moving party satisfies this burden, the court must then balance the risk of irreparable harm to the moving party against any similar risk of irreparable harm to the opposing party created by granting the injunction. *Id.* at 617. “In the context of a preliminary injunction the only rights which may be irreparably lost are those not capable of vindication by a final judgment, rendered either at law or in equity.” *Id.* at 617 n.11.

The Plaintiffs have failed to meet their burden.

I. LIKELIHOOD OF SUCCESS ON THE MERITS

“The movant’s likelihood of success is the touchstone of the preliminary injunction inquiry. If the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity.” *Foster v. Commissioner of Corr.*, 488 Mass. 643, 651 (2021) (quotation omitted).

The Plaintiffs argue that the Project impermissibly converts Linear Park into a “multi-modal transportation corridor” that exceeds the scope of the Easement Agreement. Specifically, the Plaintiffs allege that the Project, which would widen the bicycle path by three-and-a-half feet, add two-foot gravel side paths for pedestrians, and add lights and safety boxes, would encourage a larger volume of bicycle traffic and enable a variety of motor vehicles to use the pathway. The Plaintiffs also argue that the Project will result in tree loss and canopy reduction. The Plaintiffs assert the Project will damage the existing mature trees in Linear Park because the excavation, repaving, and increased width of the pathway will encroach on trees’ root zones weakening them. The Plaintiffs allege the Project calls for mature trees to be cut down.

Cambridge argues that the rehabilitation of Linear Park’s pathway, which is currently in disrepair, is necessary both for safety and the environment. Cambridge asserts the Project will not alter the nature of Linear Park nor violate the terms of the Easement Agreement. Cambridge asserts the Project will support, not threaten, urban forestry and climate resilience in Linear Park. Cambridge rejects the Plaintiffs’ argument that the purpose of the Project is to transform Linear Park into a “multi-modal transportation corridor.” Cambridge asserts that, pursuant to the terms of the Easement Agreement, motor vehicles will not be permitted in Linear Park unless for emergencies or other exceptions delineated in the Easement Agreement. Cambridge asserts that no mature trees will be removed during the Project, and instead over 100 new trees will be planted and new irrigation and drainage systems will be installed.

A. Terms of the Project

The gravamen of the Plaintiffs’ claims is that the Project impermissibly converts Linear Park into a “multi-modal transportation corridor.” This allegation, however, is refuted by the terms of the Project, which focus on creating safe spaces for pedestrians and bicyclists and

safeguarding green space protected by climate readiness measures.

Objective to Increase Sustainable Transportation

Providing opportunities for safe bicycle travel has been a priority in recent years for Cambridge. This is one objective underpinning the rehabilitation of Linear Park, but it is also the objective of various bicycle use and pathway projects currently underway across Cambridge. Cambridge, in its 2023 Fiscal Year budget, advanced priorities for combatting climate change that included the reduction of greenhouse gases using sustainable transportation. Cambridge set forth as an objective to “plan, advocate for, and implement measures to enhance safety and encourage walking, bicycling, and public transit use by all segments of the population, including children.”

Under the heading of “multimodal street design, safety, and transit access,” the Cambridge FY23 Budget identifies key actions to “improve bicycle mobility,” which include supporting the buildout of a connected network of separated bike facilities, the increased installment of bicycle racks and bicycle shelters at schools and businesses, and supporting safe bicycling through school programming and community classes. The Cambridge FY23 Budget announces the projected launch of a FY26 class on “micromobility, including e-bikes” targeting seniors as an intended audience

As examples for meeting its objectives, the Cambridge FY23 Budget references “a new pedestrian and bicycle path between Fresh Pond and Danehy Park; and a re-imagined Linear Path.” Cambridge also cited as additional examples the advancement of the Grand Junction multi-use path toward final design, the expansion of a Bluebikes system, and the implementation of roadway safety improvements for all modes of transportation. Cambridge asserted that FY23 efforts would include the River Street Reconstruction Project, targeted traffic calming projects,

and bus lane and other bus priority projects.

Comparison of Multi-Use Pathway Projects

The Cambridge FY23 Budget identifies Linear Park currently as “a heavily used corridor for people biking and walking.” The Cambridge FY23 Budget allocates money for “much needed reconstruction [that] will include new drainage, lighting, trees/landscaping, a slightly widened path surface, and possible play space.” The budget allocations as to Linear Park include the pathway rehabilitation and the implementation of park features and environmental infrastructure.

