

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 1977CV01211

82

NAHANT PRESERVATION TRUST, INC.,  
TOWN OF NAHANT, and others<sup>1</sup>

vs.

NORTHEASTERN UNIVERSITY

Consolidated with:

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2177CV00186

11

NORTHEASTERN UNIVERSITY

vs.

NAHANT PRESERVATION TRUST, INC., and others<sup>2</sup>

Consolidated with:

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

LAND COURT  
No. 19MISC00390

NORTHEASTERN UNIVERSITY

vs.

NAHANT PRESERVATION TRUST, INC., and others<sup>3</sup>

---

<sup>1</sup> Christian Bauta, Tess Bauta, Elizabeth K. Berman, Anne Bromer, Candace Cahill, Michelle Capano, Alice Cort, Carl Jenkins, Marilyn Mahoney, William Mahoney, Dan McMackin, Diane Monteith, Andrea Murphy, Jeffrey Musman, Patrick O'Reilly, Marie Elizabeth Pasinski, M.D., Roger Pasinski, M.D., Vi Patek, Linda Pivacek, Emily Potts, Laura Poulin, Peter Rogal, Peggy Silva, Susan Solomon, Paul Spirn, Donna Steinberg, and Jim Walsh.

<sup>2</sup> All those listed in n.1.

<sup>3</sup> Mark Cullinan and all those listed in n.1.

**MEMORANDUM OF DECISION AND ORDER ON  
NORTHEASTERN UNIVERSITY'S MOTION FOR SUMMARY  
JUDGMENT ON THE DEDICATION CLAIM (PAPER No. 72)**

According to Article 97 of the Amendments to the Massachusetts Constitution ("Article 97"), which was ratified by voters in 1972, a two-thirds vote of both houses of the Legislature is required to allow land that was acquired or designated ("dedicated") for a public purpose to be used for other purposes.

These consolidated actions arise from a dispute over a peninsula of land in Nahant, Massachusetts, known as East Point, a portion of which has been owned and used by Northeastern University ("Northeastern") for its Marine Science Center ("MSC") since the mid-to-late 1960s, and the applicability of Article 97 to that portion. After Northeastern announced plans in 2018 to expand its facilities on East Point, a number of Nahant residents and the Nahant Preservation Trust, Inc. ("NPT"), announced its opposition to Northeastern's plans on grounds that the land in question had been dedicated to public use (as an ecological preserve and for passive recreation), thus, a two-thirds vote of the legislature is required under Article 97 for Northeastern to develop it.

The opposition to its plans prompted Northeastern to file suit in August 2019 against twenty-eight Nahant residents and the NPT (collectively, "NPT Parties") in the Land Court (Case No. 19MISC00390), seeking a declaration that it had not made a public dedication of the land at issue.<sup>4</sup> Shortly thereafter, the NPT Parties filed suit against Northeastern in the Superior Court (Case No. 1977CV01211), challenging Northeastern's plans on a number of grounds, including Article 97.

---

<sup>4</sup> Upon transfer to the Superior Court, the Land Court action was given a Superior Court Docket number (No. 2177CV00186) for administrative purposes.

Thereafter, the Land Court ruled that the NPT Parties have a right to a jury trial on certain issues of fact in the Land Court action, and the Chief Justice of the Trial Court ordered the transfer and consolidation of the Land Court action with the Superior Court action, and authorized the undersigned Superior Court judge to sit as a Land Court judge to adjudicate both cases.<sup>5</sup> On July 31, 2020, the Town of Nahant ("Town") was allowed to intervene as a plaintiff in the Superior Court action.<sup>6</sup>

The matter is now before the Court on Northeastern University's Motion For Summary Judgment On The Dedication Claim (Paper No. 72) ("Motion"). Following a lengthy hearing on the motion on May 20, 2022, and a thorough review of the voluminous record, for the reasons that follow, the Motion is **ALLOWED**.

#### **FACTUAL BACKGROUND**

The following undisputed facts, and the disputed facts in the light most favorable to the Nahant Plaintiffs as the non-moving parties, are taken from the NPT Parties' And The Town Of Nahant's Amended Responses To Northeastern's Statement Of Facts In Support Of Its Motion For Summary Judgment On The Dedication Claim (Paper No. 73) and the summary judgment record.<sup>7, 8</sup>

---

<sup>5</sup> See Procedural Order No. 1 (Paper No. 60) for more information about the procedural history of these matters. References herein to "Paper No." are to items docketed in Superior Court Case No. 1977CV01211.

<sup>6</sup> The Court refers to the NPT, the individual Nahant resident plaintiffs, and the Town collectively as the "Nahant Plaintiffs."

<sup>7</sup> Additional relevant facts are discussed, *infra*, in the Court's Discussion section.

<sup>8</sup> The Court cites to the statement of facts as "SOF," followed by a paragraph number, and to the Joint Appendix as "J.A.," followed by an exhibit number.

In January 2018, Northeastern made public its plan to build on its 20.4-acre Nahant MSC campus ("MSC Campus") a new laboratory, classroom, and research building of some 55,000 square feet ("Project"). (SOF, ¶ 1). The new building will be located partially within and adjacent to an old military bunker ("Murphy Bunker") and partially on the land above it. (SOF, ¶ 2). A subsurface geothermal well field will be constructed to the east of Murphy Bunker and thermal energy will be used to heat and cool the new building. (SOF, ¶ 3). After construction of the thermal wells, Northeastern plans to eliminate invasive plants that currently exist in the area east of Murphy Bunker and to plant and maintain native plants in the area. (SOF, ¶ 4).

Almost as soon as the Project was announced, certain individuals, including some who are nearby neighbors to the MSC and affiliated with the NPT, voiced opposition. (SOF, ¶ 5). In the summer of 2018, Northeastern met with a number of those individuals, including certain individuals affiliated with the NPT. (SOF, ¶ 6). At no time during these discussions did any of these individuals, including those who were part of or affiliated with the NPT, or any Town official or other person, assert that the Project could not go forward because the area of the proposed Project had been dedicated for public use. (SOF, ¶ 7). In December 2018, Northeastern presented its plans for the Project at a public meeting of the Nahant Board of Selectmen, which was attended by a number of Nahant citizens, including certain members of the NPT. (SOF, ¶ 7). No one stated publicly, on the record at that meeting that the Project could not proceed because of an alleged dedication by Northeastern. (SOF, ¶ 7).

