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SJC-13865

EMERALD NECKLACE CONSERVANCY, INC., & others¹ vs.
CITY OF BOSTON & others.²

Suffolk. April 8, 2026. - August 19, 2026.

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

Municipal Corporations, Parks, Use of municipal property. Parks
and Parkways. Constitutional Law, Taking of property.
Declaratory Relief. Boston. Statute, Construction.
Trust, Charitable trust, Construction, Breach of trust.
Practice, Civil, Standing, Declaratory proceeding,
Dismissal. School and School Committee. Attorney General.

¹ Beth Abelow, Jerrold Abelow, Jon Ball, Carla-Lisa Caliga, Rory Coffey, Jamie Cohen, John R. Cook, Louis Elisa, Derrick Evans, Marjorie Greville, Melissa Hamel, Pamela Jones, Arlene Mattison, Karen Mauney-Brodek, Jean McGuire, Beverly Merz, Daniel K. Moon, Rodney Singleton, Ben Taylor, and Renee Welch.

² Trustees of the George Robert White Fund; Michelle Wu, as mayor of Boston and chairperson and trustee of the George Robert White Fund; Ruthzee Louijeune, as president of the city council of Boston and trustee of the George Robert White Fund; Maureen Joyce, as auditor of Boston and trustee of the George Robert White Fund; James E. Rooney, as president and chief executive officer of the Boston Chamber of Commerce and trustee of the George Robert White Fund; Matthew P. McTygue, as president of the Boston Bar Association and trustee of the George Robert White Fund; Boston public schools; parks and recreation department of Boston; Boston Unity Soccer Partners LLC; and Boston Unity Stadco LLC.

Real Property, Easement, License. Contract, Construction of contract.

Civil action commenced in the Superior Court Department on February 20, 2024.

The case was heard by Matthew J. Nestor, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Alan E. Lipkind (Nicholas Allen also present) for the plaintiffs.

Sammy S. Nabulsi (Gary M. Ronan, Christopher C. Tsouros, & Lauren C. Galvin also present) for city of Boston & others.

Callum LaFrance, for Environmental Justice Assistance Network, amicus curiae, was present but did not argue.

The following submitted briefs for amici curiae:

Alexandra Arnold & David A. Bunis for Trustees of Amherst College & others.

Francis E. O'Brien, pro se.

Harley C. Racer & Yelitza Montesino for Hugh Mattison & others.

Andrea Joy Campbell, Attorney General, Emily T. Gabrault & Jonathan C. Green, Assistant Attorneys General, for the Attorney General.

Thomas J. Carey, Jr., for Olmsted Network & others.

Michael E. Kenneally, Pranav Mulpur, & Charles L. Solomont for New England Revolution.

Eric L. Klein, C. Dylan Sanders, Joseph R. Ruggiero, & Korinna I. Garfield for Massachusetts Land Trust Coalition & others.

Michael J. McDermott & Sarah J. McHale for Franklin Park Coalition.

Andrew R. Dennington & Ali T. DiMatteo for Massachusetts Municipal Association, Inc.

Keith P. Carroll & Christopher H. Booth for Hatim Jean-Louis & others.

WOLOHOJIAN, J. The central issue in this appeal is whether the parcel of land located in Boston's Franklin Park upon which

the George Robert White Fund Memorial Stadium (White Stadium or stadium) was situated is subject to art. 97 of the Amendments to the Massachusetts Constitution, which requires a two-thirds vote of the Legislature to dispose of parkland or convert it to another use.

We first conclude that the plaintiffs have no cognizable individual interest in the George Robert White Fund (White Fund, fund, or trust), and therefore do not have standing to challenge alleged violations of its provisions. Turning then to the main issue in this appeal, we conclude that, although the stadium parcel was originally acquired by the city of Boston (city) by eminent domain for use as a public park, as a result of legislative action in 1947 and 1950, the stadium parcel was thereafter dedicated to another use not subject to the provisions of art. 97. More specifically, in 1947, the Legislature authorized the stadium parcel to be conveyed at fair market value to the White Fund to be used in accordance with the purposes identified in Article Fourteenth of the will of George Robert White, and those purposes were not limited to park use. St. 1947, c. 542, § 1 (1947 statute). And, in 1950, the Legislature recognized and designated White Stadium and the stadium parcel as "a school building and yard," to be repaired and maintained as such through appropriations by the city's school committee. St. 1950, c. 291, § 1 (1950 statute). See

St. 1936, c. 224, § 2 (b). Taken together, these two pieces of legislation effectively removed the stadium parcel from its previous designation as parkland and made it a school department facility to be maintained by the school committee. Accordingly, by the time art. 97 was ratified over twenty years later in 1972, the stadium parcel was no longer subject to its provisions. Finally, we conclude that the plaintiffs' challenges to the proposed use of areas within Franklin Park, but outside the stadium parcel, fail. We accordingly affirm the judgment of the Superior Court in favor of the defendants.³

³ We acknowledge the amicus briefs submitted in support of the defendants by Trustees of Amherst College, Bentley University, Trustees of Boston College, Trustees of Boston University, Brandeis University, Trustees of Clark University, Emerson College, President and Fellows of Harvard College, Trustees of the College of the Holy Cross, Massachusetts Institute of Technology, Franklin W. Olin College of Engineering, Inc., Regis College, Trustees of the Smith College, Suffolk University, Trustees of Tufts College, Wellesley College, Wheaton College, President and Trustees of Williams College, and Worcester Polytechnic Institute; the Attorney General; the New England Revolution; Franklin Park Coalition; Massachusetts Municipal Association, Inc.; and Hatim Jean-Louis, Terry Cousins, Tony Darocha, and David Shapiro. We also acknowledge the amicus briefs submitted in support of the plaintiffs by Francis E. O'Brien; Hugh Mattison, Ethan Carr, Keith Morgan, Elizabeth Saunders, Charles Beveridge, and Tupper West Thomas; Olmsted Network, William Bell, Friends of Olmsted-Beil House, Austin Allen, Friends of the Parks, Olmsted Linear Park Alliance, and Olmsted Parks Conservancy; Environmental Justice Assistance Network; and Massachusetts Land Trust Coalition, Kestrel Land Trust, Greater Worcester Land Trust, Douglas Foy, Andrew Falender, James Hoyte, and William Constable.

