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SJC-13844

TOWN OF NAHANT vs. NORTHEASTERN UNIVERSITY & another.¹

Essex. February 2, 2026. - September 3, 2026.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges,
Dewar, & Wolohojian, JJ.

Eminent Domain, Purpose of taking, Validity of taking.
Constitutional Law, Eminent domain, Taking of property.
Easement. Real Property, Easement. Municipal
Corporations, Property, Parks. Parks and Parkways.
Practice, Civil, Eminent domain proceeding, Summary
judgment.

Petition filed in the Superior Court Department on
September 16, 2021.

The case was heard by Jeffrey T. Karp, J., on motions for
summary judgment, and judgment was entered by him.

The Supreme Judicial Court granted an application for
direct appellate review.

Kevin P. Martin (Christopher J.C. Herbert also present) for
the petitioner.

George A. McLaughlin, III (Joel E. Faller & Kevin P.
O'Flaherty also present) for Northeastern University.

The following submitted briefs for amici curiae:

¹ 12.5 acres of land+/- situated in Nahant, Massachusetts.

Benjamin A. Goldberger & Sadie Keller for The Trustees of Reservations.

Harley C. Racer for Nahant Preservation Trust, Inc.

David Zimmer for Conservation Law Foundation & others.

Ali T. DiMatteo, James B. Lampke, Prasanna Rajasekaran, & Jeffrey T. Blake for Massachusetts Municipal Association, Inc., & others.

Jeffrey J. Pokorak, M. Benjamin Parsons, & Sofi Shlepakov for Suffolk University Law School Supreme Court Clinic.

Andrea Joy Campbell, Attorney General, & Kendra Kinscherf, Assistant Attorney General, for the Attorney General.

DEWAR, J. This appeal concerns a dispute between the town of Nahant and Northeastern University over a peninsula known as East Point, where they each own property. Northeastern owns a larger parcel that comprises most of the area of East Point, while the town owns the easternmost tip of the peninsula. The town has long maintained a public park on its parcel, and the town possesses an easement over Northeastern's property that provides access to the park. Northeastern uses a portion of its East Point property as a campus for its Marine Science Center and, until now, has left the remaining land largely undeveloped. In 2018, however, Northeastern announced plans to expand its existing campus on East Point, including the construction of a new 55,000 square foot building.

Following local opposition to the project, in 2021, town residents voted to authorize the town's board of selectmen to use the town's eminent domain authority to take certain conservation and access easement rights across portions of

Northeastern's property. The town then filed a petition in the Superior Court under G. L. c. 80A, § 4, seeking an order establishing its right to take these property interests. Northeastern challenged the validity of the taking, principally arguing that the town was exercising its eminent domain authority in bad faith solely to block Northeastern's planned development. On cross motions for summary judgment, a judge in the Superior Court agreed with Northeastern and entered judgment in its favor. The judge concluded that the town's actions ran afoul of this court's decision in Pheasant Ridge Assocs. Ltd. Partnership v. Burlington, 399 Mass. 771 (1987) (Pheasant Ridge), in which we held that a town's use of eminent domain in bad faith to block a housing development, based on purported public purposes that were merely pretextual, was invalid.

We conclude that on the record before us Northeastern has no reasonable expectation of proving that the town's taking is invalid under Pheasant Ridge. In short, the town's stated purpose for the taking is a proper public purpose in accord with past actions by the town evincing interest in the area of the taking, and the extreme circumstances of Pheasant Ridge -- where the record showed that the town did not intend in good faith to use the property for the ostensible purposes for which it had been taken -- indisputably are not present here. We are also unpersuaded by Northeastern's various alternative arguments

challenging the validity of the taking. Accordingly, we reverse the judgment in favor of Northeastern and remand this matter for entry of an order establishing the town's right to take the property interests at issue and for further proceedings consistent with this opinion.²

Background. We begin by reciting the undisputed facts relevant to this appeal, reserving certain details for our discussion.

The town of Nahant is almost completely surrounded by the waters of the Massachusetts Bay, connected to mainland Massachusetts by a narrow isthmus. It is the smallest town in the Commonwealth by land mass, occupying less than one and one-quarter square miles. Predominantly developed for single family residential use, the town had a population of 3,632 people in the 2000 census. Central to this dispute is an area of the town

² We acknowledge the amicus briefs submitted by The Trustees of Reservations; Nahant Preservation Trust, Inc.; Conservation Law Foundation, Association to Preserve Cape Cod, Boston Harbor Now, Brookline Bird Club, Inc., Charles River Watershed Association, Environmental League of Massachusetts, Essex National Heritage Commission, Inc., Friends of Mary Cummings Park, Inc., GreenRoots, Mass Parks for All, Massachusetts Association of Bird Clubs, Massachusetts Audubon Society, Inc., Massachusetts Land Trust Coalition, Massachusetts Lobstermen's Association, Massachusetts Rivers Alliance, Nahant S.W.I.M. Inc., North Shore Pollinator Project, and Save the Harbor/Save the Bay; Massachusetts Municipal Association, Inc., Massachusetts Municipal Lawyers Association, Inc., and KP Law, P.C.; Suffolk University Law School Supreme Court Clinic; and the Attorney General.

known as East Point, a 28.7-acre³ peninsula that is accessible to vehicles via a single public way.

A detailed summary of East Point's recent history of land ownership and use can be found in the Appeals Court's opinion in Nahant Preservation Trust, Inc. v. Northeastern Univ., 104 Mass. App. Ct. 698, 699-707 (2024), which addressed other disputes arising from Northeastern's proposed project. Most relevant here, East Point was acquired by the Federal government through eminent domain for use as a military installation in 1941. After the Federal government decommissioned its military facilities in the early 1960s, the town submitted an application to purchase the entire parcel for the purpose of "develop[ing] the property into a park and recreational area." However, some residents expressed concern about a possible influx of nonresidents to East Point, as well as the cost of removing any unsafe conditions posed by the land's recent use as a military site, and the town ultimately voted against appropriating money to purchase the property.

³ In the proceedings below, the parties disputed the precise boundaries of East Point and whether it is properly characterized as comprising 28.44 or 28.7 acres. As the Superior Court judge noted, the dispute is immaterial to the issues before us. Like the judge, we refer to East Point as comprising 28.7 acres, in accord with the size of the property originally taken by the Federal government in 1941.