In July 2019, the NPT Parties sent a letter to Northeastern asserting that, more than fifty years earlier, Northeastern had made a dedication to the public of the area where the Project would be located for use as an ecological preserve and passive recreation. (J.A., Ex. 3). As a result, the NPT Parties claimed, the Project could not proceed because the land was so-called Article 97 land of the Commonwealth which Northeastern was prohibited from altering without legislative approval. (SOF, ¶ 9). The July 2019 letter (on which the Massachusetts Attorney General, the Nahant Board of Selectmen, and other municipal officials were copied) expressed an intent to commence a lawsuit against Northeastern. (SOF, ¶¶ 8, 10).

In August 2019, Northeastern commenced the above-captioned Land Court action (19MISC00390) seeking a declaratory judgment that it had never made the alleged dedication. (SOF, ¶ 11). Thereafter, also in August 2019, the NPT Parties commenced the above-captioned Superior Court action (1977CV01211) seeking, among other things, a declaration that over fifty years earlier Northeastern had made unequivocal and clear statements of intent to dedicate to the public the land on top of and to the east of Murphy Bunker. (SOF, ¶ 12). Neither the Attorney General's Office nor the Town of Nahant were parties in either lawsuit when those cases were commenced. (SOF, ¶ 13). The Town subsequently moved to intervene in both lawsuits, which was allowed on July 31, 2020. (SOF, ¶ 15). The Attorney General's Office has not sought to intervene or otherwise involve itself in the litigation.<sup>9</sup>

---

<sup>9</sup> This is despite the fact that the NPT Parties' July 2019 letter notifying Northeastern of their intent to sue specifically included a "request that the Attorney General take steps to enforce the Commonwealth's public easement in East Point and to prevent any change in use or transfer of the Article 97 property that has been dedicated to public use by [Northeastern] as an ecological preserve." (J.A., Ex. 3, p. 10).

The MSC Campus is a 20.4-acre site at the end of Nahant Road and east of Swallow Cave Road in the area generally known as East Point. (SOF, ¶ 16). Lodge Park, an 8.3-acre public park owned by the Town, abuts the MSC Campus. (SOF, ¶ 16). The MSC Campus was originally part of two estates: the estate of the family of Henry Cabot Lodge and an adjacent estate owned by Harmon Elliot. (SOF, ¶ 17). In 1941, the United States acquired the Lodge and Elliot estates by eminent domain – taking a total of 28.7-acres in all. (SOF, ¶ 18). Thereafter, the federal government turned the land over to the United States military, which began to use the whole area for military purposes. (SOF, ¶ 19).

Among other things, the military constructed underground bunkers and other military facilities on the site, including Murphy Bunker. (SOF, ¶ 20). This work entailed significant amounts of blasting, excavation, earth moving, and filling. (SOF, ¶ 21). The construction of these facilities and the military activities left the land on top of and to the east of Murphy Bunker relatively barren, and the area to the east of Murphy Bunker was cleared and leveled to allow an unobstructed firing zone for the massive canons located at the ends of the bunker. (SOF, ¶ 22). In the 1950s, the area to the east of Murphy Bunker was once again cleared and leveled for installation of several 90-mm antiaircraft guns and bunkers. (SOF, ¶ 23). In 1954, the Army announced plans for a NIKE guided missile site to be constructed on the 8.3-acre site that eventually became Lodge Park. (SOF, ¶ 24). Massive amounts of fill were brought across the area that would become the MSC Campus in connection with that project. (SOF, ¶ 25).

In the early 1960s, the military facilities were decommissioned. (SOF, ¶ 26). In 1963, the Town applied to acquire the whole 28.7-acre site for a park, and the federal

government offered the area to the Town. (J.A., Ex. 11). At the 1964 Nahant Town Meeting, however, the Town voted to indefinitely postpone action on a motion to authorize the funds necessary to purchase the property, and the Town Board of Selectmen subsequently notified the General Services Administration ("GSA") that the Town had no further interest in the property. (J.A., Exs. 12-13).

According to the transcript from the 1964 Town Meeting, the then-chair of the Conservation Commission, Ruth Alexander, stated, in pertinent part:

I am sure that all the Townspeople in Nahant wish that this area could be left, but we are all afraid of what would happen if it is left for us to own and then all of Boston, Somerville, Chelsea, etc. occupy it because we would leave this wide open to the world as the Advisory Committee has told us.

(J.A., Ex. 13, p. 65). Commenting on whether the Town should purchase the property or not, the then-chair of the Board of Selectmen, Charles Kelley, noted, in part: "The second factor that really concerns us is the fact that we would have to use this for park or recreational purposes. It would have to be open to any citizen of the United States."

(J.A., Ex. 13, p. 71). The Town's Annual Report, dated December 1964, states:

Last year the Town decided not to appropriate money for the purpose of acquiring [the government property at East Point] . . . . The [Conservation] Commission feels, however, that at least it would be desirable to acquire for the towns people, if possible without expenditure of money, the right to walk along a scenic pathway which would follow as much of the shoreline as is included in this property. Whether or not this will be possible depends not only on the desires of the Town but also on the willingness of the government to grant a revocable license or easement for this purpose.

(J.A., Ex. 14, pp. 87-88).

Thereafter, a subcommittee was formed to see if the Conservation Commission could interest a college or university in acquiring the property, based on the belief that

an educational institution might be more inclined than a private developer to provide a walking path on the property. (J.A., Ex. 15, p. 94, and Ex. 18). The subcommittee brought the property to the attention of Northeastern, which expressed an interest in acquiring it as a site for marine science research and education. (J.A., Ex. 15, p. 94, and Ex. 16, p. 104).

In April 1965, Northeastern prepared a document entitled, "Proposal for a Marine Science Research Institute" ("April 1965 Proposal"). (J.A., Ex. 16). At that time, the 28.7-acre area was relatively barren. (SOF, ¶ 37). In the April 1965 Proposal, Northeastern proposed to acquire the entire 28.7-acre former military installation at East Point for use as a marine science campus that would "provide a year-round facility for research and instruction in the marine sciences and related fields." (J.A., Ex. 16, pp. 104-105). The April 1965 Proposal explained:

Despite its relatively small area, Nahant has an unusually diverse fauna and a wide variety of littoral<sup>10</sup> habitats, ranging from rockbound cliffs and sandy beaches on the seaward side, to tidal mud flats on the landward side. **The University seeks to acquire the whole of East Point in order to make it a wildlife preserve.** Only in this way can the unusual littoral and benthonic<sup>11</sup> faunas be protected adequately. In addition, the University can assure that pollution will not jeopardize the continued high quality of the seawater for laboratory studies.