Cambridge identifies other bicycle pathway projects primarily as enabling increased bicycle commuter traffic. The Cambridge FY23 Budget identifies different on-going projects, such as the Grand Junction Path running from Henry Street to Gore Street, as providing “an off-road route to travel through the eastern half of Cambridge and connections to a regional path system.” The Cambridge FY23 Budget cites the construction of the Danehy / New Street Path, running between Fresh Pond and Danehy Park, as creating a “long desired, safe connection between the Rindge Avenue neighborhood, Danehy Park, and retail destinations.” The Danehy Connector Path project includes a pedestrian and bicycle bridge across the Fitchburg commuter rail line.

The Danehy Path project is described in the HDR Contract’s scope of work as a multi-modal connector path. The stated purpose for the Danehy Connector Path is to “enhance multi-modal sustainable transportation in the Alewife / North Cambridge area of the City” and to “continue developing the City’s network of welcoming, safe, and accessible transportation corridors for travelers of all modes.”

The Plaintiffs assert that Cambridge is seeking to turn Linear Park into a “multi-modal

transportation corridor.” The term, “multi-modal transportation corridor,” however, is used by Cambridge in describing the Danehy Connector Path project, not the Linear Park project at issue here. The HDR Contract, which governs the Linear Park Project, does not describe the Project as a multi-modal connector path. Instead, the Project is described as incorporating “elements of play and playfulness for all ages while ensuring pathway requirements are met” and containing “increased opportunities for people to rest and play.”

The HDR scope of work for Linear Park does involve widening the existing paved pathway, and the creation of gravel side paths and walkways. Under the Project, the pedestrian and bicycle path will be widened to fourteen feet “where possible” to better accommodate simultaneous pedestrian and bicyclist travel. The Project also seeks to modify known areas where bicyclists and pedestrians conflict on the pathway to reduce the potential for collisions or injury.

The widening of the Linear Park pathway is consistent with federal safety guidelines and recommendations for safe multimodal travel. The widening of the pathway is in line with Federal Highway Administration and American Association of State Highway Transportation Officials’ recommendations to construct wider pathways, when possible, to accommodate safer passing movements between pedestrians and bicyclists.

Certainly, a wider path with a level surface would be expected to draw increased bicycle traffic. This outcome is consistent with Cambridge’s goal to reduce traffic by improving opportunities for safe bicycle travel. Cambridge wants more bicyclists and fewer cars. Cambridge’s comprehensive plans to achieve this goal target not only workplace commuters, but also students. This includes the Safe Route to School Program that identifies for children and students protected bicycle routes.

Whether the bicycle traffic at certain times in Linear Park is primarily leisure-oriented or commuter-oriented, however, will relate not only to Linear Park's topography but also to its geography – specifically Linear Park's connections to the Minuteman Bikeway, the Somerville Community Path, the Alewife MBTA station, and Massachusetts Avenue. The terms of the Project appear to anticipate both leisure use and commuter use by bicyclists. Contrary to the Plaintiffs' assertion, however, the terms of the Project do not expand the uses to motor vehicles. Nor does the focus of the Project appear to be exclusively commuter bicyclist oriented. The Project highlights Linear Park's connection to Russell, Samp, and Comeau Fields and the Francis McCrehan Memorial Pool. The terms of the Project include needed park upgrades that do not relate exclusively to bicyclists. These include environmental features that address climate change, and art and landscape installation that appear designed to promote leisure use of Linear Park.

The terms of the Project do not support the Plaintiffs' allegations that the Project will impermissibly expand the use of Linear Park beyond pedestrians and bicyclists. The terms of the Easement Agreement do not prohibit commuter bicyclists, and Cambridge's objective to make Linear Park bicyclist-friendly is directly in keeping with the Easement Agreement. Increased use and popularity of Linear Park by pedestrians and bicyclists is a proper objective under the Easement Agreement.

The terms of the Project do not support the Plaintiffs' assertions.

B. Application of Article 97

Plaintiffs argue that Linear Park is state conservation land subject to the protection of Article 97 of the Amendments to the Massachusetts Constitution, and because the Project

converts that parkland into a “multi-modal transportation corridor,” the Project may not proceed without invocation of the art. 97 approval process.