Following this vote, the town's conservation commission advocated for an educational institution to acquire the property -- preferably with assurances about the public's ability to walk along a coastal pathway on East Point -- and encouraged Northeastern to apply to purchase the land. The town's board of selectmen did not share this view and informed the Federal government of its preference that the land be sold for private residential development to expand the town's small tax base. Ultimately, the Federal government transferred ownership of 20.4 acres to Northeastern (Northeastern parcel), while reserving for itself the remaining 8.3 acres of East Point and a twenty-foot-wide easement over the Northeastern parcel to provide access to the remaining Federal land. In 1975, the Federal government sold its remaining land to the town, together with the access easement.

After Northeastern acquired its 20.4-acre parcel on East Point, it went on to create a Marine Science Center campus on the westerly side of the property. The campus contains a 31,083 square foot research facility, repurposed from three former military bunkers, as well as other smaller structures and parking lots. Previously disturbed areas associated with the subterranean bunkers, including the area above the bunkers, are now primarily wooded. The largest of the three bunkers, which contains classrooms and laboratory space, is known as the Murphy

Bunker. A solar observatory was erected atop Murphy Bunker in 1995 but removed in 2018. Northeastern has not built any other permanent structure atop or to the east of Murphy Bunker, and, as of 2021, these easterly areas of the property remained primarily vegetated, with uplands, wetlands, and a beach.

The 8.3 acre parcel on East Point that was purchased by the town also underwent changes. In 1986, the town voted to develop the land into a public park, known as the Henry Cabot Lodge, Jr., Memorial Park (Lodge Park). Three years later, the town's conservation commission issued a request for proposals to develop a passive recreational area at Lodge Park, stating that while it would be "impossible to re-establish the original contours" of the land given the changes made by the military, the commission would like to "reestablish the flora and scenic character" of the area. While the extent of the town's subsequent work to develop Lodge Park is disputed,⁴ it is undisputed that stewardship of the park was delegated to the

⁴ The 2000 open space plan for the town states that the town's conservation commission and open space committee worked with an architectural firm to develop a landscaping plan for Lodge Park, and that, pursuant to the plan, the remaining "unsightly and hazardous [military] silos" were filled, and the hilltop was "contoured and planted to blend with the natural topography." In its filings below, Northeastern disputed this characterization at least in part. Nothing in this appeal turns on the matter.

town's open space committee, and that the property remains a public park.

In 1991, the town designated Lodge Park, as well as the Northeastern parcel, as part of a "Natural Resource Zoning District." Under the terms of the bylaw, this zoning district was intended for "natural resource and recreation uses in accordance with" four purposes: (1) "[t]he preservation and maintenance of protected wildlife and wetlands resource areas and habitats"; (2) "[t]he protection of the [t]own against the costs which may be incurred when unsuitable development occurs in swamps, marshes, along water courses, in areas of high impact due to overcrowding of land and undue concentration of population, or on slopes subject to erosion"; (3) "[t]o preserve and increase the amenities of the [t]own and foster enjoyment of its remaining natural resources as recreational values"; and (4) "[t]o conserve natural conditions, wildlife and open space for the education, passive and active recreation and general welfare of the public."⁵ The town's bylaw elsewhere provided, however,

⁵ In his memorandum of decision on the parties' cross motions for summary judgment, the judge noted that the parties had not included a copy of the town's zoning bylaw in the summary judgment record; they instead had directed him to the town's website. Relying on the town website, the judge went on to quote from the town's bylaw. Neither party raises a dispute as to the accuracy of the judge's findings with respect to the bylaw, and the quoted language describing the purposes of the natural resource zoning district accords with quotations of the bylaw contained in the summary judgment record from the town's

that structures for educational purposes owned or leased by a nonprofit educational corporation like Northeastern were permitted in any zoning district. Cf. G. L. c. 40A, § 3.

In the years that followed, the town has periodically issued "Open Space and Recreation" plans concerning its open spaces, conservation efforts, and recreational opportunities, as well as residents' interests in the same. The Northeastern parcel was listed within an "Inventory of Lands of Conservation and Recreation Interest" in two such plans. Most of the property was designated as having "[m]edium" recreational potential -- except for the "[h]igh" potential in a portion of the property known as Canoe Beach -- and all of the property was described as having "[l]imited" protection from development. The town's plans reported significant public use and enjoyment of East Point for open space and recreational purposes. Ninety percent of residents surveyed for the town's 1989 plan "said they visited the beaches and Lodge Park at East Point often," and at least eighty percent of those surveyed stated that more

open space plans for 2000 and 2008. We therefore shall accept for purposes of our discussion that the judge's findings correctly reflect the town's zoning bylaw during the relevant period. Cf. Stone v. Zoning Bd. of Appeals of Northborough, 496 Mass. 366, 376 n.11 (2025), citing Warren v. Zoning Bd. of Appeals of Amherst, 383 Mass. 1, 8 (1981) (appellate court may not take judicial notice of zoning bylaws not included in record on appeal).

emphasis should be placed on protecting open space, conserving natural areas, and providing access to the coastline.

Similarly, ninety-five percent of those surveyed for the town's 2000 plan desired "at least some emphasis on the protection of open space and general aesthetic quality," as well as conservation and "public access to the shoreline or to natural areas." In addition, "Lodge Park / East Point" was listed as one of the five most frequently visited areas by those surveyed for the 2000 plan. In describing East Point, the town's 2008 plan reported that Northeastern "maintains much of [its] land as an undeveloped ecological study area," that the town had "transformed" portions of Lodge Park into a "sculpted rolling meadow," and that "[r]esidents and visitors come to the site regularly for walking, jogging, birdwatching, bass fishing, and viewing the magnificent scenery." The 2008 plan went on to characterize East Point as a "vital resource, both as a natural habitat for wild plants and migrating birds and as a passive recreational area" for residents.

These town plans did not, however, contain any discussion of acquiring the Northeastern parcel, by eminent domain or otherwise. While the plans contained general recommendations that the town consider "sites for acquisition," they made no

recommendation concerning the Northeastern parcel in particular.⁶ In addition, while the 1989, 2000, and 2008 plans identified the Northeastern parcel as among the publicly and privately owned sites used by residents for conservation and recreational purposes, the town's 2016 open space and recreation master plan focused only on town-owned spaces and did not list the Northeastern parcel in analyzing the town's "active and passive recreation resources."

