

Preserving East Point as a Wildlife Preserve

We would like to share with you the Board of Selectmen's plan to preserve East Point as a Wildlife Preserve.

We preface our remarks with acknowledgment that the Town addressing the health, safety and security of our residents is our top priority at this difficult and uncertain time. It is our most important priority, and we, like many other communities, have enacted a number of measures in an effort to keep our community healthy and safe. One of the uncertainties resulting from the pandemic is how Government will operate moving forward. Currently, the Annual Town Meeting is scheduled for May 16, 2020. Until advised otherwise, we need to prepare for the Meeting as we would in any year.

It is conjunction with this Town Meeting that we initiate this action. We are at a tipping point with the projected environmental impact to East Point, and we believe that now is the time to act.

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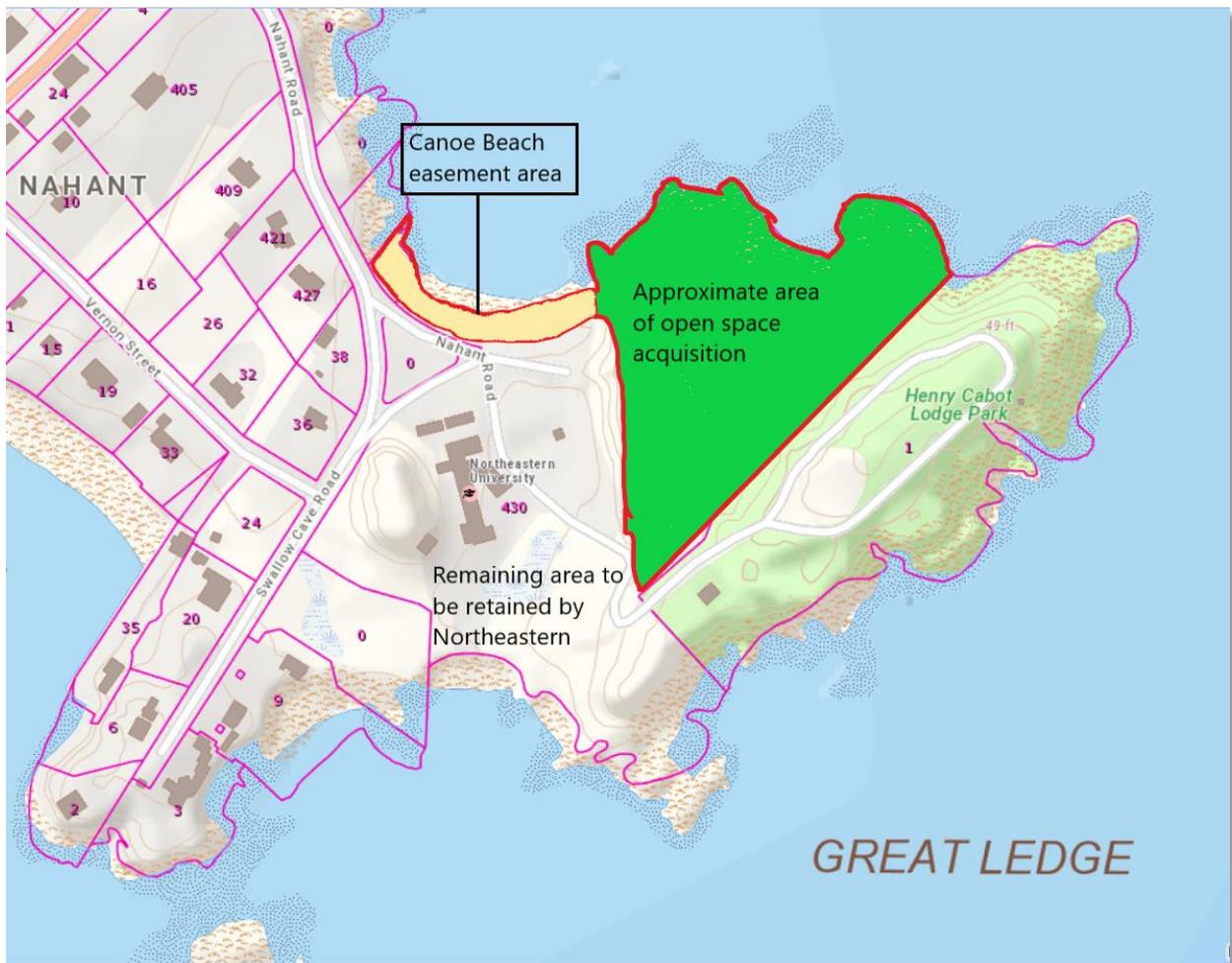
Taking the First Step in Saving East Point Wildlife Preserve

Today we announce that the Nahant Board of Selectmen is taking our first concrete step to permanently save the open space, woodlands, beaches and meadows making up the Wildlife Preserve at East Point. We have made the decision to apply to Nahant's Community Preservation Committee for funding to protect Nahant's largest unprotected contiguous open space in perpetuity.