(J.A., Ex. 16, p. 106) (emphasis added). While Board of Selectmen chair Kelley opposed the federal government's transfer of the site to Northeastern, Conservation

---

<sup>10</sup> "Littoral" refers to "the shore zone between high tide and low tide points." Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/littoral> (accessed Sept. 15, 2022). The parties do not dispute the meaning of this term.

<sup>11</sup> "Benthonic" or "benthic" refers to "the bottom of a body of water." Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/benthic> (accessed Sept. 15, 2022). The parties do not dispute the meaning of this term.



Commission chair Alexander was supportive. (J.A., Ex. 17, p. 117, and Ex. 18). She advised the GSA that the Conservation Commission was "of the opinion that it is in the interest of the Town to have the property pass to an educational institution such as Northeastern University, particularly if there were reserved to the townspeople the right to walk along a pathway on the coastal edge of the upland and if some assurance is given that only low-lying or otherwise inconspicuous buildings are contemplated." (J.A., Ex. 18).

On May 17, 1965, Northeastern's then-president, Asa Knowles, wrote a letter ("May 1965 Letter") to a federal official advising that the Northeastern Board of Trustees had authorized Northeastern to take title to approximately 20 acres of the former military site at East Point, noting that Northeastern planned to use the property "for purposes of research in the area of marine biology and environmental engineering." (J.A., Ex. 19, p. 121). The May 1965 Letter went on to report that Knowles had recently met with Town officials and residents, who welcomed Northeastern to Nahant. (J.A., Ex. 19, p. 122). According to Knowles, at the meeting he and another Northeastern official "expressed our desire to co-operate in every way with the town officials" and "assured them we would work with the town in the development of a walkway through the property which could be used by citizens and others to view the ocean and the cliffs." (J.A., Ex. 19, p. 122).

In June 1965, the federal government approved Northeastern's application to acquire 20.4-acres of the former military site, reserving the remaining 8.3-acres for use by the Navy. (SOF, ¶ 42). Prior to the transfer of the property to Northeastern, the Conservation Commission attempted to negotiate from the federal government rights for

Town residents to use a two- or three-foot wide walking path to be created along the periphery of the property. (J.A., Exs. 21 and 22). In response, the federal government stated that it was agreeable to issuing a permit or license to the Town, but that it would be of only brief duration because a transfer of the property to Northeastern was imminent, and that a more practical approach for the Town would be post-transfer negotiations directly with Northeastern "with any resultant agreement being subject to approval by the Government." (J.A., Ex. 24). The Conservation Commission had, in fact, already reached out to Northeastern about a walking path prior to the transfer of the property. In a letter dated September 29, 1965 (the same date as its letter to the federal government seeking a path), the Conservation Commission forwarded Northeastern a draft agreement "concerning the right of the inhabitants of the Town to pass on the property . . . ." (J.A., Ex. 25). That agreement was never executed. (SOF, ¶ 46). Per the 1965 Annual Town Report:

The Commission was not able to secure from the Government and Northeastern University assurance that there would be an absolute right on the part of the townspeople to walk on a pathway around the cliffs. The Commission does, however, hope that some form of visiting privilege for scenic walks will be extended by Northeastern University.

(J.A., Ex. 15, p. 94).

Northeastern acquired the 20.4-acre property from the federal government on February 23, 1966. (J.A., Ex. 26). Among other things, the deed reserved to the federal government and its successors and assigns a perpetual 20-foot easement in, over, and across the Northeastern property to provide access to the 8.3-acre parcel the federal government was retaining – which area eventually became Lodge Park. (J.A., Ex. 26, p. 142). The deed also contained several restrictions, including a requirement that the

property "be utilized continuously in the manner and for the educational purposes set forth in the approved program and plan contained in the application of Northeastern University, dated June 16, 1965, and for no other purpose" for twenty years.<sup>12</sup> (J.A., Ex. 26, p. 145). The deed also barred Northeastern from selling, leasing, mortgaging, encumbering, or otherwise disposing of any part of or interest in the property without the written authorization of the Department of Health, Education, and Welfare for a period of twenty years. (J.A., Ex. 26, p. 145).

In the early 1970s, the federal government decided to dispose of the 8.3-acre site adjacent to the MSC Campus, and Northeastern and the Town each applied to obtain the site. (SOF, ¶ 52). On August 12, 1970, Northeastern's then-president Knowles provided the federal government with a document entitled, "The Development of Programs at Nahant," which set forth how Northeastern would further develop its property holding along with the additional land. (J.A., Ex. 32). In particular, the document explains: "If given control of both sites, Northeastern will request that the entire area be designated as a marine wild life [*sp.*] preserve." (J.A., Ex. 32, p. 173). The document goes on to describe proposed new facilities on both the 20.4-acre property already owned by Northeastern and the 8.3-acre site if transferred to Northeastern, including a "doubling of the size of the [e]xisting Edwards Laboratory." (J.A., Ex. 32, p. 176). Northeastern prepared an "Application for Purchase of Real Property for Educational Utilization," dated October 23, 1974, in connection with its efforts to obtain the 8.3-acre site. (J.A., Ex. 33). Under a section entitled, "Proof of Need," Northeastern stated:

---

<sup>12</sup> The parties reportedly have been unable to locate the June 16, 1965 application referenced in the deed.

Vital to the continued success of the studies at the [MSC] is the protection of the area and its preservation in the natural state. Although many visitors now come to the site, they are under the supervision of the Northeastern staff so that the ecology of the research areas is not disturbed. If the surplus property should be opened to the general public, it would be difficult to prevent trespass onto adjacent shoreline research projects, to prevent vandalism, to avoid defacing of the unique geological formation and general littering. Any use of this land incompatible with preserving the natural state of adjacent shorelines would be very detrimental to the existing program.

Should the [MSC] be unable to maintain the shoreline in its present natural state and to protect the research project from random human intrusions, then much of the value of the site would be lost . . . .

(J.A., Ex. 33, pp. 186-187).

The Town made formal application for the 8.3-acre site via a November 22, 1974, letter from then-chairman of its Board of Selectmen, Robert Steeves. (J.A., Ex. 34). In his letter, Steeves explained that the Town intended to use the site for the following public purposes: passive recreation; educational purposes; as a training site for the fire department and civil defense; and, preservation of open space. (J.A., Ex. 34, p. 209). Steeves also noted that, at that time, the Nahant school system was "using the area owned by Northeastern (with their permission) adjacent to the site for limited studies in ecological, marine biological and photography classes," and that East Point (including the area of the MSC Campus) "has been effectively closed to Nahanters" since the federal government acquired it in the 1940s. (J.A., Ex. 34, pp. 209-210).