Northeastern has since made public its plans to expand its existing campus on the Northeastern parcel. As part of the project, Northeastern seeks to build a new 55,000 square foot building, as well as new parking areas. The project also calls for the construction of an approximately one-acre geothermal wellfield comprising eighty wells for heating and cooling the new building, to be located east of the Murphy Bunker. Representatives of Northeastern made a presentation outlining the plans at a special meeting of the town's board of selectmen on February 15, 2018.

⁶ The 2008 plan does state with respect to site acquisition that "[s]pecial attention will be given to the important 'buffer' areas around East Point," among other locations. The town's planning board also issued a report in 1986 making a passing reference to "[a]n area of lowlands at East Point, currently owned by Northeastern University," being "considered for acquisition."

Immediately following the presentation, all three members of the town's board of selectmen announced their opposition to the project. One member stated that the town needed "to take every step . . . legally" to halt the project, because the town was "way too small" for it; later in the meeting, he commented that he would be willing to "go to jail" to "stop the project." Another member stated, "This is the beginning . . . of probably a long legal battle, but I say we do the battle." The board chair moved to consider seeking a court injunction to halt the project if Northeastern submitted a permit application, and the board unanimously approved the motion.

Residents in attendance at the meeting then spoke and expressed a variety of objections to the project. A number of residents questioned the project's impact on the small town's existing infrastructure and the possibility of increased traffic, parking demands, and public safety issues. Others voiced concerns about possible disruption to wildlife, the existing habitat, views from Lodge Park, and the beauty of East Point and Nahant more generally. Residents also expressed frustration at a perceived lack of transparency from Northeastern as to the size, scope, and purpose of the project and a perceived failure by Northeastern to work cooperatively with town residents.

Two months after Northeastern's presentation, 1,683 residents signed an open letter requesting that Northeastern "halt all expansion" of the campus and study the environmental impact of the campus's existing system of pumping seawater through the Marine Science Center. The letter stated that the proposed project was "not a fit" for the town's "scenic residential community," referenced concerns about the potential impact on bird and wildlife habitats, and objected to increased municipal burdens of various kinds:

"A new entrance into the Marine Science Center will alter traffic flow. A proposed parking lot will increase traffic from cars, delivery trucks, and shuttles, thus putting more strain on our infrastructure. Also, your proposed project jeopardizes the fiduciary position of Nahant, and may be detrimental to public safety, public health, and cause the inability to provide necessary services that the residents of this community deserves [sic]."

In the summer of 2018, Northeastern representatives met with residents to discuss their concerns and ultimately made a number of modifications to the project. The following summer, Northeastern commenced preconstruction activities on its parcel, including the clearing of approximately one-half acre of land in an area east of the Murphy Bunker.

In the interim, town officials began pursuing legal action to stop the project. Approximately six weeks after Northeastern's presentation, the board of selectmen held an executive session meeting to educate itself on eminent domain.

The town also formed a "Northeastern liaison committee" to assist the board of selectmen in responding to the project. The liaison committee met with an attorney who specialized in eminent domain. It is undisputed for purposes of summary judgment that, during this meeting, the committee discussed that obtaining authority to take the property by eminent domain would "give the [t]own leverage in its negotiations with Northeastern." It is also undisputed that the town had never discussed an eminent domain taking of the property prior to Northeastern's announcement of the proposed project, and that the town decided to pursue eminent domain when it felt it had exhausted any possibility of negotiating a different site for the project.

In connection with this contemplated legal action, the town received a series of donations from the Nahant Preservation Trust, Inc., a nonprofit organization dedicated to preservation, including a \$3 million donation earmarked in a gift agreement for the purpose of taking the Northeastern parcel and smaller donations intended to pay for the town's attorney's fees. The town also entered into a common interest agreement with the nonprofit organization to authorize the exchange of confidential and privileged information related to anticipated litigation regarding the Northeastern parcel.

In 2020, the board of selectmen issued two public statements concerning Northeastern's project to residents of the town. In March, the board announced its decision to pursue an eminent domain taking of a portion of Northeastern's parcel "to actively preserve the Wildlife Preserve at East Point by acquiring the property rights necessary to do so." The board stated that it would also seek easement rights for Canoe Beach because Northeastern had threatened to close public access to the beach. The board acknowledged that the cost of the taking would be "significant," but stated that "we must save [the Wildlife Preserve at East Point] for future generations of Nahant residents, open space, wildlife, conservancy and safe[]keeping."

In August 2020, the board of selectmen issued a second statement to residents, comparing the cost of pursuing a taking to the cost of allowing Northeastern's project to move forward. The board prefaced this assessment by stating that, "[w]hile our goal is to preserve East Point and our access to it, we understand that the financial implications for the community are of utmost importance." The board asserted that residents' tax burden would be less "if East Point remain[ed] undeveloped via eminent domain," observing that Northeastern's project would result in additional demands on local infrastructure, and that the resulting financial costs would be shouldered by taxpayers.

The board also stressed that the property would "soon be developed unless [residents] use[d their] vote to prevent it."

In 2021, the board of selectmen placed an article on the warrant for the annual town meeting to authorize the taking of easement rights to the Northeastern parcel. As relevant here, it asked residents whether to authorize the board to "acquire, by gift, negotiated purchase, eminent domain taking (pursuant to [G. L.] c. 80A exclusively), or otherwise, the fee simple interest or any lesser interest in all or a portion" of the Northeastern parcel "for open space, recreation, conservation and/or historic preservation purposes and an easement to use certain portions for beach purposes."

At the annual town meeting on May 15, 2021, members of the board of selectmen and town residents who favored authorizing a taking provided a variety of reasons in support. The stated reasons included both concern about financial and infrastructure burdens from Northeastern's project and the desire to conserve the landscape of East Point. By a vote of 647 to 271, attendees voted to authorize the board of selectmen to pursue taking an easement interest in the Northeastern parcel. The town residents also voted 655 to 14 to appropriate \$1.5 million to help pay for the taking, using funds obtained through the Community Preservation Act, G. L. c. 44B.