Article 97 provides that “[l]ands and easements taken or acquired” for conservation purposes “shall not be used for other purposes or otherwise disposed of” without the approval of a two-thirds roll call vote of each branch of the Legislature. “[T]he language of art. 97 is ‘relatively imprecise’ and [] its provisions must be interpreted ‘in light of the practical consequences that would result from . . . an expansive application, as well as the ability of a narrower interpretation to serve adequately the stated goals of art. 97.’” *Smith v. City of Westfield*, 478 Mass. 49, 56 (2017), quoting *Mahajan v. Department of Env'tl. Prot.*, 464 Mass. 604, 614-615 (2013).

In determining the action necessary to designate land to protection under art. 97, the Supreme Judicial Court has examined two related common-law doctrines: the dedication of land for public use (the public dedication doctrine) and the doctrine of prior public use. *Id.* at 58, citing *Mahajan*, 464 Mass. at 616.

The public dedication doctrine occurs when privately owned land has areas dedicated to public use, such as roadways subject to the easement of public ways. *Id.* at 58-59. Similarly, “[a] city or town that owns land in its proprietary capacity and uses the land for a park may also dedicate the parkland to the use of the public.” *Id.* at 59. In this circumstance, “[t]he general public for whose benefit a use in the land was established by an owner obtains an interest in the land in the nature of an easement.” *Id.*, citing *Lowell v. Boston*, 322 Mass. 709, 730 (1948) (applying the public dedication doctrine to hold that the City did not possess title to the Boston Common and the Public Garden free from any restriction, because the City plainly dedicated the Common and the Public Garden to the use of the public as public park).

The related doctrine of prior public use dictates that “public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion.” *Id.* at 60, quoting *Robbins v. Department of Pub. Works*, 355 Mass. 328, 330 (1969). The doctrine “is applied more ‘stringently’ where a public agency or municipality seeks to encroach upon a park.” *Id.* at 61, quoting *Robbins*, 355 Mass. at 330. “[P]arkland protected by art. 97 includes land dedicated by municipalities as public parks that, under the prior public use doctrine, cannot be sold or devoted to another public use without plain and explicit legislative authority.” *Id.* at 62. The *Smith* Court held that the language of art. 97, “must be understood in this common-law context.” *Id.* at 61.

The question here is not whether Linear Park is parkland, as Cambridge concedes it is. Instead, the question is whether the Project changes the nature of Linear Park for an inconsistent public use.

Linear Park is used currently by pedestrians and bicyclists, including e-bikes, skateboards, roller skates, and hoverboards, which Cambridge does not consider as “Alternative Vehicles” or “Motor Vehicles,” as described by the Plaintiffs. Mopeds, Vespas, and other gas-powered vehicles are not permitted to be used in Linear Park unless they are emergency, maintenance, or MBTA vehicles permitted under the Easement Agreement.

The Plaintiffs argue that the use of electric bicycles, one-wheels, and hoverboards is an impermissible expansion of the types of use permitted in Linear Park. The definition of motor vehicle, however, does not include these modes of transportation. G. L. c. 90, § 1 (“The definition of ‘Motor vehicles’ shall not include electric bicycles or motorized bicycles”); *Commonwealth v. Hall*, 2025 Mass. App. Unpub. LEXIS 474 at *2 and n.3 (2025) (“A ‘motorized bicycle’ is ‘a pedal bicycle which has a helper motor, or a non-pedal bicycle which

has a motor, with a cylinder capacity not exceeding fifty cubic centimeters, an automatic transmission, and which is capable of a maximum speed of no more than thirty miles per hour”). These types of vehicles are currently used in Linear Park and are not prohibited on multi-use pathways by city ordinance or statute.

As discussed previously, the Project’s widening of the pathway will not change or alter the types of vehicles and modes of transportation permitted on the pathway. The stated goal in the Cambridge FY23 Budget to design with an emphasis on providing comfortable and safe transportation for people of all ages and abilities advances a Linear Park with expanded public access. But there is no proposal within the Project to alter the pathway to allow for alternative transportation uses beyond pedestrian, bicycle, and emergency maintenance vehicular usage. The Plaintiffs’ assertions about increased motor vehicle access or an expansion of uses is without support.