In 1966 the Federal Government deeded to Northeastern University the approximately 21 acres of land at East Point along with what is now the Edwards Building Marine Science Center and its parking lots. Northeastern paid nothing for the property. The property had been declared surplus and was gifted to Northeastern as a public benefit. Since that time the University has served as a steward of the land. It has dedicated and left open much of the property as an ecological and wildlife preserve. From the first Northeastern welcomed the public's access to and use of the preserve. It has trumpeted the beauty of the preserve in its literature and on its website, and for more than fifty years the Town and its residents have used the this property for passive recreation, have accessed the wooded areas for hikes and bird watching, have picnicked in the meadows, have climbed the rocky ledges and cliffs, have sat and played in the sand of its beaches, have swum and fished off its coast and have enjoyed the simple pleasure of the scenic beauty of the property. Indeed for more than fifteen (15) years an observatory, established by a local resident, was perched on the shoulders of Murphy Bunker delighting and educating young and old about the solar system

Unfortunately, Northeastern University is unwilling to commit to the permanent preservation of the property. To the contrary, Northeastern University is committed to an entirely different course, a course which will affect East Point’s open space forever. Protecting the “Wildlife Preserve at East Point” for Nahant in perpetuity is essential. We must save this diverse eco-system and the habitat it provides for birds, mammals, amphibians and insects. We must ensure our residents have access to the trails, the coastline, the rocky ledges, the expansive view and importantly, the continued connection to Lodge Park, the eight plus (8+) acres of protected parkland to the east and south which is owned and cared for by the Town of Nahant. (We have relied on Northeastern University’s dedication and stewardship of the property over this more than fifty year period, and have included it in our Open Space plans, and together with Lodge Park, have treated it as one contiguous open space.)



We must mitigate the impact of climate change, and by saving the Wildlife Preserve at East Point we can mitigate the impact of heat, storms, carbon emissions, and habitat loss.

It is for these reasons we have decided to move forward to actively preserve the Wildlife Preserve at East Point by acquiring the property rights necessary to do so (and because Northeastern University has threatened to close access to Canoe Beach, we also intend to confirm the right of access to and use of Canoe Beach as part of any such acquisition).

Our only goal is to save the Wildlife Preserve and rights to Canoe Beach. Northeastern University's current (and 50+ year history of) use and activities are not to be disturbed. Under our plan Northeastern University will retain ownership of the remaining land, their existing buildings, the bunkers themselves, their parking areas, their water intake lines and pump house, and all of their other existing improvements on and to the site. Northeastern would be permitted limited rights in the Wildlife Preserve itself, to a continued use for non-conflicting, non-invasive ecological studies and the like.

While we remain open to achieving a mutually acceptable agreement with Northeastern University, we have decided to initiate a process that would allow for the acquisition of the necessary property rights to the Wildlife Preserve and Canoe Beach that we believe are critical, through the power of eminent domain.

How does eminent domain work and how long does it take?

A Town can take a piece of private property for a public purpose from an owner through the power of eminent domain. This power would apply whether the Town moved forward to acquire a fee interest in the property or a conservation restriction or easement rights. The purchase price must be the property's fair market value. Thus, our process will begin with an appraisal of the fair market value of the property rights that we intend to acquire. Through discussions we have had with experienced real estate appraisal professionals, we have looked carefully at the cost to acquire the property rights described above, and we believe, given Nahant's Zoning Bylaws, that a reasonable estimate of the value of the Wildlife Preserve at East Point is in the neighborhood of One Hundred Fifty Thousand (\$150,000) Dollars per acre. We are in the process of completing the formal professional appraisal that is a predicate to the eminent domain process.

In order to insure the availability of the funds needed to support the acquisition or taking of the property interests in the Wildlife Preserve and Canoe Beach, we have planned a two-pronged approach. First, to apply to Nahant's Community Preservation Committee (CPC) for a grant of One Million Five Hundred Thousand (\$1,500,000) Dollars, which will go towards funding a portion of a purchase price of up to Four Million (\$4,000,000) Dollars and an additional Five Hundred Thousand (\$500,000) Dollars for legal and associated costs. Second, to cover the remaining balance of the purchase price by accepting donations from private donors. The grant, if approved by the CPC, would authorize the Town to borrow One Million Five Hundred Thousand (\$1,500,000) Dollars to be repaid out of Community Preservation Act funds over a thirty (30) year period. (Because the Community Preservation Act provides for a State match from a dedicated fund, the actual amount contributed from Nahant taxpayers will be a percentage of the \$1.5 million.) (Please refer to Appendix A.)