Background. We draw the facts from the trial judge's findings and the undisputed documentary evidence at trial.

1. Franklin Park. In 1883, the city took by eminent domain several parcels of land in the city's West Roxbury section "as, and for, a public park." The acquisition was authorized by "An Act for the laying out of public parks in or near the city of Boston" (Parks Act), which enabled the city to appoint a board of park commissioners empowered to acquire land for public parks. St. 1875, c. 185, §§ 1-3.

The city turned to the prominent landscape architect Frederick Law Olmsted to design a park using the acquired land. Olmsted proceeded to design what is now known as Franklin Park, the largest public park in Boston and the "crown jewel" of the system of parks that ultimately became known as the Emerald Necklace. Olmstead envisioned an area he called the "Playstead" at the north end of Franklin Park to be used "for the athletic recreation and education of the city's schoolboys, for occasional civil ceremonies and exhibitions, and for any purpose likely to draw spectators in crowds" (citation omitted). Since Franklin Park's opening, the Playstead has been used for both individual recreation and large-scale gatherings such as athletic events, festivals, and parades.

2. The White Fund. In 1922, antibacterial soap magnate George Robert White died in Boston. Article Fourteenth of

White's will created the White Fund for the purpose of "creating works of public utility and beauty, for the use and enjoyment of the inhabitants of the City of Boston."⁴ The will expressed

⁴ In pertinent part, Article Fourteenth of White's will provides:

"Whereas my sister Mary E. Sullivan has died, and I have otherwise provided for my sister Harriet J. Bradbury, I do now carry out by immediate gift my public charitable purpose which in previous wills I had provided for in remainder, and I do now give all the rest and residue of my property of every nature to the City of Boston, the same to be held as a permanent charitable trust fund to be known as the George Robert White Fund, and the net income only to be used for creating works of public utility and beauty, for the use and enjoyment of the inhabitants of the City of Boston. It is my intention that no part of said income, however, shall be used for a religious, political, educational or any purpose which it shall be the duty of the City in the ordinary course of events to provide. . . . Any work or works established from the Fund may be improved, extended, enlarged or added to from time to time, but the current expense of their care and maintenance shall be borne by the City. . . . While I think that Boston has now few, if any, superiors in beauty and in the many privileges it affords to its citizens, yet I believe it has greater possibilities for the future, and there are several public blessings among those afforded by other cities, -- such as a zoological garden and handsome buildings therefor, an aquarium, a forum of substantial proportions for public gatherings, etc. -- which we do not possess. It is with such things as these in mind that I have established the foregoing trust fund. I can conceive that pressure might be brought to bear to use the income of the Fund for small and comparatively unimportant needs, which might be equally deserving and technically within the general scope of the Trust as heretofore expressed. A use of it for such purposes to any substantial extent would be contrary to my intention, which is that its income, accumulated if need be for a time long enough to make it sufficient, should be used only for important civic improvements."

White's intention that the income of the White Fund "be used only for important civic improvements," not "to any substantial extent" for modest projects, and gave examples of the kinds of works White intended, "such as a zoological garden and handsome buildings therefor, an aquarium, a forum of substantial proportions for public gatherings, etc." Although income from the White Fund could be used to build edifices of the sort White intended, it could not be used to pay for their upkeep and maintenance costs. Instead, White specified that the city was to bear those costs, and that the fund's income should not be "mingled with other funds or applied in joint undertakings."^{5,6} The city accepted White's bequest and its accompanying terms in 1922.

3. Legislative and city action. Twenty-five years later, in 1947, the Legislature authorized the city to transfer "any land . . . including park land" owned by the city to the White

⁵ Management of the White Fund is entrusted to a board of trustees (trustees) composed primarily of city officials, including the mayor, the president of the city council, and the auditor, as well as the presidents of the Boston Chamber of Commerce and Boston Bar Association. In addition, White's will charged the "regular departments of the City" with transacting the White Fund's business, and the city with providing an office, currently located in Boston City Hall, for the keeping of the White Fund's records.

⁶ Any public work constructed with money from the White Fund is to be conspicuously identified as "erected or established from" the fund.

Fund "to be held thereafter for the purposes of" Article Fourteenth of White's will, upon the trustees' request and in exchange for the fair cash value of the land. St. 1947, c. 542, § 1. In full, the relevant provision provides:

"Any land heretofore or hereafter acquired in fee by the city of Boston by tax title foreclosure and any land, including park land, heretofore or hereafter acquired in fee by said city by eminent domain or by purchase, gift, devise or otherwise may, if the board of trustees of the fund established by article fourteenth of the will of George Robert White and known as the George Robert White Fund so requests and the board or officer having charge of said land so recommends, be transferred for the fair cash value thereof by vote of the city counsel of said city, subject to the provisions of its charter, to said fund to be held thereafter for the purposes of said article fourteenth . . ." (emphasis added).

