

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

TOWN OF NAHANT,
Plaintiff– Appellant,

v.

12.5 ACRES OF LAND+/- SITUATED IN NAHANT, MASSACHUSETTS,

and,

NORTHEASTERN UNIVERSITY,
Defendants–Appellees.

On Appeal from a Judgment of the
Superior Court Department for the Trial Court (Essex, ss.)

**BRIEF OF CONSERVATION LAW FOUNDATION AND OTHER
CONSERVATION AND ENVIRONMENTAL ORGANIZATIONS AS AMICI
CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

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Dated: January 9, 2026

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Pursuant to Massachusetts Rule of Appellate Procedure 17(c)(1) and Supreme Judicial Court Rule 1:21, amici curiae hereby disclose the following:

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Amicus curiae **Nahant Safer Waters in Massachusetts** is a nonprofit corporation. It has no parent corporation and no publicly held corporation owns 10% or more of the party's stock.

Amicus curiae **Northshore Pollinator Project** is a nonprofit corporation. It has no parent corporation and no publicly held corporation owns 10% or more of the party's stock.

Amicus curiae **Save the Harbor/Save the Bay** is a nonprofit corporation. It has no parent corporation and no publicly held corporation owns 10% or more of the party's stock.

Dated: January 9, 2026

/s/ David Zimmer

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INTEREST OF AMICI CURIAE¹

Amici curiae are 17 nonprofit organizations that focus on conservation and environmental issues in the Commonwealth. The specific amici are:

- Conservation Law Foundation
- Association to Preserve Cape Cod
- Brookline Bird Club
- Charles River Watershed Association
- Environmental League of Massachusetts
- Essex National Heritage Commission
- Friends of Mary Cummings Park, Inc.
- GreenRoots
- Mass Parks for All
- Massachusetts Association of Bird Clubs
- Massachusetts Audubon Society, Inc.
- Massachusetts Land Trust Coalition

¹ No party or party's counsel authored this brief in whole or in part. No party or party's counsel, or any other person or entity, other than amici and their counsel, contributed money that was intended to fund the preparation or submission of the brief. Amici and their counsel have not represented any parties to the present appeal in another proceeding involving similar issues and have not been parties or represented any party in a proceeding or legal transaction that is at issue in the present appeal.

- Massachusetts Lobstermen’s Association
- MassRivers Alliance
- Nahant Safer Waters in Massachusetts
- Northshore Pollinator Project
- Save the Harbor/Save the Bay

Amici have a particular interest in this appeal, which centers on conservation of a vibrant wildlife habitat and the mechanisms available for such conservation. Non-profit conservation organizations rely on a “whole-of-government approach” to achieve their shared conservation goals with the Commonwealth. Amici support the Commonwealth’s renewed priority and restated conservation goals, as presented by the Healey-Driscoll Administration’s unveiling of a 25-year plan to protect and restore nature across Massachusetts. *See* Mass. Executive Order No. 618 (2023); Commonwealth of Massachusetts, Biodiversity Conservation Goals for the Commonwealth: A whole-of-government approach to conserve biodiversity in Massachusetts for 2030, 2040, and 2050 (2025), available at <https://www.mass.gov/doc/massachusetts-biodiversity-goals-report-2025/download> (hereafter “Biodiversity Conservation Goals”). This includes supporting municipalities and community-led efforts that lead to the acquisition of conservation restrictions and other protections.

INTRODUCTION

Amici agree with the Town of Nahant that it permissibly used its eminent domain power to protect East Point's use as a park by taking conservation and access easements on Northeastern's land. Amici will not repeat Nahant's arguments but submit this brief to highlight (1) the important role that the eminent domain power plays in conserving public land in the Commonwealth, and (2) the problems that will flow from the superior court's attempt to distinguish a permissible purpose of conserving land from a purportedly pretextual purpose of preventing development on that same land.

Article 97 of the Articles of Amendment to the Massachusetts Constitution authorizes local governments to use their taking power to protect the people's right to "the natural, scenic, historic, and esthetic qualities of their environment" through the "conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources." Mass. Const. amend. art. XCVII. Earlier this year, with the support of amici and other conservation organizations, the Healey-Driscoll Administration unveiled a 25-year plan to protect and restore natural lands across Massachusetts, known as the Biodiversity Conservation Goals for the Commonwealth. That plan requires doubling the pace of land protection in the Commonwealth to obtain 30% protection by 2030 and 40% protection by 2050. Biodiversity Conservation Goals at 12, 15. Achieving those goals will inevitably

rely on Article 97 to protect conservation restrictions and other related rights either through donations, takings or negotiations with private landowners.