Cambridge has advanced goals for the Project consistent with the Easement Agreement’s requirements that the multi-use pathway be maintained for pedestrian and bicyclist use. The widening of the multi-use pathway to fourteen feet, where possible, is designed to better accommodate simultaneous pedestrian and bicyclist travel. The Project also addresses existing safety concerns by modifying known areas where bicyclists and pedestrians conflict on the path to reduce the potential for collisions or injury and the widening of the pathway to comply with federal guidelines. The widening, repaving, and safety improvements for the multi-use path are consistent with its prior use, and the path will continue to function as a means for pedestrians and bicyclists to commute, travel, and enjoy Linear Park’s urban forestry and amenities.

The Plaintiffs have failed to demonstrate either a violation of the public dedication doctrine or the doctrine of prior public use. Accordingly, the Plaintiffs have no likelihood of success on the merits as to Count I.

C. Compliance with the Massachusetts Oil and Hazardous Material Release Act

The Plaintiffs argue that the Project entails excavation that implicates a property abutting Linear Park that was formerly the site of a W.R. Grace chemical company facility (former W.R. Grace site). The Former W.R. Grace site is now owned by IQHQ, a life sciences real estate development company. The former W.R. Grace site is subject to an Activity and Use Limitation (AUL), which is based on site contaminates. The AUL contains a list of obligations and conditions necessary in the event work within the AUL area is performed. The Plaintiffs assert the Project does not comport with the requirements of G. L. c. 21E, and Cambridge is required to seek prior approval from the Massachusetts Department of Environmental Protection (MassDEP) before any project work may be performed within areas subject to an AUL.

General Laws c. 21E is known as the Massachusetts Oil and Hazardous Material Release Prevention Act. General Laws c. 21E imposes liability for the release of hazardous material on a number of parties, including the owner of the property on which the release occurs, and anyone who caused the release. *Bank v. Thermo Elemental, Inc.*, 451 Mass. 638, 653 (2008), citing G. L. c. 21E, § 5(a). General Laws c. 21E and its implementing regulations, 310 Code Mass. Regs. 40.0000, et seq., have privatized many aspects of site clean-up through the use of Licensed Site Professionals (LSPs).

“LSPs are ‘hazardous waste site cleanup professionals’ authorized to oversee assessment and remediation of hazardous waste under G. L. c. 21E.” *Decoulos v. Board of Registration of Hazardous Waste Site Cleanup Pros.*, 2024 Mass. App. Unpub. LEXIS 732 at *1 (2024) (Rule

23.0 decision), citing G. L. c. 21A, § 19C. The Board of Registration of Hazardous Waste Site Cleanup Professionals licenses and regulates LSPs under G. L. c. 21A, § 19C. *Id.* “The Massachusetts Department of Environmental Protection (MassDEP) oversees site cleanups under G. L. c. 21E, and the implementing regulations known as the Massachusetts Contingency Plan (MCP), 310 Code Mass. Regs. §§ 40.0000 (2014).” *Id.* at *1-2.

The Project does not implicate construction on any AUL sites. Linear Park pathway work is proposed to be performed adjacent to the former W.R. Grace site, but not on the site itself. Cambridge asserts that no work will be performed on any site limited by an AUL, and in addition to the plans in evidence, Cambridge offers the affidavit of its Licensed Site Professional, Eric Henry. Henry is the Principal Geoscientist and a Massachusetts Licensed Site Professional at Kleinfelder with whom Cambridge has a standing contract.

In terms of procedure for working on AUL sites, Henry attests that nothing in G. L. c. 21E or the Code of Massachusetts Regulations require that a Phase I Environmental Site Assessment (ESA) be conducted as a precondition to performing work in an area subject to an AUL. Henry outlines the steps Cambridge would be required to take with an LSP should the scope of the Project include work on an AUL site.

Significantly, Henry also attests that he has reviewed the MassDEP’s Waste Sites database, which identifies the location of sites subject to AUL’s, and no Project work is intended to be conducted in any area subject to an AUL.

The Plaintiff has not demonstrated a likelihood of success on the merits as to Count II.

D. Variance from the Cambridge Board of Zoning Appeal

The Plaintiffs ask the court to determine by way of declaratory judgment that the Project requires a use variance from the Cambridge Board of Zoning Appeal (BZA) before it can proceed.