Id. Later that year and pursuant to the 1947 statute, the city transferred a fourteen-acre parcel within the Playstead (stadium parcel) to the White Fund "for the purpose of the establishment of a stadium on said land." Construction soon began on White Stadium, which was completed in 1949.

On June 7, 1949, the White Fund trustees voted that the stadium be "turned over to the City -- according to the terms of [White's] [w]ill." The city considered various options for which department should have custody of (and financial responsibility for) the stadium, including the park department or a new stadium commission. Ultimately, on the trustees' recommendation, the city school committee's request, and the mayor's instructions, the city's school department took over

care, custody, and control of White Stadium.⁷ That said, the White Fund retained ownership of the stadium parcel, and continues to do so to this day.

In 1950, the Legislature passed "An Act relative to the George Robert White Fund Schoolboy Stadium in the city of Boston." St. 1950, c. 291. In relevant part, the 1950 statute provided:

"So long as the stadium in the city of Boston known as the George Robert White Fund Schoolboy Stadium shall remain in the custody and control of the school committee of said city, said stadium, together with the estate upon which it stands, shall be deemed to be a school building and yard, and shall be repaired, altered, improved and furnished in the same manner as a school building and yard . . . and shall be cared for and maintained in like manner" (emphasis added).^{8,9}

Id.

4. White Stadium. As initially constructed, White Stadium consisted of a central field surrounded by a track and bracketed by two grandstands (east and west grandstands) with 10,000 total

⁷ The school committee had argued that placing the stadium under its jurisdiction was "the only sound method of administration, both from an educational and financial standpoint."

⁸ The 1950 statute specifically provided that expenses for the stadium would be funded via the mechanisms in St. 1936, c. 224, for funding the "alteration and repair of school buildings" and for "all other school purposes."

⁹ The Legislature later removed the condition that the stadium remain in the school committee's custody and control. St. 1973, c. 1177, § 44.

seats. The stadium and field, as well as an open area south of the stadium known as the Grove, were surrounded by a fence separating them from the rest of the stadium parcel.

Since its opening in 1949, White Stadium has been used by Boston public schools to host athletic events, including games and practices,¹⁰ as well as graduation ceremonies. The Boston public schools athletics department has maintained offices in the west grandstand. The general public has also used the stadium for informal exercise and recreation, and for community events such as cultural festivals. As of 2025, the track and seating and aisle areas of the grandstands were open to the public on weekdays from 7 A.M. to 4 P.M. The public did not have access to the playing field or to the interior of the grandstands, and the entire stadium was locked outside open hours.

Outside the stadium itself, the stadium parcel has also long been used by the public for exercise and recreation and for community events.¹¹ The unfenced portion of the stadium parcel has generally been accessible to the public at all times.

¹⁰ Four local high schools have historically used White Stadium for football games, and the stadium has hosted school football, soccer, cross country, cheerleading, and track and field, and Special Olympics practices and competitions.

¹¹ For example, the city's Puerto Rican and Dominican festivals and the celebration of artists of color known as BAMS Fest are held on the stadium parcel.

5. Planned project. In 2023, in response to White Stadium's increasing dilapidation,¹² the city and Boston public schools issued a request for proposals seeking private firms interested in partnering to "fully renovate, rebuild, and reimagine White Stadium." The only organization to respond was Boston Unity Soccer Partners LLC, which formed for the purpose of seeking a franchise to operate a professional women's soccer team to play at White Stadium.¹³

On December 23, 2024, without seeking or obtaining approval from the Legislature pursuant to art. 97, the city signed a lease agreement and a stadium usage agreement (collectively, agreements) with Boston Unity Soccer Partners LLC and its subsidiary, Boston Unity Stadco LLC (collectively, Unity Soccer). Among other things, the agreements provide for the demolition of White Stadium, the construction of a replacement stadium, and a lease to Unity Soccer for a portion of the replacement stadium (project). The agreements contemplate a

¹² As of 2025, the interior of the east grandstand was virtually unusable due to decades-old fire damage; the grandstands' foundation had structural deficiencies; the stadium's plumbing was inoperable during the winter and needed replacement, as did the lighting and heating, ventilation, and air conditioning systems; the stadium floors had suffered water damage; the field was only usable for 250 hours a year due to maintenance issues; and the stadium did not comply with current building and fire codes or the Americans with Disabilities Act.

¹³ The National Women's Soccer League awarded Boston Unity Soccer Partners LLC such a franchise in 2023.

collaboration between Unity Soccer and the city whereby the city will be responsible for building the new eastern grandstand, track, and athletic field while Unity Soccer will be responsible for building the western grandstand, a restaurant and bar in the Grove, and other miscellaneous improvements to the stadium parcel such as new pathways and lighting. The agreements also provide for various upgrades to the functionality of the stadium itself. In addition, the project will entail work in Franklin Park outside the stadium parcel, including construction and improvement of pedestrian paths to the stadium. The replacement stadium will be named after White.

Upon conclusion of construction, the city will lease the western grandstand and the Grove to Unity Soccer for a ten-year term, with up to two renewal terms at Unity Soccer's option. Unity Soccer will have exclusive use of the western grandstand's interior and of the restaurant building in the Grove for the duration of the lease, as well as of the stadium as a whole for twenty home soccer games each year and for team practices and other team events. In addition, the agreements grant Unity Soccer a right to access the stadium parcel through Franklin Park sufficient to accommodate home soccer games, practices, and events and the operation of the Grove restaurant. High school football games will not be allowed at the stadium during the soccer season. Except for days including team events, such as

games, or city events, such as public school games or practices, the new stadium will be open to the public from 6 A.M. to 9 P.M. every day of the week.