The federal government ultimately decided to transfer the 8.3-acre site to the Town. After acquiring the 8.3-acre site, the Town petitioned the Land Court to amend the Town's and Northeastern's Registered Land Certificates of Title to reflect that the Town (not the military) was now the beneficiary of the 20-foot paved access easement

across the Northeastern property to the adjacent 8.3-acre site. (J.A., Ex. 36, and Deposition of Mark Cullinan, 90:3-13). The Town did not petition and has never petitioned the Land Court to seek to amend Northeastern's Certificate of Title to reflect any alleged easement by dedication. (Cullinan Depo., 90:14-17).

In 1995, Northeastern granted permission for a local astrophysicist, Peter Foukal, to construct a solar observatory on the land above Murphy Bunker. (SOF, ¶ 57; Cullinan Depo., 54:10-13). The Town was also consulted and concluded that the recreational use of observing the solar system complied with the way the area was zoned. (Cullinan Depo., 55:5-9). To construct the observatory, an area of land on top of the Murphy Bunker was cleared. (SOF, ¶ 58). Then a concrete pad foundation was laid and the observatory structure was installed. (SOF, ¶ 58). It operated on the land on top of Murphy Bunker from 1995 to 2018. (SOF, ¶ 59). The observatory was visible from Lodge Park and its existence on the land above Murphy Bunker was well-known to Town officials. (SOF, ¶ 60).

The observatory was used for scientific study and for educational programs. (SOF, ¶ 61). Northeastern asserts that the observatory was not freely open to or usable by the public. The NPT Parties dispute this, pointing to evidence that the observatory was advertised as being "open to Nahant residents for evening viewing of the Moon and planets, on most Friday evenings in the fall," and that Dr. Foukal would often accommodate private viewings on request. (SOF, ¶ 62, J.A., Exs. 74 and 81). The observatory was locked when not in use. (SOF, ¶ 63). No Town official or any other party objected to the clearing of land on top of Murphy Bunker or to the construction of

the observatory, nor did any party object to the observatory's operation on the land above Murphy Bunker. (SOF, ¶ 64).

Over the years, Northeastern's website describing the history of the MSC has stated the following: "The northeast portion of the property and the rocky coast are maintained as a wildlife sanctuary and ecological study area." (J.A., Ex. 86).<sup>13</sup>

The parties dispute the extent to which Northeastern sought to exclude the public from the MSC Campus over the past 50-plus years. Northeastern points to evidence that it hired a caretaker for the MSC whose job included maintenance and security at the property, "no trespassing" signs posted on the property, and internal memos noting the need to keep people not affiliated with the MSC off the property. The Nahant Plaintiffs, in turn, point to a multitude of affidavits and answers to interrogatories from Nahant residents attesting to their unfettered access to the area on top of and to the east of Murphy Bunker over the past many years. It is pointless to debate this conflicting evidence at the summary judgment stage. The Court construes the facts in the light most favorable to the Nahant Plaintiffs, as it must, and assumes for purposes of this motion that at least some Nahant residents have used the land on top of and to the east of Murphy Bunker for general recreation over the years, without seeking Northeastern's permission and under the impression that the area was open to the public.

---

<sup>13</sup> One of the two printouts included in Exhibit 86 of the Joint Appendix shows that the webpage was last changed November 23, 1995. The other identifies a 2001-2002 copyright.

## **DISCUSSION**

### **I. THE LEGAL FRAMEWORK**

#### **A. Summary Judgment Standard**

The fact that the Land Court has determined in the Land Court action that the defendants in that action have a right to a jury trial on certain issues of fact does not preclude this Court from awarding summary judgment if the record reveals an absence of genuine issues of material fact.

A motion for summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and responses to requests for admission under Rule 36, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Mass. R. Civ. P. 56(c). "The moving party has the burden of demonstrating affirmatively the absence of a genuine issue of material fact on every relevant issue, regardless of who would have the burden on that issue at trial." Arcidi v. NAGE, Inc., 447 Mass. 616, 619 (2006).

The party opposing summary judgment must respond and allege facts establishing the existence of a genuine issue of material fact for trial. Polaroid Corp. v. Rollins Env'tl. Servs. (N.J.), Inc., 416 Mass. 684, 696 (1993). Moreover, "[i]n deciding a motion for summary judgment, the motion judge must consider all factual allegations, and draw all reasonable inferences therefrom, in favor of the nonmoving party." Godfrey v. Globe Newspaper Co., Inc., 457 Mass. 113, 119 (2010); see also Willitts v. Roman Catholic Archbishop of Boston, 411 Mass. 202, 202 (1991) (any conflicts in the supporting materials are answered in favor of the non-movant). However, although the

Court views the evidence in the light most favorable to the non-moving party, it does not weigh evidence, assess credibility, or find facts. Drakopoulos v. United States Bank Nat'l Ass'n, 465 Mass. 775, 788 (2013) (citation omitted).

Finally, as is pertinent here, "a party moving for summary judgment in a case in which the opposing party will have the burden of proof at trial is entitled to summary judgment if [it] demonstrates, by reference to material described in Mass. R. Civ. P. 56(c), unmet by countervailing materials, that the party opposing the motion has no reasonable expectation of proving an essential element of that party's case." Jinks v. Credico (USA) LLC, 488 Mass. 691, 704 (2021) (citation omitted). "To be successful [in such a case], a moving party need not submit affirmative evidence to negate one or more elements of the other party's claim." Id. Moreover, "[a] nonmoving party's failure to establish an essential element of her claim 'renders all other facts immaterial' and mandates summary judgment in favor of the moving party." Roman v. Trustees of Tufts College, 461 Mass. 707, 711 (2012) (citations omitted).

### **B. Law Of Dedication Of Land**

Article 97 of the Amendments to the Massachusetts Constitution provides, in pertinent part, that:

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and **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.**

...

Lands and easements **taken or acquired for such purposes** 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 [legislature].



Id. (emphasis added).