Thereafter, the board of selectmen voted to issue an order of intention declaring the town's intent to take by eminent domain two conservation easements and an access easement over approximately twelve acres of the Northeastern parcel in total.⁷ Under the order of intention, the conservation easements would prohibit Northeastern from constructing new buildings in the easement areas -- thereby preventing the construction of the new 55,000 square foot building -- but would allow for continued maintenance and use of existing structures. In addition, the proposed access easement would grant a public right to access and use Canoe Beach for outdoor recreational purposes.

⁷ The order of intention described the purpose of taking these property rights as follows:

"[T]o preserve the East Point Easement Areas (as hereinafter defined) in perpetuity in their natural, scenic, and open condition and to protect against any use of the East Point Easement Areas that will interfere with the conservation values of said property. The public benefits resulting from conservation of the East Point Easement Areas . . . include, without limitation: the preservation of open space for the use and enjoyment of the general public, the creation and buffering of an expanded [Lodge Park], . . . the protection of the scenic and natural beauty and character of the East Point Easement Areas, the protection of public access to the sea, the protection of wildlife habitat, wildlife connectivity and biodiversity, the reduction of pollution and improvement of air quality, the provision of a buffer to sea level rise, the promotion of resiliency and protection against climate changes, and the protection of the public passive recreational use of the land."

Shortly thereafter, the town filed a petition in the Superior Court under G. L. c. 80A, § 4, requesting authorization to take the property interests set forth in the order of intention. Northeastern answered and opposed the petition, asserting that the taking should be deemed invalid on a number of grounds.

Following discovery, the parties filed cross motions for summary judgment. As relevant to this appeal, Northeastern advanced two reasons why the taking was invalid. First, in its motion for summary judgment, Northeastern argued that undisputed facts in the record demonstrated that the purported public purpose for the taking was pretextual, and that the town instead initiated the taking in bad faith for the sole purpose of stopping Northeastern's project. Second, in opposing the town's motion for summary judgment, Northeastern argued that the town was not entitled to summary judgment because Northeastern had adduced evidence that the town's taking authority had been commandeered by private persons within the town for their own personal benefit, rather than for the benefit of the town as a whole.

After holding a hearing, a Superior Court judge granted summary judgment in favor of Northeastern. The judge concluded that there was no dispute of material fact that "the dominant reason" for the taking was not the proper purpose of

"preserv[ing] the East Point [e]asement [a]reas . . . for open space and conservation purposes," as stated in the town's order of intention; instead, the town's true purpose was "to stop Northeastern's development project because it would purportedly detract from the town's scenic and residential nature." Based on his view that the town had thus given a pretextual reason for the taking, the judge concluded that the town acted in bad faith, requiring dismissal of the town's petition. On May 12, 2025, judgment entered, dismissing the petition and awarding Northeastern over \$1 million in attorney's fees, expert fees, and costs under G. L. c. 80A, § 13.⁸ The town appealed, and we granted its application for direct appellate review.

Discussion. On appeal, the town argues that the judge should have allowed summary judgment in its favor. The town contends that undisputed facts show that the town had a valid and indeed quintessential public purpose for the taking, and that the facts here do not resemble the extreme circumstances in which we have invalidated a taking based on a municipality's bad faith. Moreover, the town argues, an otherwise lawful taking for a public purpose is not invalid merely because its cost is

⁸ The town contests the propriety of awarding attorney's fees and expert fees under G. L. c. 80A, § 13. Deciding the case as we do, we do not reach the issue.

paid for by private actors who will obtain an incidental benefit from the taking.

In response, Northeastern urges us to affirm the entry of summary judgment in its favor on the ground that the town sought to use eminent domain for the unlawful purpose of blocking Northeastern's development. Northeastern argues that preserving a town's scenic character is not a valid public purpose, and that, in any case, use of eminent domain for the dominant reason of blocking a development is tantamount to bad faith, regardless of whether the town also has other motivations for the taking. Northeastern alternatively argues that, even if the judge erred in granting summary judgment to Northeastern, the case must be remanded for trial, because Northeastern adduced evidence of bad faith on the part of the town, as well as evidence that the taking's true purpose was to benefit private actors who opposed the project.

We review decisions allowing summary judgment de novo. See Ryan v. Mary Ann Morse Healthcare Corp., 497 Mass. 271, 278-279 (2026). Where, as here, the parties cross-moved for summary judgment based on undisputed facts in the record, we examine each motion to "determine whether the moving party is entitled to judgment as a matter of law after viewing the evidence in the light most favorable to the opposing party and drawing all permissible inferences and resolving any evidentiary conflicts

in the opposing party's favor." Id., citing Dzung Duy Nguyen v. Massachusetts Inst. of Tech., 479 Mass. 436, 448 (2018). If the party opposing the motion would bear the burden of proof at trial, the "moving party may satisfy its burden . . . either by submitting evidence that negates an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of [its] case at trial" (quotation omitted). Ryan, supra at 279, quoting Tody's Serv., Inc. v. Liberty Mut. Ins. Co., 496 Mass. 197, 199 (2025).

We first address whether the taking has a valid public purpose. Concluding that it does, we next consider whether the taking is nonetheless invalid due to bad faith on the part of the town or the involvement of private actors financially supporting, and incidentally benefiting from, the taking. Finally, we address Northeastern's public policy argument relating to the Dover Amendment, G. L. c. 40A, § 3.

1. Public purpose. This dispute arises under G. L. c. 80A, "a statutory framework for so-called 'straight condemnations,' in which no taking occurs until the amount of valuation of the property is determined by a court." Abuzahra v. Cambridge, 486 Mass. 818, 819 n.3 (2021). To begin this process, town officials first adopt and record an order of intention to take a property, as the town's board of selectmen

did here. See G. L. c. 80A, §§ 2, 3. They then file a petition in the Superior Court "to establish [the town's] right to take the property" and to determine the appropriate amount of compensation and damages. G. L. c. 80A, § 4. If, as Northeastern did, a landowner "denies the right of the petitioner to . . . take . . . [its] property" or "impugns the validity or regularity of the proceedings," the Superior Court must "hear and determine the issue" and then may either dismiss the petition or enter "an order establishing the right of the petitioner to take the real estate, or interest therein." G. L. c. 80A, § 7. In the event that the court determines the town has the right to take the property, "commissioners are appointed to hear and determine any issue as to the sufficiency of compensation or damages." Swampscott v. Remis, 350 Mass. 523, 525 (1966), citing G. L. c. 80A, § 8.⁹