The trial court’s decision in this case threatens local governments’ conservation authority, hampering the Commonwealth’s ability to carry out its Biodiversity Goals and local governments’ ability to protect the people’s right to “the natural, scenic, historic, and esthetic qualities of their environment.” The decision does so by distinguishing between a purpose of “preserv[ing] [land] for open space and conservation” (a concededly permissible purpose) and “stop[ping] a development project” on that land (according to the court, an impermissible pretext). Add.108.

That distinction makes little sense. Preserving land for open space and conservation often translates into opposing development projects on that specific land. Thus, trying to distinguish between preserving land for “open space and conservation” and preventing a large “development project” on that land is effectively impossible—it is like trying to decide if a fan at a Red Sox–Yankees game is there to root for the Red Sox or against the Yankees. Upholding the superior court’s attempt to make this illogical distinction would both undermine the government’s ability to conserve land and irrationally incentivize the government to seek to take property rights before a specific development project is proposed.

The superior court's reliance on this Court's decision in *Pheasant Ridge Associates Ltd. Partnership v. Town of Burlington*, 399 Mass. 771 (1987), is deeply misplaced. Unlike this case, *Pheasant Ridge* involved an attempt to take land outright, raising far more concerns about pretext than the taking of a conservation restriction and access easements in this case. Moreover, the superior court's reliance on *Pheasant Ridge* ignored the difference between opposing development of a property *generally* and opposing development only for a *particular purpose*. In *Pheasant Ridge*, this Court held that the town's purported basis for a taking was pretextual because the town really just wanted to stop a below market rate housing development. *Id.* at 772. Here, there is no suggestion in the record that anyone in Nahant opposed the specific use to which Northeastern planned to put the property. Instead, Nahant opposed development of the land *at all*. Opposing development only because it is for below market rate housing is fundamentally different than supporting conservation. Opposing all development to protect the traditional use of land as a park is not.

Unlike in *Pheasant Ridge*, the taking in this case is exactly the type of taking envisioned by Article 97, and this Court should reverse.

ARGUMENT

I. The Massachusetts Constitution specifies that land conservation is a permissible purpose for a taking.

For half a century, the Massachusetts Constitution has enshrined land conservation as a “public purpose” that the Commonwealth and its local governments can invoke in using their eminent domain power. Article 97 establishes that the people of the Commonwealth “shall have the right to,” as most relevant here, “the natural, scenic, historic, and esthetic qualities of their environment.” Mass. Const. amend. art. XCVII. To protect that “right,” Article 97 provides that “the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.” *Id.*

Article 97 recognizes that the purpose of land conservation is not limited to protecting the environment in some abstract way. It also serves to improve people’s daily lives by protecting important “scenic, historic, and esthetic qualities”—giving people daily access to natural beauty and preserving their historically open lands.²

Article 97 also imposes important safeguards to ensure that this takings

² Article 97’s declaration that land conservation is a valid “public purpose” applies to takings under M.G.L. ch. 80A, which creates the procedure by which Nahant took the easements at issue in this case.

power is not abused. Specifically, Article 97 requires that, if property is taken for conservation purposes, it “shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote ... of each branch of the general court.” Mass. Const. amend. art. XCVII. In addition to Article 97’s protections, Massachusetts has also enacted An Act Preserving Open Space in the Commonwealth, M.G.L. c. 3, § 5A, which imposes further restrictions on the government’s ability to modify the use of land acquired pursuant to Article 97.

The Commonwealth and its local governments rely on their Article 97 powers to conserve public land and promote the rights that Article 97 recognized. For instance, with the support of amici and other conservation organizations, the Healey-Driscoll Administration recently unveiled its Biodiversity Goals for Massachusetts, an ambitious 25-year plan to rebuild biodiversity and invest in nature to sustain the health and well-being of the Commonwealth’s citizens. The first goal of that plan is to protect land, doubling the pace of land protection to achieve 30% protection by 2030 and 40% protection by 2050. Biodiversity Conservation Goals at 12, 15. Another goal is to connect people to nature, seeking to make nature and protected lands accessible even within towns and cities. *Id.* at 26-27. Protecting land at that scale, and in a way that is accessible to those throughout the Commonwealth, will inevitably involve the Commonwealth and its local governments’ use of their vital Article 97 powers.