Although Article 97 became law in 1972, the SJC has “made clear that art. 97 applie[s] to all property that was taken or acquired for art. 97 purposes, including property taken or acquired before its ratification in 1972.” Smith v. Westfield, 478 Mass. 49, 62 (2017). Thus, Article 97 applies to property that had been protected, *inter alia*, under two common law doctrines: the prior public use doctrine and the public dedication doctrine. Id. at 58, 62. In fact, “the spirit of art. 97 is derived from” those common law doctrines, which should be applied under Article 97 to “inform [the court’s] analysis.” Mahajan v. Department of Env’tl. Protection, 464 Mass. 604, 616 (2013) (citation omitted).

“Under our common law [public dedication doctrine], land is dedicated to the public as a public park when the landowner’s intent to do so is clear and unequivocal, and when the public accepts such use by actually using the land as a public park.” Smith, 478 Mass. at 63 (citation omitted).<sup>14</sup> Thus, a claim under the public dedication doctrine has two elements: (a) clear and unequivocal intent of the landowner to dedicate the land for public use; and, (b) acceptance by the public to use the land for the purpose so dedicated. Id. “The general public for whose benefit a use in the land was established by an owner obtains an interest in the land in the nature of an easement.” Lowell v. Boston, 322 Mass. 709, 730 (1948).

Clear and unequivocal intent may be demonstrated in a number of ways. “The recording of a deed or a conservation restriction is one way of manifesting such intent

---

<sup>14</sup> Here, the parties agree that the common law public dedication doctrine informs this Court’s determination of whether the property at issue is protected by Article 97 and, thus, a two-thirds vote of the legislature is required for Northeastern to proceed with the Project.

but it is not the only way.” Id. “[T]he intent must be to use the land permanently as a public park,” not just “temporarily or until a better use has emerged or ripened.” Id.

Use of the land by the public “is competent, and often important, as bearing on the question of dedication, when that is in dispute; for if a man stands by, seeing the public use a way, permits it, and says nothing, it is very strong evidence to show an intention to dedicate.” Hayden v. Stone, 112 Mass. 346, 350 (1873). Dedication “also may be manifested by the owner’s acts from which such an intention can be inferred.” Attorney Gen. v. Onset Bay Grove Ass’n, 221 Mass. 342, 348 (1915).

In Smith, for example, where there was no recorded restriction, a dedication was found based on the 1979 “acceptance by the city of Federal conservation funds under the [Land and Water Conservation Fund Act of 1965] to rehabilitate the playground with the statutory proviso that, by doing so, the city surrendered all ability to convert the playground to a use other than public outdoor recreation without the approval of the Secretary [of the Interior].” Smith, 478 Mass. at 64.

### **C. Overview of Issues To Be Determined**

As is relevant here, in their Complaint in the Superior Court action (No. 1977CV01211), the NPT Parties seek declarations that: (a) Northeastern “dedicated the land on top of and to the east of Murphy Bunker to the public for use as an Ecological Preserve and for passive recreation, and the public accepted that dedication, creating a public easement for that use that cannot be changed by [Northeastern]” (Verified Complaint, Count II, ¶ 86) (Paper No. 1); and, (b) “the public Ecological Preserve parkland on top of and to the east of Murphy Bunker is Article 97 land that cannot be transferred, altered or destroyed by [Northeastern] without compliance with the Article

97 transfer and/or change in use procedure” (*Id.*, Count III, ¶ 95(1)).<sup>15</sup> The Town seeks the identical declarations in the Complaint it filed in the Superior Court action.

(Complaint Of Intervenor-Plaintiff, Counts I and II) (Paper No: 45).

For its part, in its Complaint in the Land Court Action, Northeastern seeks declarations that: (a) it has not made a dedication of its property to the Town or the public; and, (b) its property is not subject to Article 97.<sup>16</sup>

In its Order Framing Questions Of Fact To Be Tried By Jury In The Superior Court Of Essex County (“Land Court Order”), the Land Court has identified the following questions of fact for trial by jury in this Court:

1. Did Northeastern University clearly and unequivocally intend to dedicate land on top of and to the east of Murphy Bunker in the Town of Nahant to the public for use as an ecological preserve and for passive recreation?
2. If the answer to Question 1 is yes, did Northeastern University clearly and unequivocally intend to permanently dedicate the above-described land to the public for such use?
3. If the answers to Questions 1 and 2 are both yes, did the public, generally, and/or the Town of Nahant on behalf of the public, accept Northeastern University’s permanent dedication of the land on top of and to the east of Murphy Bunker in the Town of Nahant for use as an ecological preserve and for passive recreation?

(J.A., Ex. 88, p. 1034).

In the Motion, Northeastern seeks summary judgment on the Nahant Plaintiffs’ claim that Northeastern dedicated the land on top of and to the east of Murphy Bunker to the public for use as an ecological preserve and for passive recreation through its

---

<sup>15</sup> The NPT Parties also allege, *inter alia*, that the Project proposed by Northeastern violates Article 97 (*Id.*, Count I).

<sup>16</sup> In their answer in the Land Court action, the NHP Parties seek the opposite declarations.

public statements, actions, representations, use, and/or course of conduct of the past 50-plus years.

The Nahant Plaintiffs argue that summary judgment should be denied because there are genuine issues of material fact regarding Northeastern's intent to dedicate that land. The Nahant Plaintiffs point to Northeastern's and the public's 50-year course of conduct, coupled with statements, assurances, and representations made by Northeastern when it acquired the property and in the decades since, as creating a triable issue on the question of Northeastern's intent to dedicate.

For the following reasons, the Court concludes that the Nahant Plaintiffs have no reasonable expectation of establishing that: (a) Northeastern clearly and unequivocally intended to permanently dedicate the property on top of and to the east of Murphy Bunker for use as an ecological preserve and for passive recreation; and, (b) there was an acceptance of the purported dedication by the general public.

The Court also concludes, as a matter of law, that even if the property was acquired by Northeastern for educational use, **and** as an ecological preserve and for passive recreation, as the Nahant Parties contend, Article 97 and the prior public use doctrine do not apply because the property was not "devoted to one public use," as required under Mahajan, 464 Mass. at 617, and the cases cited therein. As a result, summary judgment in Northeastern's favor is appropriate.