If the CPC approves and recommends the grant, the grant would then need Town Meeting approval. (If approved and recommended by the CPC, we would anticipate bringing the article to the Annual Town Meeting currently scheduled for May 16, 2020. As a borrowing article, a 2/3rds vote of Town Meeting would be required.) The grant would be subject to the following conditions, all of which would need to be satisfied before any of the One Million Five Hundred Thousand (\$1,500,000) Dollars would be borrowed:

- The Town would have voted to authorize the Board of Selectmen to acquire the property rights by negotiation or by an eminent domain taking.
- The Town will have received from private donors a cash donation for the greater of (x) Three Million (\$3,000,000) Dollars (i.e. a 2-1 match) or (y) the amount in excess of the \$1.5 Million Dollar CPC grant funds to pay Northeastern the negotiated acquisition price, or in the case of an eminent domain taking, the *pro tanto* (the amount of money to be paid to Northeastern University based on the Town's appraisal of the fair market value of the property interests being taken) established by the Board of Selectmen. (We strongly believe that this condition is achievable and will be satisfied within weeks of an affirmative Town Meeting vote.)
- In the case of a taking through the power of Eminent Domain, the Board of Selectmen shall have voted in fact to take the property rights described above and to pay Northeastern a *pro tanto* of no more than Four Million (\$4,000,000) Dollars, or if the Board of Selectmen elects to pay more than Four Million (\$4,000,000) Dollars, then the Town will have first received in cash such additional funds as to make up the difference.

These conditions make it clear that the Board of Selectmen cannot and will not authorize the borrowing of the \$1.5 Million Dollar CPC grant funds until both Town Meeting approves the acquisition or taking and the Town has received private donations of at least Three Million (\$3,000,000) Dollars, and, if necessary, such additional amounts as may be needed to pay the negotiated acquisition price or *pro tanto*, as the case may be. Any funds received by the Town and not expended in the acquisition or taking will be returned to the CPC general or open space reserve.

If the Community Preservation Committee and the Town Meeting both vote favorably on the grant, then the Board of Selectmen at the appropriate time would schedule a Special Town Meeting to seek a vote authorizing the Board of Selectmen to acquire the property by negotiation with Northeastern, by gift, or through the power of eminent domain. That vote again would require a 2/3rds vote of the Special Town Meeting. That Special Town Meeting vote simply authorizes the Selectmen to acquire the property rights. It does not mandate the Selectmen to act. The Selectmen, therefore, must also vote to acquire the property through the power of eminent domain if the Selectmen intend to proceed in that manner. If at the Special Town Meeting and the Board of Selectmen vote to acquire the property rights by eminent domain, the Town of Nahant needs only to record the order of taking at the Essex County District of the Land Court and/or Registry of Deeds in order to complete the purchase of the property rights. Within a short period of time thereafter, the Town will write Northeastern University a check for the *pro tanto* amount to acquire the property rights in the Wildlife Preserve at East Point and Canoe Beach.

Thus, the acquisition can happen in a matter of months. Northeastern University, however, may go to court with a lawsuit saying the *pro tanto* amount is insufficient and that an appraiser that they have hired has determined that the fair market value of the property rights is more than the *pro tanto* amount they have been paid. (Notably, the valuation date is the date that the taking order is recorded at the Registry of Deeds or the Registry District of the Land Court as the case may be.) Northeastern University has three years to file a lawsuit against the Town of Nahant after the taking order is recorded to protest the fair market value. This potential disagreement over the value of the Wildlife Preserve would need to wind its way through the court system. Eventually (perhaps

another two or three years later), either a judge or a jury will have the final say on the fair market value.

Why use Community Preservation Act funds?

In 2004 the citizens of Nahant voted to adopt The Community Preservation Act and in so doing added a three (3%) percent surcharge onto our Town excise taxes to fund certain defined areas of need allowed under the Community Preservation Act, affordable housing, historic resources, open space and recreation. The use of Community Preservation Act funds for this purpose, the preservation of open space is exactly what was intended by the Act. As noted earlier, under The Community Preservation Act the State also matches a portion of the Town's funding (this last Fiscal Year the State matched the Town's funding at an approximately Sixty (60%) percent rate). By funding the acquisition out of Community Preservation Act funds, we will not affect the Town's operating budget or your tax rate in any way. By bonding the One Million Five Hundred Thousand (\$1,500,000) Dollars grant over a Thirty (30) year period, the acquisition cost will be spread out over time and will allow Nahant's Community Preservation Act program to continue to have funding for other qualifying projects.

While the cost of preserving the Wildlife Preserve at East Point is significant, we know we must save it for future generations of Nahant residents, open space, wildlife, conservancy and safe-keeping.

Appendix A

1. This CPC borrowing authorization puts the Town in a strategic position to pursue Eminent Domain at a later date. It does not authorize an Eminent Domain taking; it simply provides funding to do so should the Town vote to take. The actual taking requires a separate vote of the Town.
2. This CPC borrowing has no effect on operating or capital budgets or on the tax rate, as it is funded through the CPC which is outside of budgets and has its own funding sources.
3. From a purely financial perspective this is a sound investment offering a 500% return.

Town CPC investment	\$ 900,000	} CPC borrowing authorization
State CPC match	600,000	
Private donations match	<u>3,000,000</u>	
Total	\$ 4,500,000	