The Plaintiffs cannot rely on declaratory relief under G. L. c. 231A, § 1, to challenge the validity of official acts without independent standing to sue the town. See *Ten Persons of the Commonwealth v. Fellsway Dev. LLC*, 460 Mass. 366, 380 (2011); *Pratt v. Boston*, 396 Mass. 37, 42-43 (1985); *Baun v. Board of Selectmen of Ashland*, 2015 Mass. App. Unpub. LEXIS 660 at*3 (2015) (Rule 23.0 decision). To proceed, “[t]he petitioning taxpayers [must have an] interest of their own apart from that of all other taxpayers.” *Spear v. Boston*, 345 Mass. 744, 747 (1963). See *Povey v. School Comm. of Medford*, 333 Mass. 70, 71-72 (1955) (“Such rights as taxpayers have are given to them by the express provisions of c. 40, § 53, and must of course be exercised in the manner there provided”).

The record before the court is silent as to whether any of the individual plaintiffs have standing based on their addresses to bring a zoning enforcement action involving Linear Park. Even if Plaintiffs live sufficiently close to Linear Park to give them standing under G. L. c. 40, § 17, this fact does not confer independent standing to obtain declaratory relief. See *Iodice v. Newton*, 397 Mass. 329, 333-334 (1986).

More importantly, however, the Plaintiffs have failed to demonstrate that the Project will change Linear Park from its parkland status or use, and thus the Plaintiffs have failed to show that any change in zoning is required by the Project.

The entirety of Linear Park is zoned as an Open Space district. Cambridge argues that the Executive Office of Energy and Environmental Affairs’ (EEA) policies and

recommendations encourage development of a municipality's natural resources for public enjoyment and use. The EEA's Open Space and Recreation Planner's Workbook specifically describes the need to "[e]nsure the parks are well-connected by public transportation, walking paths, and biking routes," and states affirmatively that parks should be "accessible . . . [and] equipped with . . . walking paths." The EEA's Open Space and Recreation Planner's Workbook states that open space can be used to accommodate "transportation networks," including "open space-based transportation systems, including bicycle and pedestrian facilities." The Project's goals and plans are in accordance with these guidelines. Increased cyclist and pedestrian use of Linear Park would not alter its status as parkland or conflict with Linear Park's Open Space district zoning. There is no evidence that a zoning amendment would be necessary.

The Plaintiffs have failed to demonstrate a likelihood of success on the merits of Count III.

E. Damage to the Environment

The Plaintiffs seek general equitable relief restraining the Defendant from continuing with the Project based upon "damage to the environment" pursuant to G. L. c. 214, § 7A.

General Laws c. 214, § 7A authorizes Superior Court judges to enjoin environmental damage provided that certain prerequisites are met. To obtain equitable relief under G. L. c. 214, § 7A, the Plaintiffs are required to establish that the Project was causing or about to cause damage to the environment and that such damage constitutes a violation of "a statute, ordinance, by-law or regulation the major purpose of which is to prevent or minimize damage to the environment." G. L. c. 214, § 7A. See *Medeiros v. A Plus Waste & Recycling Servs., LLC*, 2024 Mass. App. Unpub. LEXIS 620 at *3 (2024) (Rule 23.0 decision).

General Laws c. 214, § 7A requires that the Plaintiffs provide written notice to (1) the agency responsible for enforcing the environmental laws that are allegedly being violated, (2) the

Attorney General, and (3) Cambridge. Absent a showing of irreparable harm, which, as discussed below, the Plaintiffs do not make here, this court cannot hear the matter if notice was not tendered. G. L. c. 214, § 7A. Here, the Plaintiffs failed to provide the required notice. The procedural requirements have therefore not been met, and the claim fails on this basis.

Even if the procedural requirements had been met, however, the Plaintiffs also fail to demonstrate that they have a reasonable likelihood of success on their claim averring damage to the environment. In addition to the arguments previously asserted pursuant to art. 97 and G. L. c. 21E, the Plaintiffs argue that by widening the Linear Park pathway, the Project will undermine urban forestry and climate resilience. Specific concerns of the Plaintiffs include that a wider paved pathway will decrease the amount of permeable surface area within the park, that a wider pathway will encroach on the critical root zone of mature trees and threaten their vitality, and that the wider pathway will necessitate the cutting down of mature trees.