**III. THE NAHANT PLAINTIFFS HAVE NO REASONABLE EXPECTATION OF PROVING NORTHEASTERN MANIFESTED A CLEAR AND UNEQUIVOCAL INTENT TO DEDICATE THE PROPERTY FOR PUBLIC USE**

**A. There Is No Record Evidence That Demonstrates A Clear And Unequivocal Intent By Northeastern To Dedicate The Property For Public Use At The Time Of Acquisition In 1966**

In support of their argument that Northeastern intended to dedicate the land on top of and to the east of Murphy Bunker to the public for use as an ecological preserve and for passive recreation, the Nahant Plaintiffs rely heavily on Northeastern's April 1965 Proposal and the May 1965 Letter. In particular, they point to the April 1965 Proposal's statement that "[t]he University seeks to acquire the whole of East Point in order to make it a wildlife preserve" and the May 1965 Letter's statement that Northeastern had assured town officials that they "would work with the town in the development of a walkway through the property which could be used by citizens and others to view the oceans and the cliffs." The significance the Nahant Plaintiffs seek to impart on these words, however, ignores the context in which they were written, as well as the larger historical context of the negotiations regarding the federal government's disposition of East Point.

When the property that ultimately became the MSC Campus first became available in the early 1960s, the Town turned down the chance to purchase it for the purpose of a public park, apparently in part because of concerns that the Town would have been required to open and maintain it for use by the public at large, i.e., not just Nahant residents. (J.A., Ex. 13, pp. 65, 71; Ex. 14, pp. 87-88). Thereafter, the Town sought to facilitate a transfer that would secure for townspeople the right to walk along a scenic pathway along the shoreline of the property. (J.A., Ex. 14, pp. 87-88). It was in

this context that Northeastern came onto the scene and developed its proposal to use the property for a marine science research facility.

The April 1965 Proposal on which the Nahant Plaintiffs rely is focused on Northeastern's plan to use the property as a year-round facility for marine science research and education. Its statement that "[t]he University seeks to acquire the whole of East Point in order to make it a wildlife preserve," is made in the context of describing the area's unique littoral habitats, and what its authors viewed as the only way to adequately protect the area's unusual littoral and benthonic faunas, and a way to assure that pollution would not jeopardize the quality of the seawater needed for laboratory studies. The use of the term "wildlife preserve" in and of itself does not imply public access, particularly in this context. It is also important to note that, in April 1965, the dry land on East Point was relatively barren thanks to years of military use. (SOF, ¶ 37). All of these facts lead to the conclusion that the April 1965 Proposal's statement that "[t]he University seeks to acquire the whole of East Point in order to make it a wildlife preserve" was aimed at protecting what it called the "unusual littoral and benthonic faunas" in the area, not the then-barren land on top of and to the east of Murphy Bunker.<sup>17</sup>

Additionally, in the very next paragraph following the "wildlife preserve" passage of the April 1965 Proposal, the authors contemplate building on portions of the land (a pumphouse, saltwater storage tank, and living quarters), which, according to the Nahant Plaintiffs, Northeastern had just stated it intended to designate as a wildlife preserve.

---

<sup>17</sup> It also bears noting that there is no evidence that in 1965 - 1966, the Town asked Northeastern to make the whole area of East Point a wildlife preserve accessible to the public; rather, the Town only sought the right to a scenic walking pathway on the property.

Later, the April 1965 Proposal notes that Northeastern "seeks to utilize the Nahant site to its fullest potential" and that "activities other than those just mentioned would be permitted, provided that they did not interfere with the scientific studies of the proposed Institute." (J.A., Ex. 16, p. 113). The April 1965 Proposal elaborates that the site could be used by Northeastern's Underwater Society as a scuba diving training and exploration area, and possibly by other Northeastern organizations for life saving, sailing, sketching and painting instruction. (J.A., Ex. 16, pp. 113-114). It makes no mention of the possible establishment of a scenic path for recreational use by Nahant residents or the public generally.

The May 1965 Letter's statement that Northeastern had assured Town officials that they "would work with the town in the development of a walkway through the property which could be used by citizens and others to view the oceans and the cliffs," brings the Nahant Plaintiffs no closer to a dedication for public use. Ambiguous assurances that Northeastern would work with the Town to develop a scenic walkway cannot constitute a clear and unambiguous intent to dedicate the entire area of land on top of and to the east of Murphy Bunker.

Several other facts support the conclusion that Northeastern neither had, nor expressed, a clear and unequivocal intent to dedicate the land on top of and to the east of Murphy Bunker. It is undisputed that, at the time of the federal government's approval of Northeastern's application to acquire the 20.4-acres of land (i.e., the MSC campus) in June 1965, the Town was seeking to negotiate the right for Town residents to use a two- or three-foot wide walking path along the periphery of the property.<sup>18</sup> The federal

---

<sup>18</sup> This is consistent with the 1964 Annual Town Report, which notes the Conservation Commission's desire to acquire "the right to walk along a scenic pathway which would follow as

government deferred, suggesting that the Town negotiate directly with Northeastern post-transfer, "with any resultant agreement being subject to approval by the Government." (J.A., Ex. 24). In its pre-transfer communications with Northeastern, the Town proposed a draft agreement "concerning the right of the inhabitants of the Town to pass on the property," but it was never executed. The 1965 Annual Town Report confirms that the Town "was not able to secure from the Government and Northeastern University assurance that there would be an absolute right on the part of the townspeople to walk on a pathway around the cliffs" and expresses the "hope that some form of visiting privilege for scenic walks will be extended by Northeastern University." (J.A., Ex. 15, p. 94). None of the communications between the Town, the federal government, and Northeastern following the April 1965 proposal and leading up to the February 1966 transfer of the property to Northeastern make any mention of the "wildlife preserve" designation referenced in the April 1965 Proposal as being a way of granting Town residents access to the property.

In addition, since a dedication results in an easement, see Lowell, 322 Mass. at 730, a dedication by Northeastern in 1966 (and the succeeding twenty years) would have required the approval of the federal government. (J.A., Ex. 26, p. 145). The deed by which Northeastern acquired the property in 1966 makes no mention of any dedication of any portion of the land for a path or other passive recreation by Town residents and, consistent with the federal government's earlier representation that any

---

much of the shoreline as is included in this property," (J.A., Ex. 14, pp. 87-88), and Knowles' May 1965 Letter noting Northeastern's assurances to Town officials and residents that Northeastern would "work with the town in the development of a walkway through the property which could be used by citizens and others to view the ocean and the cliffs." (J.A., Ex. 19, p. 122).



agreement granting the Town a path along the MSC Campus would be subject to government approval, the deed includes a provision barring Northeastern from encumbering or otherwise disposing of any part of or interest in the property without the written authorization of the federal government for twenty years. (J.A., Ex. 26). There is no record evidence that Northeastern ever sought government approval for any type of dedication like that now argued by the Nahant Plaintiffs.