II. The trial court’s incoherent distinction between promoting conservation and opposing development threatens the Commonwealth and local governments’ ability to use their Article 97 powers.

For all the reasons identified in the Town of Nahant’s brief, Northeastern failed to demonstrate that there was anything impermissibly pretextual about Nahant’s goal of preserving East Point. For decades, East Point has been open for public use—including the parts of East Point owned by Northeastern—and there is nothing pretextual about using the eminent domain power to preserve the land and protect that public use when faced with the possibility that Northeastern would develop that land. Amici focus particularly on the dangers that flow from the trial court’s attempt to distinguish between a permissible purpose of preserving land and a purportedly pretextual purpose of stopping development on that land.

A. There is no coherent way to distinguish between conserving a piece of land and opposing development on that piece of land.

The superior court’s decision rested fundamentally on trying to separate a purpose of “preserv[ing] the East Point Easement Areas for open space and conservation purposes” from a purpose of “stop[ping] a development project that Northeastern has the right to pursue” on that land. Add.108. That exercise is fundamentally flawed. Preserving land through eminent domain *always* will involve stopping or limiting development projects that the landowner could otherwise pursue. And where land has long been preserved and kept open for public use, a desire to maintain the preservation of that land in the face of a

proposed development will often manifest in the form of opposition to that proposed development. There is simply no way to coherently disentangle a permissible purpose of preserving land from a purportedly pretextual purpose of opposing the development of that specific piece of land.³

This case presents an excellent example. As Nahant’s brief explains in detail, East Point—including the part of East Point owned by Northeastern—has long been treated as open, publicly accessible land for citizens of Nahant specifically, and the Commonwealth more generally, to enjoy. Indeed, Northeastern obtained its property in East Point from the federal government for free by telling the government that it “seeks to acquire the whole of East Point in order to make it a wildlife preserve” because “[o]nly in this way can the unusual littoral and benthic faunas be protected adequately.” Nahant Br. 13-14 (citing III.App.273, 279, 313; I.App.133-134). That commitment was particularly important because Northeastern’s land was connected to Lodge Park, making the conservation of Northeastern’s land crucial to the scenic and natural value of that public park. Consistent with its promise to the federal government, after

³ For the avoidance of doubt, there is nothing inconsistent about being in favor of both development and conservation as a matter of policy in the Commonwealth. Amici’s point is simply that, as to a given piece of land, conserving land and opposing development on that land are often exactly the same.

Northeastern acquired the property in 1966, it left the land undeveloped and open to the public for decades. Nahant Br. 14-15.

The first time there was any threat of development on East Point was in 2018, when Northeastern proposed building a 60,000 square foot building on its East Point property. Nahant Br. 17-18. Unsurprisingly, then, while there was significant opposition to that particular project, that opposition was intimately connected to the desire to protect the land that Northeastern had left undeveloped for more than four decades. Perhaps the best example is a statement on which the superior court relied:

This is about building a building that's way out of scale with the town, way out of scale with the place. It just doesn't belong there. I think all of us that have been up to Lodge Park know what a beautiful place that is ... And when I look out across the ocean and see the sun shining off the ocean, I don't want to turn around and see the sun shining off a 60,000 square foot building.

Add.100.

The superior court viewed this statement as evidence of pretext because it suggested that the speaker opposed Northeastern's development to protect "the town's character," not to preserve the land. Add.100. But there is no way to coherently disentangle the speaker's concern about the town's character from the desire to protect Lodge Park and East Point's natural beauty—the two are, in the speaker's mind, intimately connected.