In furtherance of its arguments, the Plaintiffs point to various exhibits including (1) the affidavit of William Moomaw, Ph.D., Professor Emeritus of International Environment Policy at Tufts University (retired 2014) and slides prepared by Dr. Moomaw on urban trees and the importance of adequate watering, (2) the affidavit of Plaintiff Charles Teague, the current director of the Cambridge Citizens for Liveable Neighborhoods, Inc. d/b/a Cambridge4Trees, (3) the affidavit of Brian Beaty, BCMA, MCA, RCA, the principal of B2 Arboriculture Consulting opining the Project will cause critical harm to most of the large significant trees “within and near the proposed limits of construction,” (4) three affidavits of Deneen Crosby, a Massachusetts Registered Landscape Architect and one of the original landscape architects for Linear Park in the 1980’s, (5) the affidavit of Fayssal Hussein, the Principal of Hussein Design Group, LLC, an engineering consulting firm providing transportation and traffic services, and Mr. Hussein’s

August 21, 2025 Memorandum on Linear Park opining that the Project will result in cyclists operating at faster speeds, (6) the affidavit of Mark Duntemann, an ISA Board-Certified Master Arborist with a specialization in urban forestry on the minimum standards for maintaining tree preservation zones and critical root zones, (7) a December 20, 2024 Letter to the Cambridge City Manager Yi-An Huang from The Committee on Public Planting, (8) various documents that appear to be excerpts from design plans for the Project with commentary inserted, and (9) photographs purporting to be removed magnolia and cherry trees.

Cambridge counters these exhibits with six affidavits: (1) the affidavit of William J. Deignan, a Senior Transportation Program Manager for the Cambridge Department of Transportation, (2) the affidavit of Kevin Beuttell, the Supervising Landscape Architect for the Cambridge Department of Public Works, (3) the affidavit of David Lefcourt, the Cambridge City Arborist and Tree Warden, (4) the affidavit of Jacob Lazzara, the Assistant Commissioner for Cambridge's Inspectional Services Department, (5) the affidavit of Kathy Watkins, the Cambridge Deputy City Manager, and (6) the affidavit of Eric Henry, LSP, a principal Geoscientist and LSP at Kleinfelder.

The Plaintiffs' evidence is insufficient to show a likelihood of success on the merits under G. L. c. 214, § 7A, which requires both imminent damage to the environment and a violation of an environmental statute, ordinance, by-law, or regulation. The stated objectives of the Project include preservation of urban forestry, climate change resilience, and reduction of greenhouse gases using sustainable transportation. Cambridge has presented attestations of Project oversight by various qualified employees and a contractor who will advance these objectives, including acting to protect existing mature trees in Linear Park. Cambridge also has attested that the only trees removed to date in Linear Park have been diseased, no healthy mature trees will be

removed under the Project, and the pathway will not be expanded at the expense of tree vitality. The HDR scope of work documents discuss “pinch points” to accommodate mature trees, and a robust vetting process to address urban forestry and environmental considerations. The Plaintiffs have failed to demonstrate a likelihood of success on the merits of Count IV.

F. Ten Taxpayer Action

In Count V the Plaintiffs bring action under G. L. c. 40, § 53 and request that the court order the City to stop all expenditure of taxpayer funds on the Project.

The Ten Taxpayer statute, G. L. c. 40, § 53, “provides a mechanism for taxpayers to enforce laws relating to the expenditure of tax money by the local government.” *LeClair v. Norwell*, 430 Mass. 328, 332 (1999). “Since 1847, see St. 1847, c. 37, the Legislature has given groups of ten or more taxable inhabitants of a town the right to sue to restrain the unlawful or unconstitutional exercise of the town’s power to raise or expend funds:

‘If a town, ... or any of its officers or agents are about to raise or expend money or incur obligations purporting to bind said town ... for any purpose or object or in any manner other than that for and in which such town ... has the legal and constitutional right and power to raise or expend money or incur obligations, the supreme judicial or superior court may, upon petition of not less than ten taxable inhabitants of the town ... restrain the unlawful exercise or abuse of such corporate power.’”

Reilly v. Hopedale, 102 Mass. App. Ct. 367, 377-378 (2023), quoting G.L. c. 40, § 53.