Also contradicting Northeastern's intent to dedicate is the Nahant Plaintiffs' vague description of the purportedly dedicated land. The Nahant Plaintiffs claim that Northeastern has dedicated the land "on top of and to the east of Murphy Bunker." Even after years of litigation and the development of a voluminous summary judgment record, the exact bounds of the allegedly dedicated land are undetermined. In a case where the Nahant Plaintiffs seek a declaration that Northeastern in effect relinquished some of the sticks from its bundle of property rights, the lack of more precisely defined boundaries is telling.

For all these reasons, the Nahant Plaintiffs have no reasonable expectation of proving that Northeastern clearly and unequivocally intended to dedicate the land on top of and to the east of Murphy Bunker (or, for that matter, any of its land on East Point) as an ecological preserve and for passive recreation at the time Northeastern acquired the property that became the MSC Campus in 1966.

**B. The Record Evidence Of The Treatment And Use Of The Property And Statements Made By Northeastern In The Years Since It Acquired The Property In 1966 Does Not Evidence An Intent To Dedicate The Property For Public Use**

The Nahant Plaintiffs' dedication claim is not based solely on the April 1965 Proposal and May 1965 Letter in isolation. Rather, the Nahant Plaintiffs contend that "[e]vidence of [Northeastern's] clear unequivocal intent to dedicate the wildlife sanctuary for public use is found in those two documents and its oral assurances and in its maintenance of the wildlife preserve and the more than 50-year open use and access by the public and in decades of cooperation with the Town to conserve the wildlife preserve as protected public open space." (NPT Parties' Opp'n, p. 4) (emphasis in original).

In particular, the Nahant Plaintiffs point to the following: statements made by Northeastern in connection with its efforts to obtain the remaining 8.3-acre site on East Point in the 1970s; statements on Northeastern's website describing the area as "being maintained as a wildlife sanctuary and ecological study area" (J.A., Ex. 86); the operation of a solar observatory on the property from 1995 to 2018; and testimony and affidavits from numerous Nahant residents attesting to their unfettered use of the MSC Campus over the past 50-plus years.

Northeastern's statements in connection with its efforts to obtain the remaining 8.3-acre site on East Point in the 1970s do not evidence an intent to dedicate. While the "Development of Programs at Nahant" document did note that Northeastern would "request that the entire area be designated as a marine wild life [*sp.*] preserve" if given control of the remaining site, that same document also described plans for significant

development of the area in connection with expanding the MSC. (J.A., Ex. 32, pp. 173, 176).

As noted above, the use of the term "wild life [*sp.*] preserve," in and of itself, does not imply public access, particularly when viewed in conjunction with the "Application for Purchase of Real Property for Educational Utilization" Northeastern submitted in 1974 in connection with its efforts to obtain the 8.3-acre site. There, Northeastern explained:

Vital to the continued success of the studies at the [MSC] is the protection of the area and its preservation in the natural state. Although many visitors now come to the site, they are under the supervision of the Northeastern staff so that the ecology of the research areas is not disturbed. If the surplus property should be opened to the general public, it would be difficult to prevent trespass onto adjacent shoreline research projects, to prevent vandalism, to avoid defacing of the unique geological formation and general littering. Any use of this land incompatible with preserving the natural state of adjacent shorelines would be very detrimental to the existing program.

Should the [MSC] be unable to maintain the shoreline in its present natural state and to protect the research project from random human intrusions, then much of the value of the site would be lost . . . .

(J.A., Ex. 33, pp. 186-187). In the face of this language, it is impossible to sustain the Nahant Plaintiffs' argument that Northeastern demonstrated a clear and unequivocal intent to dedicate the land on top of and to the east of Murphy Bunker, a significant portion of its property at East Point, to public access for even "passive" recreational purposes.

With respect to the operation of a solar observatory on top of Murphy Bunker from 1995 to 2018, that use also does not evidence a clear and unequivocal intent to dedicate the land on top of and to the east of Murphy Bunker to the public for use as an ecological preserve and for passive recreation. It is undisputed that Dr. Foukal built the

observatory with Northeastern's permission, that it was locked when not in use, and that the public only had access to it when Dr. Foukal (Northeastern's invitee) was present. (SOF, ¶¶ 57, 62, 63). In addition, the Nahant Plaintiffs' argument that the observatory is evidence of an intent to dedicate the area to public use contradicts their argument that the use of the term "wildlife preserve" in the April 1965 Proposal evidenced an intent to dedicate the then-barren land on top of and to the east of Murphy Bunker. The clearing of land on top of the bunker, pouring of a concrete pad, and construction of the observatory structure is inconsistent with an intent to dedicate that area as a "wildlife preserve." There is no evidence that any of the Nahant Plaintiffs, or anyone else, ever objected to the observatory's construction and operation on grounds that it disturbed the area they now claim was dedicated as a "wildlife preserve" in the 1960s.

**IV. THE NAHANT PLAINTIFFS HAVE NO REASONABLE EXPECTATION OF PROVING THE PUBLIC ACCEPTED NORTHEASTERN'S PURPORTED DEDICATION OF THE PROPERTY FOR PUBLIC USE**

The Court next turns to the Nahant Plaintiffs' evidence of the public's recreational use of the property at issue over the past 50-plus years; i.e., the second element of the aforementioned Smith paradigm.

As noted above, the Court assumes for purposes of this motion that Nahant residents have used the land on top of and to the east of Murphy Bunker for general recreation over the years, without seeking Northeastern's permission and under the impression that the area was open to the public. The summary judgment record is replete with evidence (in the form of, among other things, affidavits and answers to interrogatories) that **Nahant residents** have used portions of the MSC Campus, in particular the land on top of and to the east of Murphy Bunker, for passive recreation for

decades. The Nahant Plaintiffs point to this as evidence of both Northeastern's intent to dedicate (in that Northeastern allowed the conduct to continue for many years) and the public's acceptance of the dedication.

At first blush, this argument may seem persuasive. However, the summary judgment record lacks any evidence that the **general public**, that is, people other than Nahant residents, have used the land in question for passive recreational purposes.