Procedural background. Plaintiff Emerald Necklace Conservancy, Inc. (Conservancy) is a nonprofit organization whose mission is to "preserve, improve, promote, and maintain the system of land and water park areas known as the Emerald Necklace." The Conservancy is joined by twenty individual plaintiffs, some of whom are members of the Conservancy, who primarily live near Franklin Park, including the stadium parcel.

The plaintiffs brought suit in the Superior Court, seeking, in broad strokes, (1) declarations that the project violated the terms of the White Fund, (2) declarations that White Stadium, the stadium parcel, and Franklin Park as a whole are protected by art. 97, and that the project represents a change of use for the stadium parcel and the surrounding areas of Franklin Park that is prohibited by art. 97, and (3) injunctions preventing the city and Unity Soccer from continuing the project until various statutory requirements are met¹⁴ or from transferring any portion of the stadium parcel to a private entity.

¹⁴ The plaintiffs asserted that, in addition to seeking approval by two-thirds of the Legislature pursuant to art. 97, the defendants were required to satisfy various statutory requirements, including those imposed by G. L. c. 3, § 5A, G. L. c. 40, § 53, G. L. c. 45, § 7, and G. L. c. 214, § 7A. Each of these statutes is applicable here only insofar as the project

A judge denied the plaintiffs' motion for a preliminary injunction, concluding that they had failed to demonstrate either a likelihood of success on the merits or irreparable harm.¹⁵ Subsequently, a different judge (trial judge) dismissed the plaintiffs' claims seeking to enforce the terms of the trust, concluding that the plaintiffs lacked standing to assert claims for breach of a public charitable trust.

After a three-day bench trial, the trial judge entered judgment in favor of the defendants on the remaining claims. The plaintiffs timely appealed, and we transferred the case here on our own initiative.

Discussion. At the core of this appeal is the plaintiffs' contention that the stadium parcel was parkland at the time art. 97 was ratified and, therefore, was and is subject to art. 97's requirement that a two-thirds vote of the Legislature is required to change the parcel's use. In addition, the plaintiffs contend that their claims for breach of trust were incorrectly dismissed for lack of standing, and that the trial

implicates art. 97. Because we conclude that legislative approval under art. 97 was not required, we do not discuss these statutes or claims further.

¹⁵ The motion judge likewise denied the plaintiffs' requests for a temporary restraining order and for a memorandum of lis pendens. In the absence of an injunction, the defendants proceeded with the project by demolishing White Stadium and began reconstruction.

judge erred with respect to their claims regarding usage of Franklin Park beyond the stadium parcel. We begin with the question of standing.

1. Standing. The plaintiffs, who, as we have already noted, are a nonprofit organization and a group of private citizens, contend that the agreements constitute a breach of the terms of the public charitable trust created by White's will by allowing Unity Soccer -- a private for-profit entity -- to use trust property for a private purpose. The plaintiffs also allege that certain provisions of the lease to Unity Soccer violate the terms of the trust.¹⁶ Based on these allegations, counts I and II of the third amended complaint sought declaratory relief to enforce the terms of the trust.

The issue here is whether the plaintiffs have standing to pursue such relief on behalf of the trust. The trial judge concluded that they did not, and accordingly dismissed counts I and II of the third amended complaint. We review an order on a motion to dismiss de novo, accepting as true the facts alleged in the complaint and attached exhibits and drawing all

¹⁶ More specifically, the plaintiffs point to a litigation-loss provision and an expression of intent to enter an agreement for payment in lieu of taxes under G. L. c. 121B, § 16, as violating terms of the trust.

reasonable inferences in the plaintiffs' favor.¹⁷ Revere v. Mass. Gaming Comm'n, 476 Mass. 591, 595 (2017).

Generally speaking, "the Attorney General is the only person apart from a trustee who, on behalf of the general public served by [a public charitable] trust's charitable mission, has standing to bring [an action to correct abuses in the administration of the trust]." DeGiacomo v. Quincy, 476 Mass. 38, 46 (2016). See G. L. c. 12, § 8. This "'power and duty'" of the Attorney General "reflects [the] Legislature's recognition 'of the necessity of protecting public charities from being called upon to answer to proceedings instituted by individuals, with or without just cause, who have no private interests distinct from those of the public.'" DeGiacomo, 476 Mass. at 49, quoting Dillaway v. Burton, 256 Mass. 568, 575 (1926).

Where persons, such as the plaintiffs here, who are neither the Attorney General nor a trustee seek to assert a claim of breach of a public charitable trust, they must "[assert] an individual interest in the charitable organization distinct from

¹⁷ While the defendants styled their challenge to the plaintiffs' standing as a motion in limine, the trial judge appropriately treated it as a motion to dismiss. See Colorio v. Marx, 72 Mass. App. Ct. 382, 385 (2008) (motion's label is less important than its substance). See also Sudbury v. Massachusetts Bay Transp. Auth., 485 Mass. 774, 779 (2020) (standing may be raised at any time).