That connection should come as no surprise. Article 97 itself describes the right it protects as the people’s right to enjoy “the natural, scenic, historic, and esthetic qualities of their environment.” Mass. Const. amend. art. XCVII. The drafters of Article 97 thus recognized that land conservation serves a host of purposes, which can include not just preserving “natural” qualities but also preserving the “scenic” and “esthetic” qualities of the environment in which people live. That is particularly important in this case, where Northeastern’s land was adjacent and connected to Lodge Park such that development of Northeastern’s land would necessarily have a significant detrimental impact on the “scenic” and “esthetic” qualities of that public park. The superior court wrongly accorded no weight at all to the town’s desire to protect Lodge Park, even though it was a key motivation in some of the very statements on which the court relied. Thus, the fact that the public’s longstanding access to a given piece of open parkland is important to the “town’s character” does not remotely suggest that the town’s stated desire to conserve the land was pretextual.

The superior court relatedly erred in suggesting that a desire to conserve land can be coherently disentangled from a desire to protect the “scenic, residential nature” of the town. *E.g.*, Add.108. Again, Article 97 specifically recognizes that land conservation can be used to protect not just the people’s right to the “natural” environment, but also the “scenic, historic, and esthetic qualities of their

environment.” Far from being some sort of impermissible pretext (as the superior court apparently believed), taking a conservation restriction on a piece of open land to ensure the “scenic” nature of a town is a use of Article 97 that flows naturally from the Amendment itself.

B. The superior court’s decision will undermine land conservation efforts in the Commonwealth.

The superior court’s decision not only rests on an incoherent distinction between protecting land and prohibiting development on that land, it also will hinder governments’ ability to use eminent domain to protect land. Relatedly, it will create inefficient incentives for governments to use eminent domain power preemptively and potentially unnecessarily.

Most importantly, the superior court’s decision risks limiting the government’s eminent domain power in arbitrary ways. On the superior court’s view, whether the government can use its eminent domain power to take a conservation restriction may turn on whether a specific development project has been proposed on a piece of land. If the landowner has not proposed a specific development, there is almost no possibility the taking could be challenged as pretextual—even if it were motivated by opposition to theoretical future development. If the landowner has proposed a specific development project, however, the superior court’s decision creates the risk that the developer could try to characterize the dominant purpose of the taking as opposition to that

development rather than “true” conservation. Given that, as described above, those two purposes are really the same, in some number of cases (like this one) the developer will succeed in proving a “pretext” even though, in reality, the motivation for the taking is functionally identical to what the motivation would have been for a taking before the specific development project had been proposed.

The ironic result could be that the Commonwealth and local governments will be forced to use their taking power *before* any specific development is proposed, even in situations where a taking may never actually be necessary. Here, for instance, Northeastern obtained its East Point land for free by promising it would treat the land as a “wildlife preserve.” Consistent with that promise, Northeastern did not try to develop the land for more than five decades. There would have been no reason for the Commonwealth or Nahant to use taxpayer funds to obtain a conservation restriction on Northeastern’s land while Northeastern was complying with its representation that it would preserve the land. It was only once there was a concrete threat of development that it made sense to use government resources to obtain a conservation restriction and preserve the land.

If the superior court’s decision is allowed to stand, however, cities and towns in Nahant’s position will be pressured to spend resources and exercise their taking power *before* any specific development is proposed to avoid the risk of

being later accused of “pretext.” The result will be premature and potentially unnecessary takings, wasting taxpayer funds.

Relatedly, if a local government waits until a specific development is proposed, it may be discouraged from trying to conserve the land at all out of fear of protracted litigation and the imposition of fees and costs. In this case, for instance, Northeastern was awarded over a million dollars in costs and fees. Nahant Br. 26. There is no reason that a local government should have to choose between using its eminent domain power prematurely and potentially unnecessarily and taking on the enormous financial risk of litigation.

III. The superior court ignored the important differences between this case and *Pheasant Ridge*.

The superior court’s decision relied heavily on this Court’s decision in *Pheasant Ridge*. The court’s reliance on *Pheasant Ridge* is misplaced for two key reasons. First, the court failed to recognize the difference between opposing development *generally* and opposing development *for a specific use of land*. Second, the court failed to recognize the important protections against a pretextual taking that are present in this case that were not present in *Pheasant Ridge*.

A. The superior court failed to recognize the important distinction between opposing development generally and opposing development for a specific use of property.