For land to constitute dedicated land, it must be dedicated to and accepted by the general public, i.e., the inhabitants of the Commonwealth and public at large, not just the residents of the particular municipality where the land sits. The Supreme Judicial Court answered the question of who constitutes the "general public" in detail in Smith, stating:

The "general public" that has obtained an "interest in the land in the nature of an easement," [Lowell, 322 Mass.] at 730, is not simply the residents of the particular city or town that owns the parkland. See Higginson v. Treasurer and Sch. House Comm'rs of Boston, 212 Mass. 583, 589 (1912). This court in Higginson declared:

"[T]he dominant aim in the establishment of public parks appears to be the common good of mankind rather than the special gain or private benefit of a particular city or town. The healthful and civilizing influence of parks in and near congested areas of population is of more than local interest and becomes a concern of the State under modern conditions. It relates not only to public health in its narrow sense, but to broader considerations of exercise, refreshment and enjoyment."

Id. at 590.

Because the general public has an interest in parkland owned by a city or town, ultimate authority over a public park rests with the Legislature, not with the municipality. See Lowell, 322 Mass. at 730. "The rights of the public in such an easement are subject to the paramount authority of the General Court which may limit, suspend

or terminate the easement.” *Id.* As stated in *Lowell*, 322 Mass. at 730, quoting *Wright v. Walcott*, 238 Mass. 432, 435 (1921):

“Land acquired by a city or town by eminent domain or through expenditure of public funds, held strictly for public uses as a park and not subject to the terms of any gift, devise, grant, bequest or other trust or condition, is under the control of the General Court ... The power of the General Court in this regard is supreme over that of the city or town.”

*Smith*, 478 Mass. at 60. This is in accordance with Article 97, which places in the hands of the Legislature (the representatives of the people of the Commonwealth) the power to dispose of or change the use of dedicated land by a two-thirds vote.

Thus, even if Northeastern had a clear and unequivocal intent to dedicate the land in question pursuant to Article 97, the holder of the easement would be the general public, not the residents of Nahant. In the absence of any record evidence that the general public accepted the purported dedication of the land on top of and to the east of Murphy Bunker for use as an ecological preserve and for passive recreation, the Nahant Plaintiffs' dedication claim fails as a matter of law.

**V. THE NAHANT PLAINTIFFS' CLAIM OF DEDICATION OF LAND FOR PUBLIC USE FAILS AS A MATTER OF LAW BECAUSE ARTICLE 97 AND THE PRIOR PUBLIC USE DOCTRINE DO NOT APPLY WHERE LAND IS NOT DEVOTED TO ONE PUBLIC USE**

While not argued in the parties' memoranda, summary judgment in favor of Northeastern is appropriate for the additional reason that, even assuming (in the light most favorable to the Town) that the property was acquired by Northeastern for educational use, and as an ecological preserve and for passive recreation, the prior public use doctrine is not applicable because it “is only applicable to those lands which are . . . devoted to one public use.” *Mahajan*, 464 Mass. at 617 (quotations and citations omitted) (emphasis in original) (where wharf was taken for range of urban

renewal purposes, some of which were consistent with Article 97 purposes, property was not subject to Article 97); see also Robbins v. Department of Pub. Works, 355 Mass. 328, 330 (1969) (land taken by eminent domain for “park purposes” cannot be used to build “public highway” without vote of Legislature); Muir v. Leominster, 2 Mass. App. Ct. 587, 591-592 (1974) (prior public use doctrine inapplicable where property was acquired by city via unrestricted deed and not formally dedicated as park land, but was used for thirty years as playground and for other recreational purposes).

For land to be subject to Article 97, it must be “**‘taken or acquired for [the] purpose’** of protecting interests covered by art. 97.” Mahajan, 464 Mass. at 616 (emphasis in original). The prior public use doctrine, from which “the spirit of art. 97 is derived,” “holds that public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion, . . . is only applicable to those lands which are in fact **devoted to one public use.**” Id. at 616-617. (internal citations and quotations omitted) (emphasis in original).

“Even where land was taken for purposes included within the protection of art. 97, where those purposes were not the overarching purpose of the acquisition, or were only incidental to a non-art. 97 use for which the land was also taken or dedicated, or where the land was taken for more than one use, including a use or uses not protected by art. 97, then the requirements of art. 97 for a vote of the Legislature to approve a change in use will not apply.” Mirkovic v. Guercio, No. 16 MISC 000054 (HPS), 2017 WL 4681972, at \*3 (Mass. Land Ct. Oct. 18, 2017). Thus, by extension, here, where one use is covered by Article 97 (ecological preserve and passive recreation) and the other use (educational) is not, Article 97 cannot be invoked as a matter of law.

**ORDER**

For the above reasons:

**1. In Superior Court Case No. 1977CV01211:**

a. It is **HEREBY ORDERED** that Northeastern University's Motion For Summary Judgment On The Dedication Claim (Paper No. 72) is **ALLOWED**.

b. It is **HEREBY DECLARED** and **ADJUDGED** that:

(i) Northeastern University has not dedicated, and the public has not accepted, the land on top of and to the east of Murphy Bunker at East Point, Nahant, MA, to the public for use as an ecological preserve and for passive recreation;

(ii) a public easement on said land has not been created; and,

(iii) said land is not subject to Article 97 of the Amendments to the Massachusetts Constitution.

c. Count II, so much of Count III that seeks a declaration that said land is subject to Article 97 and the EOEEA's Article 97 Land Disposition Policy, Count IV, and Count V of the NHP Parties' Verified Complaint (Paper No. 1) are **HEREBY DISMISSED**.

d. Count I, so much of Count II that seeks a declaration that said land is subject to Article 97 and the EOEEA's Article 97 Land Disposition Policy, Count III, and Count IV of the Town of Nahant's Complaint (Paper No. 45) are **HEREBY DISMISSED**.

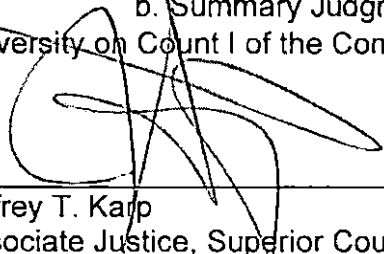
**2. In Land Court Case No. 19MISC00390:**

a. It is **HEREBY DECLARED** and **ADJUDGED** that:

(i) Northeastern University has not dedicated, and the public has not accepted, the land on top of and to the east of Murphy Bunker at East Point, Nahant, MA, to the public for use as an ecological preserve and for passive recreation; and,

(ii) said land is not subject to Article 97 of the Amendments to the Massachusetts Constitution.

b. Summary Judgment **SHALL ENTER** on behalf of Northeastern University on Count I of the Complaint (Paper No. 1).



\_\_\_\_\_  
Jeffrey T. Karp  
Associate Justice, Superior Court  
Dated: September 20, 2022