that of the general public." DeGiacomo, 476 Mass. at 46, quoting Maffei v. Roman Catholic Archbishop of Boston, 449 Mass. 235, 245 (2007), cert. denied, 552 U.S. 1099 (2008). Such an individual interest must arise from infringement of a "personal right that directly affects" the plaintiff, Weaver v. Wood, 425 Mass. 270, 276 (1997), cert. denied, 522 U.S. 1049 (1998), such as an asserted reversionary interest in the charitable trust's property, see Maffei, 449 Mass. at 245, a loss of personal funds, see id., or an unlawful denial of membership in the charity, see Lopez v. Medford Community Ctr., Inc., 384 Mass. 163, 168 (1981). Where such an interest exists, the plaintiff's standing is limited to enforcing that individual interest. See id. (plaintiffs had standing to challenge allegedly unlawful denial of their membership in charity, but not to raise other claims of mismanagement by trustees). Membership in a charitable organization, involvement in the community the charity is intended to serve, or status as a donor to the charity does not by itself create an interest sufficient to confer standing. See Weaver, 425 Mass. at 277 (church membership does not grant standing to challenge administration of associated trusts); Ames v. Attorney Gen., 332 Mass. 246, 249 (1955) (members of committee that provided advice to management of public arboretum, who were "actively interested" in arboretum

and contributed to it, had no individual interest in associated trust distinct from that of public).

The plaintiffs in this case assert no cognizable interest in the White Fund itself. And, to state the obvious, they are neither the Attorney General nor trustees of the White Fund. They thus do not fall within the parameters we have established for standing to enforce the terms of a public charitable trust. This is so despite the fact that the Conservancy's organizational mission is to "preserve, improve, promote, and maintain" parks within the Emerald Necklace, including Franklin Park, and that the individual plaintiffs are involved in the mission of the Conservancy or make use of the stadium parcel for their own recreation. Membership in an organization having a mission harmonious with the purpose of a public charitable trust is not, by itself, enough to confer standing to enforce the terms of that trust, nor is recreational use of trust-owned land as a member of the general public. See Ames, 332 Mass. at 249 (volunteering for or donating to charitable organization is not enough for standing). Nor does it help the plaintiffs that the city's parks and recreation department temporarily contracted with the Conservancy for tree-pruning in Franklin Park in 2020, because that arrangement gave the Conservancy no ongoing interest in the trust itself.

The plaintiffs urge that we adopt a more relaxed view of standing where, as here, the Attorney General has decided not to bring an enforcement action on behalf of the trust. The plaintiffs advocate that, in such circumstances, standing should be determined by reference to one of two multifactor tests, which can be found in the margin.¹⁸ But such an approach would be at odds with our established standard for special-interest standing, and we decline to adopt it. For more than a century, we have carefully limited special-interest standing due to a recognition that the public interest is not served by exposing public charitable trusts to "attack from all sides." Ames, 332 Mass. at 253. The duty to protect such trusts is "more satisfactorily performed by one acting under official responsibility," whose "duty [is] to see that the public interests are protected and to proceed in the prosecution or to decline so to proceed as those interests may require" (emphasis

¹⁸ Under one, the so-called Blasko standard, plaintiffs have standing to enforce the terms of a charitable trust if the balance of five factors favors standing: "(1) the extraordinary nature of the acts complained of and the remedies sought; (2) the presence of bad faith; (3) the [A]ttorney [G]eneral's availability and effectiveness; (4) the nature of the benefitted class and its relationship to the charity; and (5) the social desirability of conferring standing." In re Trust of Eddy, 172 N.H. 266, 271 (2019), citing Blasko, Crossley, & Lloyd, Standing to Sue in the Charitable Sector, 28 U.S.F. L. Rev. 37, 61 (1993). Under the other, promulgated by the American Law Institute, plaintiffs must satisfy each of a similar list of factors. Restatement of Charitable Nonprofit Organizations § 6.05 (2021).

added). Dillaway, 256 Mass. at 573, quoting Burbank v. Burbank, 152 Mass. 254, 256 (1890). Abandoning our limitations on standing when the Attorney General exercises her proper authority to conclude that bringing suit is not warranted would open charitable trusts to precisely the barrage of claims that we have traditionally sought to prevent.

For these reasons, counts I and II of the third amended complaint were properly dismissed for lack of standing.

2. Article 97. As relevant here, art. 97 requires a two-thirds vote by both houses of the Legislature before land subject to its provisions, such as land committed to use as a park, may be used or disposed of for other purposes. See Smith v. Westfield, 478 Mass. 49, 60 (2017). Even prior to the adoption of art. 97, "[t]he rule that public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion [was] firmly established in our [common] law."

Robbins v. Department of Pub. Works, 355 Mass. 328, 330 (1969).

It is undisputed that no legislative approval was sought or obtained with respect to the proposed use of the stadium parcel before the city and Unity Soccer entered into the agreements. But the question here is whether legislative approval was required. And the answer to that question turns on whether the stadium parcel was parkland at the time the agreements were

entered into. The trial judge concluded that it was not. We review the trial judge's rulings of law de novo and his findings of fact for clear error. Trace Constr., Inc. v. Dana Barros Sports Complex, LLC, 459 Mass. 346, 351 (2011).

Although art. 97 was ratified in 1972, its protections, including the requirement of a two-thirds vote by the Legislature prior to disposition or diversion, apply to "all property that was taken or acquired for art. 97 purposes" at any point in the Commonwealth's history. Smith, 478 Mass. at 62, citing Opinion of the Justices, 383 Mass. 895, 918 (1981). Thus, it is not dispositive that the city acquired the stadium parcel (together with the other land that became Franklin Park) by eminent domain long before art. 97 was ratified. Instead, the "critical question" is "whether the land was taken for [art. 97] purposes, or subsequent to the taking was designated for those purposes in a manner sufficient to invoke the protection of art. 97." Mahajan v. Department of Environmental Protection, 464 Mass. 604, 615 (2013).