“The basic provision of the statute is that the ‘town or its officers must be about to raise or expend money or incur obligations’ in an unlawful manner.” *Reilly*, 102 Mass. App. Ct. at 378, quoting *North v. City Council of Brockton*, 341 Mass. 483, 484 (1960). “Equitable principles do not confer on taxpayers the right to sue ‘to restrain cities and towns from carrying out invalid contracts, and performing other similar wrongful acts.’” *Id.*, citing *Pratt v. Boston*, 396 Mass. 37, 42 (1985), quoting *Fuller v. Trustees of Deerfield Academy*, 252 Mass. 258, 259 (1925). “Instead, taxpayer plaintiffs must show a statutory foundation for standing apart from

G. L. c. 40, § 53, in order to challenge a town's entering into a contract or settlement." *Id.*, citing *Pratt*, 396 Mass. at 42-44.

The Plaintiffs assert that permitting HDR to continue work under HDR's contract with Cambridge constitutes the imminent expenditure of money and incurring of obligations under G. L. c. 40, § 53. Cambridge, however, has already expended money and incurred obligations related to Linear Park. The HDR Contract was signed in 2021. To bring a Ten Taxpayer action three years later is untimely because Cambridge has already incurred the obligations at issue in this case. The right to bring suit does not exist if the challenged action has already occurred or is ongoing. See *Kapinos v. Chicopee*, 334 Mass. 196, 198 (1956) (plaintiffs lacked standing in taxpayer suit because they petitioned court eleven months after City contracted with construction company to remove fill from city land); *Fuller*, 252 Mass. at 260 (G.L. c. 40, § 53 is preventative, not retroactive, and cannot be employed to correct wrongs wholly executed and completed).

The Plaintiffs have not met their burden on demonstrating that G. L. c. 40, § 53 gives them standing to enjoin Cambridge from carrying out its pre-existing obligations under the 2021 HDR Contract, and they have failed to demonstrate a likelihood of success on the merits as to Count V.

G. Mandamus

In Count VI (Mandamus), the Plaintiffs request that the court issue a writ of mandamus obligating the City to act in accordance with applicable law.

"Where a plaintiff seeks mandamus relief, the question of standing is one of critical significance. . . . [O]nly persons who have themselves suffered, or who are in danger of suffering, legal harm can compel the courts to assume the difficult and delicate duty of passing

upon the validity of the acts of a coordinate branch of the government.” *Perella v. Massachusetts Turnpike Auth.*, 55 Mass. App. Ct. 537, 539 (2002) (*Perella*) (citations and quotations omitted). Plaintiffs lacking a particularized, personal interest in a matter — like the Plaintiffs here — may sometimes proceed under the “‘public right doctrine’, which allows a citizen to bring an action for relief in the nature of mandamus to ‘procure the enforcement of a public duty.’” *Tax Equity Alliance for Mass. v. Commissioner of Rev.*, 423 Mass. 708, 714 (1996), quoting *Sears v. Treasurer & Receiver Gen.*, 327 Mass. 310, 315 (1951). To invoke the public right doctrine, however, the plaintiffs must seek to enforce “clear and unequivocal duties.” *Perella*, 55 Mass. App. Ct. at 540.

Here, the duties of Cambridge that the Plaintiffs seek to enforce are not of the clear-cut administrative or ministerial variety to which the courts have applied the doctrine. See *Baun v. Board of Selectmen of Ashland*, 2015 Mass. App. Unpub. LEXIS 660 at *4-5 (2015) (Rule 23.0 decision). Further, as discussed previously, the Plaintiffs have not shown legal violations by Cambridge that would require enforcement by mandamus. Accordingly, the extraordinary relief of mandamus is not available. The Plaintiffs have failed to demonstrate a likelihood of success on the merits as to Count VI.

II. IRREPARABLE HARM

In addition to demonstrating a likelihood of success on the merits, the Plaintiffs must also show that irreparable harm will result from a denial of the injunction. *Massachusetts Port Authority v. Turo Inc.*, 487 Mass. 235, 239 (2021). “A plaintiff experiences irreparable injury if there is no adequate remedy at final judgment.” *Id.* at 246, quoting *GTE Prods. Corp. v. Stewart*, 414 Mass. 721, 724 (1993).

The Plaintiffs assert irreparable harm will ensue absent a preliminary injunction because the Project will convert Linear Park from a public park to a multi-modal transportation corridor and commuter thruway, the Project's excavation and installations will endanger some or all of Linear Park's mature trees, excavation in close proximity to multiple MassDEP Disposal Sites risks the release of chemicals and other hazardous materials, and the use of "air spading" to decompact neglected park soils will make contaminants airborne, creating a hazard to the public. While these are significant concerns, as previously discussed, they are belied by the Project's stated objectives and plans.