For any such taking to be constitutionally permissible, art. 10 of the Massachusetts Declaration of Rights and the Fifth Amendment to the United States Constitution require that the

⁹ Municipalities rarely pursue eminent domain takings under G. L. c. 80A, and instead typically proceed under G. L. c. 79, the so-called "quick take" statute. See Abuzahra, 486 Mass. at 818, 819 n.3. We therefore have had few occasions to consider takings under G. L. c. 80A, and the parties' briefs principally cite to cases concerning the validity of takings under G. L. c. 79. No party has argued that the differences between the statutory schemes are relevant to the questions presented in this appeal.

taking "be made for a legitimate public purpose" and that the landowner "receive just compensation." Cobble Hill Ctr. LLC v. Somerville Redev. Auth., 487 Mass. 249, 262 (2021) (Cobble Hill). If a taking does not have a public purpose, "[n]o amount of compensation can authorize such action." Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 543 (2005).

The concept of a public purpose for taking property is construed "broadly," in accord with "our longstanding policy of deference to legislative judgments in this field." Cobble Hill, 487 Mass. at 263, quoting Kelo v. New London, Conn., 545 U.S. 469, 480 (2005). See, e.g., Blakeley v. Gorin, 365 Mass. 590, 598 (1974) ("It is not necessary . . . that the land thereafter be devoted to a public use," so long as "taking is accomplished for a public purpose"). "[T]he [L]egislature, not the judiciary, is the main guardian of the public needs to be served by social legislation," and "[t]he role of the judiciary in determining whether . . . [the power of eminent domain] is being exercised for a public purpose is an extremely narrow one." Id., quoting Berman v. Parker, 348 U.S. 26, 32 (1954). The Legislature's exercise of this authority "may be delegated by statute to the cities and towns," Burnham v. Mayor & Aldermen of Beverly, 309 Mass. 388, 389 (1941), and a town's exercise of such delegated authority, "duly recorded, in conformity with the statute, is to be treated as if it were a statute," Boston v.

Talbot, 206 Mass. 82, 90 (1910) (Talbot). A court may review the discrete question whether a taking was for a public purpose, but, if the court concludes that it was, the taking's necessity or expedience is a legislative question beyond the scope of the court's review. See Luke v. Massachusetts Turnpike Auth., 337 Mass. 304, 308 (1958), and cases cited; Talbot, supra at 89-90.

In determining the purpose of a taking, as with our review of any legislative act, the court ordinarily does not "inquire into the motives" of the individual members of the legislative body that voted to effect the taking. Talbot, 206 Mass. at 91, quoting Soon Hing v. Crowley, 113 U.S. 703, 710 (1885). See generally Durand v. IDC Bellingham, LLC, 440 Mass. 45, 51-52 & n.11 (2003), and cases cited. Thus, for example, in Despatchers' Cafe Inc. v. Somerville Hous. Auth., 332 Mass. 259, 263-264 (1955), where there was "no allegation that the [housing authority did] not intend to carry out the project for which the land [was] to be taken" for the proper public purpose of redressing slum-like conditions, the plaintiffs could not succeed by "attacking merely the impelling motives of officers authorized to exercise the power of eminent domain and actually exercising that power for authorized purposes." See id. at 262-264 (taking alleged to be improperly motivated by "desire to change the area from one predominantly residential to one exclusively industrial" to attract businesses to city and

increase tax revenues). Contrast HTA Ltd. Partnership v. Massachusetts Turnpike Auth., 51 Mass. App. Ct. 449, 456 (2001) (reversing dismissal of complaint seeking rescission of taking where stated public purpose for taking was to satisfy certain Federal requirements, but defendant allegedly was aware of studies showing property to be unsuitable for meeting those requirements).

Here, the purposes identified in the town's order of intention for the taking -- to preserve the easement land "in perpetuity in [its] natural, scenic, and open condition . . . for the use and enjoyment of the general public" and to "protect against" any uses that would "interfere with the conservation values" of the property -- are quintessential public purposes. Article 97 of the Amendments to the Massachusetts Constitution, adopted in 1972, explicitly declares that "the protection of the people in their right to the conservation . . . of the . . . forest, water, air and other natural resources" is "a public purpose." Article 97 replaced art. 49, which was adopted in 1918 and similarly provided that "[t]he conservation, development and utilization of the . . . forest, water and other natural resources of the commonwealth are public uses." And, even prior to the adoption of art. 49, we had recognized the validity of taking land for conservation purposes. See, e.g., Salisbury Land & Improvement Co. v. Commonwealth, 215 Mass. 371,

374 (1913) (Salisbury) ("plainly" within power of Legislature to exercise power of eminent domain to acquire land for "establishment and maintenance of public parks and reservations"). See also Smith v. Westfield, 478 Mass. 49, 58-62 (2017) (describing common-law protections for public parks); Opinion of the Justices, 383 Mass. 895, 918 (1981), quoting Rep. A.G., Pub. Doc. No. 12, at 139, 141 (1973) (art. 97 furthers "public purposes deemed important in our laws since the beginning of our Commonwealth").

The order of intention also lists various anticipated public benefits of taking the easements, such as protecting "the scenic and natural beauty and character" of the area, that similarly constitute valid public purposes. Contrary to Northeastern's argument, preserving or enhancing the scenic character of an area is a valid public purpose. See Kelo, 545 U.S. at 481, quoting Berman, 348 U.S. at 33 ("It is within the power of the [L]egislature to determine that the community should be beautiful as well as healthy . . ."); Worcester Knitting Realty Co. v. Worcester Hous. Auth., 335 Mass. 19, 24 (1956) ("The improvement of the appearance and attractiveness of a project area is a valid public purpose"); General Outdoor Advertising Co. v. Department of Pub. Works, 289 Mass. 149, 185 (1935) ("Grandeur and beauty of scenery contribute highly important factors to the public welfare of a State," and

"preserv[ing] such landscape from defacement . . . is a public purpose"). Indeed, along with its recognition of conservation as a public purpose, art. 97 expressly states that the "people shall have the right to . . . the natural, scenic, historic, and esthetic qualities of their environment." And both our Legislature and the United States Congress have charged agencies with maintaining scenic areas for the benefit of the public. See, e.g., G. L. c. 21, § 1 (Department of Conservation and Recreation "shall have control and supervision of such parks, forests, and areas of recreational, scenic, or historic significance as may be from time to time committed to it"); 54 U.S.C. § 100101(a) (National Park Service to regulate use of National Park System in conformance with its purpose "to conserve the [parks'] scenery, natural and historic objects, and wild life").