The establishment of public parks is a quintessential use of natural resources, and land exclusively designated as parkland sits at the heart of art. 97's protections. See Smith, 478 Mass. at 62-63, citing Mahajan, 464 Mass. at 615. Here, the city's 1883 taking order was explicit that the land to be taken by eminent domain, including the stadium parcel, was taken "as,

and for, a public park" pursuant to the Parks Act of 1875. The city's subsequent hiring of Frederick Olmsted to design and reshape the landscape as parkland and for public recreation confirmed and implemented the city's intended use of the land. On these facts, we have no hesitation in concluding that at the time it was taken by eminent domain in 1883, the stadium parcel was dedicated parkland. Cf. Smith, 478 Mass. at 63 (post-acquisition, land is dedicated as public park when "the landowner's intent to do so is clear and unequivocal" and public accepts dedication by using land as park). It was therefore subject to art. 97 to the extent that its dedication as parkland continued. See Higginson v. Treasurer & Sch. House Comm'rs of Boston, 212 Mass. 583, 587-589 (1912) (land taken pursuant to Parks Act is public park belonging to general public rather than to municipality). See also Jacobson v. Parks & Recreation Comm'n of Boston, 345 Mass. 641, 643 (1963) (holding that St. 1899, c. 274, which gave Boston board of park commissioners "the same powers over" lands subject to that statute as over lands acquired via Parks Act, sufficed to make land at issue parkland).

The defendants argue that the Legislature diverted the stadium parcel from use as parkland by operation of the 1947 and 1950 statutes. Because these statutes predate the ratification of art. 97, in order for the defendants' argument to succeed,

the statutes must satisfy the requirements of the common-law doctrine of "prior public use" -- not the heightened and enhanced requirements of art. 97. See Carroll v. Select Bd. of Norwell, 493 Mass. 178, 184 (2024). See also Smith, 478 Mass. at 61-62 (process for removing lands from art. 97 protection must be understood in context of prior public use doctrine); Mahajan, 464 Mass. at 616 ("spirit of art. 97 is derived from" prior public use doctrine). A key distinction between art. 97 and the prior public use doctrine is that the latter does not require a supermajority vote by the Legislature. See Smith, 478 Mass. at 61-62 (parkland can be repurposed under prior public use doctrine by "bare majority" of Legislature).

The prior public use doctrine, developed during the Nineteenth Century,¹⁹ provides that "public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion." Sudbury v. Massachusetts Bay Transp. Auth., 485 Mass. 774, 783 (2020), quoting Robbins, 355 Mass. at 330. We have explained the contours of the doctrine as follows:

"We think it is essential to the expression of plain and explicit authority to divert parklands, Great Ponds, reservations and kindred areas to a new and inconsistent public use that the Legislature identify the land and that there appear in the legislation not only a statement of the

¹⁹ See Old Colony R.R. Co. v. Framingham Water Co., 153 Mass. 561, 563 (1891); Boston Water Power Co. v. Boston & Worcester R.R. Corp., 23 Pick. 360, 398 (1839).

new use but a statement or recital showing in some way legislative awareness of the existing public use. In short, the legislation should express not merely the public will for the new use but its willingness to surrender or forgo the existing use." (Footnote omitted.)

Robbins, 355 Mass. at 331. See Higginson, 212 Mass. at 592

(Legislature's failure to grant "unequivocally clear"

authorization of particular new use of parkland "strongly points as matter of construction to a legislative intent" not to allow that use).

The requirement of plain and explicit legislative authorization is applied especially "stringently" to attempted encroachments on public parks. Robbins, 355 Mass. at 330. See Higginson, 212 Mass. at 592 (policy of preserving public parks from "intrusion of every kind" cannot be "lightly thrown aside"). That stringency reflects the recognition that upon a property's dedication as a public park, the general public "obtains an interest in the land in the nature of an easement," which can only be surrendered or modified by the Legislature as representative of the public. Lowell v. Boston, 322 Mass. 709, 730 (1948). See also Smith, 478 Mass. at 60, citing Higginson, 212 Mass. at 589-590 (right to use dedicated parkland belongs to general public rather than to residents of any city or town). Because we expect that the Legislature will be vigorously protective of the people's rights in such land, we do not presume an intent to surrender such rights where the Legislature

has not made such intent explicitly clear. See Commonwealth v. Massachusetts Turnpike Auth., 346 Mass. 250, 253-254 (1963), quoting Boston Water Power Co. v. Boston & Worcester R.R. Corp., 23 Pick. 360, 398 (1839) (whether statute authorizes diversion of land devoted to public use is "a question of legislative intent; and it could not be presumed, that the legislature intended that the power conferred by them should have such an effect, unless it were unequivocally expressed").

With these principles in hand, we turn to the 1947 and 1950 statutes to determine whether they satisfy the requirements of the public use doctrine.

As we have already noted above, the 1947 statute authorized the city to transfer "any land, including park land," to the White Fund "for the purposes" specified in Article Fourteenth of White's will. St. 1947, c. 542. Those purposes were the creation of "works of public utility and beauty," for which White gave examples such as a zoo, aquarium, or forum for public gatherings. Although creation of a park or a park project could be considered a work of public utility and beauty within the meaning of Article Fourteenth of White's will, that provision contemplated a far broader range of projects. Indeed, among the earliest uses of the White Fund was the construction, in the 1920s, of "Health Units" for the public in various neighborhoods of Boston -- a work of public utility, but clearly not a park

one.²⁰ Accordingly, the Legislature's 1947 authorization to transfer parkland to the White Fund did not confine its use thereafter; instead, it allowed the transferred land to be used for any purpose within the scope of Article Fourteenth of White's will, including uses inconsistent with park status.