In *Pheasant Ridge*, the town purported to exercise its eminent domain power to take a piece of property “for the purpose of parks, recreation, and the

construction of moderate income housing.” 399 Mass. at 772. There was overwhelming evidence, however, that the town had no plans to use the property for any of those purposes but was taking the property solely to prevent construction of a below market rate housing development—which is not a permissible use of the taking power. *Id.* at 777-79. The superior court’s decision in this case relied heavily on analogizing this case to *Pheasant Ridge*. The court went so far as to conclude its decision with a block quote from *Pheasant Ridge* in which the court used brackets to substitute Northeastern for the developer in *Pheasant Ridge*. Add.108.

In analogizing this case to *Pheasant Ridge*, the court failed to recognize the important difference between opposing development generally and opposing development for a particular purpose. In *Pheasant Ridge*, this Court in no way suggested that opposing development generally would have been an impermissible purpose or that it was in any way distinguishable from a genuine desire to conserve land. The problem this Court identified in *Pheasant Ridge* was that the town was opposed to development only for the purpose of housing—there was no indication in the record that the town was opposed to development more generally. That was clear from the fact that the record contained no evidence that the town ever intended to use the parcel at issue for parks, recreation, or housing. *Id.* at 778.

Here, by contrast, there is no suggestion that Nahant was opposed to the educational and research purposes for which Northeastern intended to use the land. It did not matter to Nahant whether the proposed development would be used for teaching, research, affordable housing, or some other purpose. What Nahant did not want was total loss of what had been preserved parkland for more than five decades with the development of a massive building in its place. To put it slightly differently, Nahant wanted to protect the land from *any* development, not to prohibit Northeastern from putting a development to a particular use. That fundamentally distinguishes this case from *Pheasant Ridge*: Opposing development generally is equivalent to supporting conservation; opposing development only for a particular use is not.

B. The superior court failed to recognize the important protections against pretextual use in this case because Nahant was taking only a conservation easement.

This case also differs from *Pheasant Ridge* because there were structural indications that the taking in this case was not pretextual. In *Pheasant Ridge*, the town intended to take the land outright in fee—it did not take only a conservation or access easement. The risk of a pretextual taking in *Pheasant Ridge* was therefore obvious: Once the town had taken the land, it could use it in any way it wanted, regardless what its purported purpose had been in taking the land in the first place.

This case is fundamentally different because Nahant did not take the land outright in fee. Instead, as the superior court itself recognized, Nahant only took conservation restrictions and access easements that maintained public access to the land for recreation purposes; prohibited new construction on the land; and allowed Northeastern to continue to use the buildings that were already on the land. Add.69-70; *see also* Nahant Br. 23. In addition, Article 97 and the Act Preserving Open Space impose additional limitations on Nahant's ability to repurpose property rights taken pursuant to Article 97. *See* M.G.L. ch. 3 § 5A. And Nahant acquired the conservation restriction using funds under the Community Preservation Act, which requires that funds be used for specific purposes, including conservation.

Given the limited and conservation-related nature of the rights Nahant took, Nahant's interest in conservation cannot be characterized as pretextual. Unlike the town's taking in *Pheasant Ridge*, Nahant's taking would not allow Nahant or anyone else to develop the land—such development would be precluded by both the easements themselves and the fact that Northeastern retained title to the land. The only possible outcome from Nahant's taking is that the land will be protected from any development, which is exactly the purpose Nahant identified in taking the restriction and easements. Where, as here, the town carefully tailored the rights it took in a way that precisely matches the stated basis for the taking, the court

should require a particularly high showing that the stated basis for the taking was invalid. Given that East Point had been preserved as a park for five decades, and for all the other reasons in Nahant's brief, Northeastern has not come close to making that showing here.

CONCLUSION

The Court should reverse.

Dated: January 9, 2026

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure, the undersigned counsel states that this brief complies with the rules of court that pertain to the filing of briefs, including but not limited to Mass. R. App. P. 16(b), 16(e), 16(f), 16(h), 18, and 20.

This brief was prepared using Microsoft Word in 14-point Times New Roman, a proportionally-spaced typeface, and contains 3,846 words.

Dated: January 9, 2026

/s/ David Zimmer

David Zimmer (BBO No. 692715)

CERTIFICATE OF SERVICE

Pursuant to Mass. R. App. P. 13, I certify that I caused the foregoing document to be served through electronic filing to counsel of record for the Town of Nahant and Northeastern University.

Dated: January 9, 2026

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