The town's stated purpose of taking the disputed easements to preserve the land for open space and conservation purposes thus constitutes a valid public purpose for exercising the town's eminent domain authority under G. L. c. 80A.

2. Bad faith. Northeastern nonetheless claims that the taking is invalid under Pheasant Ridge, 399 Mass. at 775, in which we held that "a municipal land taking, proper on its face, may be invalid because it was undertaken in bad faith." "Bad faith in the use of the power of eminent domain . . . includes

the use of the power . . . solely for a reason that is not proper, although the stated public purpose or purposes for the taking are plainly valid ones." Id. at 776.¹⁰ Here, Northeastern claims, the taking was undertaken in bad faith because the town's stated public purpose is not its true purpose for taking the easement rights.

Northeastern's claim of bad faith rests on evidence showing that the town used its eminent domain authority specifically in order to block Northeastern's project. Many town residents expressly stated this intent in vehement terms; some also spoke of using the prospect of a taking as "leverage" in negotiations with Northeastern; and the town had not discussed taking the parcel by eminent domain before Northeastern announced its project. Northeastern also points to evidence showing a variety of reasons why members of the board of selectmen and town residents opposed Northeastern's project, apart from a desire to conserve East Point. For example, opponents of the project analyzed and expressed concern about the project's potential negative impacts on the town's infrastructure, as well as potential financial costs to residents; one member of the board

¹⁰ Elsewhere in Pheasant Ridge, 399 Mass. at 777 & n.5, we stated that a taking is unlawful if the improper purpose is "the dominant reason[] for the town's taking," but that, in the circumstances of that case, we did not need to "define dominant reason with precision." The same is true here.

of selectmen stated that the project would pose a "very real risk of a tax increase" on residents, and that this was "doubly unfair" given that Northeastern does not pay property taxes to the town. Based on this evidence, Northeastern contends that the undisputed record establishes that the dominant reason for the taking was not to conserve the land but instead to block Northeastern's project.

We begin by reiterating, as we said in Pheasant Ridge, 399 Mass. at 777, that "[w]e should not easily attribute improper motives to a town, and to its citizens voting at town meeting, if there were valid reasons that would have supported the town's action." As we have already discussed, a town's exercise of its eminent domain authority is a legislative act and as such is entitled to a presumption of validity. See Durand, 440 Mass. at 51-52 & n.11; Talbot, 206 Mass. at 90. We have previously recognized the impropriety, and fundamental infeasibility, of inquiring into the minds of each person who voted to approve a taking as a basis for invalidating the action:

"Apparently the plaintiffs expect to show by oral evidence that the authority's motives are not what they purport to be. . . . If the plaintiffs can do that in this case, any person whose land is about to be taken for a public purpose can do the same. If land is about to be taken for a schoolhouse, the owner can bring suit claiming that the motive of the authorities for the proposed taking is not really that a schoolhouse is needed, but is to improve the appearance of the street, to advertise the community, to give jobs to contractors and workmen, to make themselves popular with the parents of the children, or is whatever

other motive ingenuity and the plausibilities of the situation may suggest."

Despatchers' Cafe Inc. 332 Mass. at 263. "To permit" such inquiries as the basis for invalidating a taking thus would "seriously . . . hamper public officers in the performance of duties necessary to the public welfare." Id. See Talbot, supra at 91. See also Simon v. Needham, 311 Mass. 560, 566 (1942) ("The action of the voters is not to be invalidated simply because someone presented a reason that was unsound or insufficient in law to support the conclusion for which it was urged"); Knowles v. Codex Corp., 12 Mass. App. Ct. 493, 498 (1981) ("We think it axiomatic that a court will not entertain a claim for relief which necessarily depends for its proof on interrogating the voters as to how and why they exercised their rights to vote by secret ballot").

Our decision in Pheasant Ridge did not overturn this long-standing principle. There, the plaintiffs had applied for a comprehensive permit under G. L. c. 40B, §§ 20-23, seeking to build a development that would include low and moderate income housing on land zoned for light commercial, municipal, and single-family residential use. Pheasant Ridge, 399 Mass. at 773. The proposed development met with town-wide opposition, and, while the plaintiffs' application remained pending, the town voted to take the property for the stated "purpose of

parks, recreation, and the construction of moderate income housing." Id. at 772-773 & n.3. The town had not previously considered acquiring the plaintiffs' land, or any parcel in that general vicinity, for park or recreational uses, despite conducting studies of the town's recreational needs. Id. at 778. Nor was there any indication that the town was seeking to provide moderate income housing in that area. Id. Rather, these ostensible purposes had been developed by town officials "within minutes" of the town meeting at which the taking was authorized, and without consulting any of the town agencies that normally would have been involved in considering such actions. Id. Further still, the record showed "beyond question" that voters were not asked to consider the merits of acquiring the land for the specified purposes, but instead were effectively told by the chairman of the board of selectman that these purposes had been chosen in a pretextual attempt to legitimate the taking. Id. at 779 & n.8.

We concluded that this "record require[d] the inference that the town, acting through its town meeting, was concerned only with blocking the plaintiffs' development." Pheasant Ridge, 399 Mass. at 779. We reasoned that, while "[t]he town [was] not bound by the statements of the chairman of the board of selectmen," the town was indeed bound "when, after hearing the chairman's uncontested remarks and without any consideration

by any town agency or the town meeting itself of the merits or the relative merits of the acquisition of the site for the purposes stated, the town meeting voted to take the property." Id. at 779-780. In these circumstances, where the town's actions showed that the "public purposes for which the site purportedly was to be taken were not purposes for which the town intended in good faith to take and use the property," the taking was invalid. Id. at 779.