That said, the 1947 statute on its own was insufficient to satisfy the prior public use doctrine because it did not specifically identify the land to be transferred. See Brookline v. Metropolitan Dist. Comm'n, 357 Mass. 435, 440 (1970) (statute authorizing taking of "public or private lands, including . . . cemeteries, public parks or reservations" for highway purposes did not satisfy prior public use doctrine); Appleton v. Massachusetts Parking Auth., 340 Mass. 303, 305, 310 (1960) (statute authorizing conveyance of "lands constituting Boston Common and . . . the Public Garden" did not justify taking "unspecified substantial portions" of those parks). That lacuna, however, was bridged by the 1950 statute, which unambiguously identified White Stadium and the "estate upon which it stands." St. 1950, c. 291, § 1.

²⁰ The Health Units were neighborhood headquarters from which city health and welfare officials as well as charitable organizations could offer health services to local residents. Boston Board of Health, Boston's Health Units: Established from the Income of the George Robert White Fund, 1924-1944 (1945).

In addition, the 1950 statute identified White Stadium and the stadium parcel as falling within the school committee's custody and control, deemed the stadium and its parcel to be a school building and yard, and specified that the parcel's upkeep and improvements would be paid for with school funds. Id. This repeated identification of the stadium parcel as part of the school department's facilities and responsibilities -- and not the park department's -- establishes that the Legislature did not intend this particular parcel to remain dedicated to park purposes. Where, as here, the Legislature acknowledged the stadium as under the school department's custody and control -- a stadium described as a "schoolboy stadium" that was used, at the time and since, by the city's public schools, including as office space for the athletics department -- the Legislature's authorization of the use of the land for school purposes, rather than for park purposes, is clear.²¹

Nonetheless, it is true, as the plaintiffs point out, that the 1950 statute did not make reference to the stadium parcel's prior status as parkland. But the 1947 statute made it clear

²¹ The Legislature has transferred other park stadiums to school departments by way of legislation. See, e.g., St. 1967, c. 693 (authorizing city of Gloucester to transfer "park land known as Newell Stadium" from department of public works to school department); St. 1949, c. 42 (authorizing city of Salem to transfer stadium from park department to school department for school purposes).

that the Legislature was aware of the parcel's park status. While the land to be diverted and the new use to which it will be put must be identified with particularity under the prior public use doctrine, we have required only that the Legislature show "in some way" that it is aware of the land's prior use. Robbins, 355 Mass. at 331. That awareness was amply supplied by the 1947 statute, which explicitly authorized the transfer of parkland.

Although the 1950 statute did not make reference to the stadium parcel's prior status as parkland, and the 1947 statute did not specifically identify the land to be transferred to the White Fund, the public use doctrine is satisfied because the two statutes should be read together as a "legislative unit." Higginson, 212 Mass. at 592-593. Unlike in Higginson, where we declined to treat two statutes as a unit for purposes of the prior public use doctrine, concluding that "under all the circumstances" the inconsistencies between the two statutes (one of which authorized the taking of land for a building that would function both as a school and as an administrative center, the other of which authorized only a school) rendered it "too great a stretch" to read them in combination, the 1947 and 1950 statutes are a harmonious whole. Cf. Gould v. Greylock Reservation Comm'n, 350 Mass. 410, 419-422 (1966) (examining multiple statutes to evaluate validity of challenged project

under prior public use doctrine). The two statutes relate to the same contemplated series of interrelated actions whereby the stadium parcel was to be sold to the White Fund at fair market value, for any purpose consistent with Article Fourteenth of White's will -- in this case, the erection of White Stadium which, once erected, was conferred to the school department for maintenance, operation, and funding.

We conclude that the 1947 and 1950 statutes collectively establish the Legislature's unequivocal intent to extinguish the stadium parcel's status as parkland. The 1947 statute demonstrated the Legislature's willingness to divert parkland to the White Fund for nonpark uses, and the 1950 statute showed the Legislature's recognition and approval of the stadium parcel's new status as a school ground. Taken together, the 1947 and 1950 statutes satisfy the prior public use doctrine.

Two additional facts reinforce this conclusion. The first is the contrast between the 1947 and 1950 statutes and other statutes in which the Legislature authorized the White Fund to build recreational improvements on parkland. See St. 1941, c. 585; St. 1937, c. 258. In those statutes, which authorized transferring parkland to the White Fund's custody and control (to build an esplanade and colonnade in 1937 and a recreation center in 1941), the Legislature carefully specified that the transferred land would revert to the control of the park

department when construction ended, and the White Fund never obtained ownership of the delineated land. These statutes evince a clear legislative intent to preserve the park status of the transferred land. By contrast, the Legislature authorized a different arrangement with respect to the stadium parcel allowing the city to transfer it permanently to the White Fund in exchange for fair market value and then conferring its maintenance and upkeep to the school department.

