

**The Commonwealth of Massachusetts**

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SPECIAL REPORT OF THE DEPARTMENT OF  
PUBLIC WORKS AND THE ATTORNEY  
GENERAL RELATIVE TO ACQUIRING A  
RIGHT OF WAY FOR PUBLIC ACCESS TO  
UPPER MILL POND OR WALKERS POND  
IN BREWSTER.

[Harbors and Public Lands.]

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BOSTON, December 21, 1948.

*To the Honorable Senate and House of Representatives.*

The Joint Board, constituted under the provisions of section 18A of chapter 91 of the General Laws, submits the following report relative to a right of way for public access to Upper Mill pond or Walkers pond in Brewster. Section 18A provides: —

Upon petition of ten citizens of the commonwealth that in their opinion public necessity requires a right of way for public access to any great pond within the commonwealth, the department and the attorney general or a representative designated by him sitting jointly shall hold a public hearing and receive such evidence thereon as may be presented to them. The joint board may make such additional investigation as it deems desirable and if it appears to said board that such a right of way exists it shall present a petition to the land court for registration of the easement. If it appears that no right of way exists it shall submit a report, together with recommendations thereon, to the general court on or before January first of the following year. This section shall not apply to any body of water used as a source of water supply by the commonwealth or by any town or district, or water company, nor shall it affect the right of the commonwealth or any town or district or water company to the use and

control of the waters of any such pond for the purposes of a water supply, nor shall it affect or diminish any existing right to the use of the water of any such pond for mercantile or manufacturing purposes.

On January 28, 1948, under the provisions of this statute, the following petition, signed by ten citizens of the commonwealth, was filed with the department:

The undersigned, ten citizens of Massachusetts, respectfully represent that in their opinion public necessity requires a right of way for public access to the shores of Upper Mill Pond in the town of Brewster, and request that a public hearing be held by the Joint Board under the provisions of section 18A of chapter 91 of the General Laws, and such further action taken by said Board as may be necessary under the provisions of said statute.

The Attorney General designated Assistant Attorney General William S. Kinney to represent him upon the Joint Board constituted under the provisions of said section 18A.

A public hearing, duly advertised, was held on November 9, 1948, at which all persons were given full opportunity to be heard and to submit evidence.

Upper Mill pond or Walkers pond has an area of approximately 93 acres and is a comparatively undeveloped pond.

A public road known locally as Slough road but shown on the U. S. Geological Survey Topographic Map as Airline road, runs by the southwest end of the pond and about 100 feet from it. Direct access from this public road is impractical because of the presence of a cable guard rail and a sharp slope from the road to the pond. However, a dirt road which leaves Slough road to parallel the northwesterly shore of this portion of the pond at a distance of about 100 feet, provides access at almost any point and has been so used near where it leaves Slough road. While the northerly end of this road may be reached over a meandering dirt road from Setucket road, a public way northwesterly of the pond, the distance required is about three-quarters of a mile and the route is impractical in view of the proximity of said dirt road to the pond near its junction with Slough road.

Other access is confined to a dirt road easterly of the pond, which is remote from all public roads, or through fields and wooded areas.

Upon consideration of the evidence presented at the said public hearing and of the existing means of access to Upper Mill pond or Walkers pond the board finds that no public right of way for access to the shore of the pond exists and that due to the comparatively few locations where access is now possible, establishment of such a right of way is necessary and desirable. The board concludes that said existing dirt road running off Slough road is the most acceptable route.

The board recommends that the county commissioners of Barnstable county be directed to lay out a public right of way to Upper Mill pond or Walkers pond over said dirt road off Slough road, to a suitable location nearby Slough road then turning and extending to the pond, or in such other location as may be determined to be equally suitable. The attached bill is submitted for the purpose of carrying out this recommendation.

The board takes occasion to point out that the proposed Mid-Cape Highway so called, the location for which has not been determined as far as Brewster is concerned, may if located in the near vicinity of this pond place a different aspect on the need for a public right of way as now petitioned for, but in any event is a thing of the future.

Respectfully submitted,

THE DEPARTMENT OF PUBLIC WORKS.

WILLIAM H. BURACKER,

*Commissioner.*

GEORGE G. HYLAND,

B. H. GROUT,

*Associate Commissioners.*

DEPARTMENT OF ATTORNEY GENERAL.

WILLIAM S. KINNEY,

*Assistant Attorney General.*

## PROPOSED LEGISLATION.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Forty-Nine.

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A RIGHT OF WAY FOR PUBLIC ACCESS AND AN AREA FOR THE PARKING OF VEHICLES CONTIGUOUS TO SAID RIGHT OF WAY TO UPPER MILL POND OR WALKERS POND IN THE TOWN OF BREWSTER.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The county commissioners of Barn-  
2 stable county are hereby authorized and directed  
3 to lay out in the town of Brewster a right of way  
4 for public access and an area for parking facilities  
5 contiguous to said right of way to Upper Mill pond  
6 or Walkers pond in the town of Brewster, in accordance  
7 with plans to be approved by the department of  
8 public works and showing the location and dimensions  
9 of such right of way and parking area. If it is neces-  
10 sary to acquire land for the purpose of laying out  
11 such right of way or parking area said county com-  
12 missioners shall at the time such right of way or  
13 parking area is laid out take such land by eminent  
14 domain under chapter seventy-nine of the General  
15 Laws. Any person sustaining damages in his property

16 by the laying out of such right of way or parking  
17 area, or by specific repairs or improvements thereon,  
18 shall be entitled to recover the same under said  
19 chapter seventy-nine; provided, that the right to  
20 recover damages, if any, by reason of the laying  
21 out of such right of way or parking area, shall vest  
22 upon the recording of the order of taking by said  
23 county commissioners and that no entry or possession  
24 for the purpose of constructing a public way or  
25 parking area on land so taken shall be required for  
26 the purpose of validating such taking or for the pay-  
27 ment of damages by reason thereof.

1 SECTION 2. The selectmen of the town of Brewster  
2 from time to time may make specific repairs on or  
3 improve such right of way or parking area to such  
4 extent as they may deem necessary, but neither  
5 the county of Barnstable, nor any city or town therein,  
6 shall be required to keep such right of way or parking  
7 area in repair, nor shall they be liable for injury  
8 sustained by persons travelling thereon; provided,  
9 that sufficient notice to warn the public is posted  
10 where such way enters upon or unites with an existing  
11 public way.

1 SECTION 3. All expenses incurred by said county  
2 commissioners in connection with such right of way  
3 or parking area shall be borne by the county of  
4 Barnstable, or by such cities and towns therein, and  
5 in such proportions, as said county commissioners  
6 may determine.

1 SECTION 4. Said right of way or parking area  
2 shall not be discontinued or abandoned without  
3 authority therefor from the general court.

1 SECTION 5. Nothing in this act shall be construed  
2 to limit the powers of the department of public  
3 health, or of any local board of health, under any  
4 general or special law.