Northeastern has no reasonable expectation of proving the same with respect to the town's actions here. This conclusion follows from undisputed facts regarding the nature of the particular property at issue, prior actions by the town evincing interest in the property as part of an area of open space and recreation, and the method of the taking itself. See Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd. of Lawrence, 403 Mass. 531, 552-553 (1988) (Elks Lodge) ("In examining a municipality's proposed exercise of the power of eminent domain for inferences of bad faith, we consider whether the municipality has evinced prior interest in the area or its neighborhood, and whether its method of acquiring the property accords with usual practices").

The record here shows that the town has indeed evinced relevant interest in both East Point generally and Northeastern's parcel in particular. As the Superior Court

judge correctly determined, the relevant factor with respect to a town's prior interest is not whether the town previously had considered taking that same property by eminent domain, but rather whether the town had "evinced prior interest in the area or its neighborhood" in respects germane to the stated public purpose of the taking. Elks Lodge, 403 Mass. at 552 (discussing various manifestations of city's prior interest in riverfront area and its development before taking alleged to be for benefit of private party). See Pheasant Ridge, 399 Mass. at 778 ("Although not controlling, the absence of any prior town interest in the site or its neighborhood is instructive on the matter of good faith"). As discussed, the Northeastern parcel consists of wooded, coastal, and beach land in the area east of Northeastern's existing campus. Open space and recreation plans issued by the town in recent decades document interest from town residents in conservation and open space on East Point and make specific references to Northeastern's parcel. After the town acquired its own parcel of land on East Point, residents voted to create a public park there in 1986. The town's park still exists today, adjacent to Northeastern's parcel, and is accessible to members of the public seeking outdoor recreation only via the town's existing access easement over the Northeastern parcel. And, since 1991, the town has designated the Northeastern parcel as part of the town's natural resource

zoning district, which is intended for the preservation of open space and conservation uses. Contrast Pheasant Ridge, supra (no "parcel in the general vicinity of" taking had been considered for park, recreational, or low or moderate income housing purposes).

The terms of the taking -- imposing conservation easements over a portion of the parcel and taking a public access easement in relation to Canoe Beach -- accord with these prior actions by the town evincing interest in the land. Indeed, the easements by their nature will effect the town's stated purpose of preserving the land for open space and conservation. See Elks Lodge, 403 Mass. at 552, quoting Pheasant Ridge, 399 Mass. at 777 (we draw inferences concerning municipalities' "intentions from what they have done and what they have not done"). Contrast Pheasant Ridge, supra at 779 n.7 (town's ability to carry out its purported intent to build moderate income housing on land "would at best be in doubt," where land was also ostensibly taken for park purposes).

Moreover, Northeastern has not adduced evidence that the manner in which the town conducted the proceedings to take the easements deviated from its usual practices as a town. Unlike in Pheasant Ridge, town officials did not move forward with the taking without consulting committees that would ordinarily be involved in the process. See Pheasant Ridge, 399 Mass. at 778

(town's finance committee was not informed of public purpose for taking prior to town meeting). Rather, the town's advisory and finance committee, which functions in a fiscal advisory role for the town, published a report and recommendation assessing the estimated cost of the taking. Cf. Despatchers' Cafe Inc., 332 Mass. at 263 ("In determining whether the project was one that ought to be undertaken it would seem proper to give some consideration to the economic effects upon the city which was expected to pay one third of the cost"). Far from fabricating a public purpose mere minutes before the town meeting vote as in Pheasant Ridge, supra, the town issued a warrant in advance of the 2021 town meeting informing voters that the taking would be "for open space, recreation, conservation and/or historic preservation purposes." And, rather than a complete absence of debate among town residents on the merits of the taking, cf. id. at 780, the town meeting here included a lengthy debate, with some speakers -- albeit not all¹¹ -- advocating in favor of the taking for reasons reflected in the ensuing order of intention.

¹¹ As Northeastern appropriately concedes, it cannot show that the taking was in bad faith based solely on the diverse remarks made at the town meeting by residents who opposed Northeastern's project. See Pheasant Ridge, 399 Mass. at 779-780. An argument based solely on these remarks would fall squarely in the category of "a claim for relief which necessarily depends for its proof on interrogating the voters as to how and why they exercised their rights to vote by secret ballot." Knowles, 12 Mass. App. Ct. at 498.

We note further that, even under the extraordinary circumstances present in Pheasant Ridge, 399 Mass. at 778, we stated that the taking in that case may have been permissible if the town had "truly intended that the land should be used for the purposes for which it was taken." Here, there is no evidence that the town "does not intend to carry out the purposes for which the land in the area is to be taken." Bowker v. Worcester, 334 Mass. 422, 430 (1956). As stated, the land is already zoned as part of the natural resource zoning district, which limits use of the land to purposes consistent with those for which the easements will be taken. Moreover, the property interests sought by the town are tailored to the stated public purposes for the taking: access and conservation easements that would provide the public with the right to "access and use" the easement areas "for outdoor recreational purposes" specifically.¹² Contrast Despatchers' Cafe Inc., 332 Mass. at 263 (suggesting that taking would be improper "where the authorities ostensibly taking land for a schoolhouse have no intention of building any schoolhouse at all but are really

¹² In addition, the town has voted to finance the taking in part with Community Preservation Act funds obtained under G. L. c. 44B, which ordinarily must be dedicated to conservation uses. See G. L. c. 44B, § 5 (b); Seideman v. Newton, 452 Mass. 472, 474, 480 (2008).

taking the land to let it lie open for the benefit of adjoining land owned by themselves or for some other irrelevant purpose").

In sum, the record here does not approach the extraordinary circumstances of Pheasant Ridge. The town's stated public purpose for the taking is a proper public purpose; this public purpose is consistent with past town actions evincing interest in the area of the taking; the town did not deviate from its usual practices in proceeding with the taking; and there is no material dispute that the taking in fact will be used for the town's stated public purpose.