In keeping with Cambridge's policy of preserving healthy trees when possible for municipal projects, the terms of the Project specify widening the path only in areas that do not unreasonably impact any existing healthy trees in Linear Park. Cambridge attests to actions to prevent harm to healthy trees due to the Project, and the Cambridge arborist has attested to oversight of this aspect of the Project. Further, the Project will expand Linear Park's urban forest with the planting of over 100 new healthy trees, which would increase shade coverage and help mitigate the impacts of climate change. The Project also includes installation of a new irrigation system, replacing the current broken system and giving Cambridge the ability to water trees and other park plants as needed. The Project seeks to improve soil quality by loosening compacted areas, amending soils with nutrients and organic matter, and replacing poor soils with high quality horticultural soil. The Project will also reduce soil compaction from off-path travel by creating permeable stone dust side paths, increasing land permeability and ensuring the longevity of social decompaction. Moreover, as discussed above, the Project does not implicate construction on any AUL sites. The Plaintiffs have failed to show how the Project's stated objectives and plans would cause them irreparable harm.

III. BALANCING OF HARMS

The court need not engage in a balancing of harms where the Plaintiffs have failed to establish a likelihood of success on the merits and a risk of irreparable harm. Here, where the public interest is central to the inquiry, however, I elect nonetheless to review the balance of harms. This inquiry further supports my decision.

To balance the harms to each side, the court considers whether, “in light of the [moving party’s] likelihood of success on the merits, the risk of irreparable harm to the [moving party] outweighs the potential harm to the [nonmoving party] in granting the injunction.” *King v. Shank*, 92 Mass. App. Ct. 837, 839 (2018), quoting *Tri-Nel Mgmt., Inc. v. Board of Health of Barnstable*, 433 Mass. 217, 219 (2001). The potential harm to the Plaintiffs has been discussed previously and the Plaintiffs have not met their burden of demonstrating irreparable harm.

In contrast, Cambridge has demonstrated it will suffer irreparable harm from an injunction. The aforementioned improvements to Linear Park will be delayed, or possibly canceled, if the court grants the Plaintiffs injunctive relief. The results would include further health erosion of Linear Park’s existing urban forest and foliage. Halting or delaying the Project would also increase the costs to Cambridge and the public, as a contractor has already been hired and is ready to perform the work. Prior to the ordered halt in construction, Cambridge’s contractor had plans to start work on Linear Park’s pathway immediately, including demolition, utility improvements, and repaving of the pathway. This work was scheduled to be performed this fall. Cambridge’s contractor has informed Cambridge that, due to the currently ordered hold, the contractor must delay the proposed fall repaving work. If the Plaintiffs’ preliminary injunction is granted and the ordered hold extended, Cambridge’s contractor may be unable to perform the scheduled paving of the path within the fall construction season. Cambridge cannot perform construction past November due to cold weather conditions. Cambridge is also likely to

incur additional costs in the event of an extended construction period due to holds. For example, if construction is further delayed for this year's fall season, Cambridge's contractors may have to submit change orders to address any costs incurred due to the delays. I conclude that Cambridge may suffer irreparable harm should a preliminary injunction enter halting the Project.

Where the Plaintiffs' motion seeks to enjoin governmental action, the judge must also find that "the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public." *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89 (1984). As Cambridge points out, halting the Project by granting the Plaintiffs injunctive relief would negatively impact the public by delaying the installation of vital safety improvements and amenities. Such safety improvements include fixing the drainage issues that presently exist and pose a public safety concern to pedestrians and bicyclists, as ice and pools of water can easily form and create slippery conditions. The installation of new lighting and call boxes will increase illumination and access to emergency assistance. The Project will also remove dangerous obstacles in Linear Park that currently exist to facilitate travel and accessibility. These public safety improvements are at risk if the Project is halted. The issuance of a preliminary injunction now would adversely affect this public interest.

ORDER

For the reasons stated above, the Plaintiffs' Motion for a Preliminary Injunction and Temporary Restraining Order is **DENIED**.

So ordered this 19th day of September 2025.



Sarah Weyland Ellis
Justice of the Superior Court