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Nahant v. Northeastern University: SJC Confirms That Conservation Is a Valid Public Purpose for Eminent Domain In Response to Threatened Loss of Open Space to Development

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Eight years after Northeastern University's announcement that it intended to construct a 55,000 square foot Institute in the heart of East Point, a cherished wildlife habitat and headland with a sweeping scenic cliff-lined vista of the ocean below, the Supreme Judicial Court affirmed that the Town of Nahant can preserve the land through eminent domain. Last week, the SJC issued its decision in *Town of Nahant v. Northeastern University* ruling that protecting open space and habitat is a valid public purpose for an eminent domain taking. *Nahant v. Northeastern University* is a landmark ruling for municipalities seeking to preserve open space and natural resources in the face of proposed development. In a unanimous decision, the Court reversed the Superior Court and held that the Town of Nahant may proceed with its proposed eminent domain taking of conservation and access easements over a portion of Northeastern University's East Point property, reinforcing a municipality's authority to use eminent domain for genuine conservation purposes and provides important guidance regarding the distinction between a valid conservation taking and an impermissible bad-faith effort to stop development.

This decision is also a validation for the Town of Nahant and the Nahant Preservation Trust, which have worked tirelessly to protect this ecologically and aesthetically valuable headland for future generations.

[Read the decision here.](#)

The Critical Difference from Pheasant Ridge

Much of the eminent domain litigation centered on the Supreme Judicial Court's 1987 decision in *Pheasant Ridge Associates Ltd. Partnership v. Burlington*, where the Court invalidated a taking because the record demonstrated that the municipality's stated public purpose was merely a pretext and that the town did not genuinely intend to use the property for the purposes asserted.

In *Nahant v. Northeastern University* however, the Court emphasized that the extraordinary circumstances present in *Pheasant Ridge* simply were not present. Rather than discovering



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a newly conceived conservation objective after a development proposal appeared, the record established a longstanding municipal commitment to preserving East Point as open space. The Town had designated the area within a natural resource zoning district, repeatedly identified East Point in planning documents, promoted recreational and conservation uses of the property for decades, and consistently recognized the area's ecological, scenic, and public access value.

The SJC found that history mattered. The Court concluded that Nahant's stated conservation objectives were supported by decades of municipal action and planning, undermining Northeastern's claim that conservation was merely a litigation-driven justification designed to conceal an anti-development motive.

Conservation Takings May Respond to Proposed Development

Perhaps the most important aspect of the decision is the Court's recognition that a conservation taking does not become invalid simply because it is undertaken in *response* to a proposed development project.

Northeastern argued that the Town's true objective was to stop the University's proposed expansion of its Marine Science Center. The Court acknowledged that Nahant pursued the taking after Northeastern announced its plans, that residents strongly opposed the project, and that the proposed easements would effectively prevent the development from moving forward. The Court nevertheless rejected the argument that these facts established bad faith.

As the Court explained, preventing development is often the very purpose of a conservation easement. These are two sides to the same coin. When land is valued for its open-space, scenic, habitat, recreational, or conservation characteristics, limiting future development is not evidence of an improper motive. The Court's analysis recognizes an important practical reality: municipalities may act to protect open land only after a threatened change in use becomes imminent. The fact that development precipitates municipal action does not automatically transform a valid conservation objective into an improper one. Indeed, the Court wrote "it is for a town to decide if and when to take property for proper conservation and open space purposes, and such a taking may not appear warranted so long as a private landowner leaves open space undeveloped."

Municipalities are in the strongest position when they can establish a documented history of valuing and protecting the area at issue. Open space plans, conservation planning efforts, zoning designations, public investments, recreational programming, environmental studies, and long-term policy decisions may all help demonstrate that a later taking reflects a genuine public purpose rather than an ad hoc response to a particular development proposal.

For municipalities confronting proposed projects on environmentally sensitive or highly valued open-space resources, *Nahant v. Northeastern University* confirms that the relevant question is not whether the taking will stop development. The question is whether the

municipality is acting in good faith to advance a legitimate public purpose that it has consistently pursued over time. When a community has a demonstrated history of preserving and valuing land as open space, the Supreme Judicial Court has now made clear that eminent domain remains a lawful tool to protect that resource for future generations.

The support of twenty environmental and conservation organizations at the Supreme Judicial Court, as well as the Massachusetts Municipal Association, Massachusetts Municipal Lawyers Association and the Attorney General's Office did not go unnoticed.

The matter will return to the trial court for the compensation phase of the taking.

Harley C. Racer is a member of Rich May's Litigation Group. He represents Nahant Preservation Trust, Inc. in this matter. He also represents municipalities, landowners, citizen groups and developers in complex land use and environmental matters throughout Massachusetts.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney [Harley C. Racer](#).

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