On this record, Northeastern has no reasonable expectation of proving that the town's taking was in bad faith on the ground that the dominant reason for the taking was "solely to block" Northeastern's project. Pheasant Ridge, 399 Mass. at 777. To be sure, it is undisputed that the town pursued the taking in response to Northeastern's announcement of the project, that there was vehement opposition to the project on the part of town officials and residents, and that the taking would in effect block the project. However, it is axiomatic that taking a conservation easement will have the effect of preventing development; preventing development is the very purpose of imposing such an easement on land valued as an open space resource. See generally Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1018-1019 (1992) (acknowledging "[t]he

many statutes on the books, both [S]tate and [F]ederal, that provide for the use of eminent domain to impose servitudes on private scenic lands preventing developmental uses"). In light of these overlapping aims of conservation and preventing development, attributing to the town a dominant bad faith reason for the taking "solely" focused on blocking Northeastern's project in the circumstances here -- where, again, the town previously had taken actions evincing interest in the area consistent with the town's stated purpose for the taking, the town pursued the taking in accordance with its usual procedures, and there is no material dispute that the taking will in fact be used for the stated public purpose -- would be at odds with our reluctance to attribute improper motives to a town, and with the presumption of validity we accord a town's legislative acts at town meeting. See Pheasant Ridge, 399 Mass. at 777. See also Durand, 440 Mass. at 51-52 & n.11; Talbot, 206 Mass. at 91. Invalidating the taking on this basis alone in the circumstances here also would be in tension with "our longstanding policy of deference to legislative judgments" as to the necessity for a taking, Cobble Hill, 487 Mass. at 263, quoting Kelo, 545 U.S. at 480, because 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.

Northeastern thus has no reasonable expectation of proving on this record that the town's taking is in bad faith on the theory that the taking had the sole purpose of blocking Northeastern's project.

3. Private interests. Northeastern alternatively argues that disputes of material fact remain as to its separate theory that the taking was improper because it was intended to benefit private persons who have funded and advocated for the town's efforts to use its eminent domain authority.¹³ We disagree.

"A purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void." Kelo, 545 U.S. at 477, quoting Hawaii Hous. Auth. v. Midkiff, 467 U.S. 229, 245 (1984). See Pheasant Ridge, 399 Mass. at 775 (use of power of eminent domain "solely to benefit some private person or persons would be . . . grounds for declaring a taking invalid"). "Nor would the [town] be allowed to take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit." Kelo, supra at 478.

¹³ Northeastern did not move for summary judgment on this alternative ground, but it was fully briefed in the parties' filings concerning the town's motion for summary judgment. The judge below did not reach the issue, having ruled on other grounds that Northeastern was entitled to summary judgment, but the issue is properly before us on de novo review of the summary judgment record. See Ryan, 497 Mass. at 278-279.

But a taking that does have a valid public purpose "is not void merely because the disposition of that land indirectly benefits private individuals." Elks Lodge, 403 Mass. at 551. See Kelo, 545 U.S. at 485 ("Quite simply, the government's pursuit of a public purpose will often benefit individual private parties"). See, e.g., Luke, 337 Mass. at 311 ("[the fact] that the number of probable users [of a private way created via eminent domain] is not large does not invalidate the taking"). Nor is a taking with a public purpose invalid on the ground that it is requested, financially supported, or advocated for by a private party. See, e.g., Machado v. Board of Pub. Works of Arlington, 321 Mass. 101, 104-105 (1947), and cases cited ("the mere fact that [landowner] may have agreed to reimburse the town for the cost of the taking [to extend the town's sewer system to his property] would not render it invalid" where project had public purpose); N. Ward Co. v. Street Comm'rs of Boston, 217 Mass. 381, 386 (1914) (taking not invalid for having been requested by city contractor where taking's primary object was public purpose of building garbage disposal plant).

These principles foreclose Northeastern's argument that the taking may be invalidated based on evidence of financial support, influence, and advocacy in support of the taking from the Nahant Preservation Trust, Inc., and other private actors

who, Northeastern contends, seek to forestall "any increase in traffic, loss of privacy[,] or diminution of view" caused by Northeastern's project. As discussed, the taking has a proper public purpose, and Northeastern has not adduced evidence that the easement areas are being "seized ostensibly for [this] public use," only to be "diverted to a private use." Sellers v. Concord, 329 Mass. 259, 261-262 (1952), quoting Salisbury, 215 Mass. at 377. Indeed, the very nature of the easement rights being taken undisputedly will provide a public right of access to the easement areas for recreational and conservation uses. Evidence that the taking is partially funded by, and also may incidentally benefit, private actors does not invalidate its public purpose. See Elks Lodge, 403 Mass. at 551 (taking not invalid for disposition of land to private developer where benefits to developer were "incidental to the main [public] purpose" of redressing blighted open area).

4. Public policy. Finally, Northeastern argues that authorizing an eminent domain taking in the circumstances of this case would run afoul of public policy considerations. Northeastern points to the Dover Amendment, which prohibits municipalities from imposing zoning ordinances or bylaws that "regulate or restrict the use of land or structures . . . for educational purposes on land owned or leased . . . by a nonprofit educational corporation." G. L. c. 40A, § 3.

Northeastern contends that the town, in seeking to take land that Northeastern intends to develop for educational purposes, is misusing its eminent domain authority to sidestep the Dover Amendment's restrictions on the town's zoning authority.

Northeastern's public policy argument founders on the fact that, unlike in the zoning context, the Legislature has not chosen to impose additional limits, beyond those set by our State and Federal Constitutions, on a town's ability to take land used for educational purposes. While the Legislature has chosen to restrict the scope of a town's authority to exercise its eminent domain authority to take certain categories of land, land used for educational purposes is not among those categories. See, e.g., G. L. c. 79, § 5 (restricting use of eminent domain to take land for public way, canal, or railroad purposes if land already dedicated to certain other public uses, not including educational uses); G. L. c. 79, § 5A (prohibiting takings of certain lands of historical or archeological interest, absent "leave of the general court specially obtained"). Where the Legislature has imposed no such restriction, public policy does not preclude the town's exercise of its eminent domain authority for a public purpose long recognized not only in our case law but also in our Constitution. See art. 97 of the Amendments to the Massachusetts Constitution; Salisbury, 215 Mass. at 374. Of

course, as with all takings -- and unlike the imposition of most zoning restrictions, see Gove v. Zoning Bd. of Appeals of Chatham, 444 Mass. 754, 761 (2005) -- the town may take the easements only upon payment of just compensation to Northeastern.

Conclusion. We reverse the judgment granting Northeastern summary judgment and attorney's fees and costs. The case is remanded for entry of an order establishing the town's right to take the property interests described in the order of intention and for further proceedings consistent with this opinion.¹⁴

So ordered.

¹⁴ Northeastern's request for appellate attorney's fees is denied.