Finally, we also note that the city received two Land and Water Conservation Fund (LWCF) grants, in 1978 and 1983, for the betterment of Franklin Park.²² The acceptance of LWCF grants with respect to a given property, which obligate the recipient to maintain the property for public outdoor recreation, establishes that property as protected under art. 97 (if it was not already). See Pub. L. No. 88-578, Title I, § 5(f), 78 Stat. 902 (1964), now codified at 54 U.S.C. § 200305(f)(3); Smith, 478 Mass. at 64. The city never used LWCF funds for the stadium parcel, however, and the LWCF's map of the area covered by the grant does not include the stadium parcel. In addition, the Commonwealth's Bureau of Geographic Information public mapping

²² LWCF grants are awards of matching Federal and State funds intended to support coordination of outdoor resources for the public's benefit. See Smith, 478 Mass. at 51-52.

tool shows that while Franklin Park generally is protected by art. 97, the stadium parcel is not.²³

The prior public use doctrine ensures that the public's interest in parkland is not disposed of casually or accidentally. We are satisfied that here, where the Legislature approved a particular nonpark use in a particular location and expressed willingness that parkland be diverted to that purpose, it extinguished the stadium parcel's park status no later than 1950. As such, the parcel is not subject to art. 97, and a two-thirds vote of the Legislature was not required in order for the city to enter into the agreements with Unity Soccer.

3. Areas beyond the stadium parcel. The plaintiffs make two arguments concerning the anticipated consequences of the project to areas of Franklin Park beyond the stadium parcel. First, they contend that -- despite language characterizing the arrangement as a license -- the agreements in fact grant an easement to Unity Soccer for access rights through Franklin Park. The grant of an easement over art. 97 land would constitute a disposition requiring a two-thirds vote of the

²³ The plaintiffs point to the city's published open space and recreation plans, which provide regularly updated overviews of the city's park system and which, since 2002, have characterized White Stadium as protected by art. 97. But the trial judge credited the testimony of the city employee responsible for preparing those plans from 2002 to 2015, who testified that this characterization of White Stadium was not based on legal or historical analysis.

Legislature, while the grant of a lesser property interest, such as a license, would not. See Mahajan, 464 Mass. at 620, citing Opinion of the Justices, 383 Mass. at 919. Second, the plaintiffs contend that the project will change the usage of areas of Franklin Park beyond the stadium parcel and that the trial judge erred in denying their motion in limine to admit certain city policies regarding alcohol use and traffic in parks, which they argue would have fortified that argument.²⁴ We are not persuaded by either argument.

The intent of the parties is the "critical factor" in determining whether an agreement creates a license or an easement. J.W. Bruce & J.W. Ely, Jr., *Easements and Licenses in Land* § 1.5 (2018). See Commercial Wharf E. Condominium Ass'n v. Waterfront Parking Corp., 407 Mass. 123, 134 (1990). To determine the parties' intent, we look first to the language of paragraph 4.2(a)(ii) of the stadium usage agreement, by which Unity Soccer was granted

"a license for pedestrian (and vehicular to the extent of any paved roads intended for vehicular use) ingress and egress to and from [White] Stadium through [certain

²⁴ The defendants argue that we should treat the plaintiffs' argument that the agreements grant Unity Soccer an easement as waived because it did not appear in the complaint. But the third amended complaint characterizes the agreements' description of Unity Soccer's right to use Franklin Park's paths as a grant of an easement. Moreover, the plaintiffs made their argument about the proper characterization of the access right at trial, with no objection from the defendants.

portions of Franklin Park], which ingress and egress the [c]ity hereby acknowledges must be sufficient to accommodate [Unity Soccer]'s use of [White] Stadium for [Unity Soccer purposes]."

While the label the parties place on an interest is not controlling, id., the words of an agreement are the "most important evidence" of the parties' intent, Robert Indus., Inc. v. Spence, 362 Mass. 751, 755 (1973). Here, the parties described their arrangement as a license, not an easement.

Other provisions of the agreements also indicate that the parties intended paragraph 4.2(a)(ii) to create a revocable license arrangement, and not an irrevocable easement. The "fundamental difference" between a license and an easement is that a license is revocable at the will of the grantor. Easements and Licenses in Land § 1.4. See Carroll, 493 Mass. at 192-193. And here, the parties specifically did not refer to the paragraph 4.2(a)(ii) license as "irrevocable" even though they used that terminology elsewhere to describe other property interests. For example, Unity Soccer, as leaseholder of portions of the stadium parcel, elsewhere granted Boston public schools an "irrevocable, exclusive license and sublease" to occupy a portion of the leased area and an "irrevocable license" to access and use other portions (emphases added). See Wortis v. Trustees of Tufts College, 493 Mass. 648, 665 (2024) (we "strive to give effect to every word in a contract"). It would

have been a simple matter to add the word "irrevocable" to paragraph 4.2(a)(ii) if that is what these sophisticated parties had intended by their contractual arrangement. See Anderson St. Assocs. v. Boston, 442 Mass. 812, 819 (2004) ("[W]here sophisticated parties choose to embody their agreement in a carefully crafted document, they are entitled to and should be held to the language they chose").

In addition, the paragraph preceding paragraph 4.2(a)(ii) granted Unity Soccer a separate "license" about which Unity Soccer "acknowledge[d] and agree[d] that [this right] is a license only, and that [Unity Soccer] shall not acquire any estate or title or real property interest in [the covered area]." Taken in context and given their proximity, we think it safe to conclude the word "license" carried the same meaning in paragraph 4.2(a)(ii) as it did in the preceding paragraph of the same section of the agreement. See Bank v. Thermo Elemental Inc., 451 Mass. 638, 650 (2008) (words used in one place in contract are generally presumed to have same meaning in other places in same contract). In short, we conclude that Unity Soccer was granted a license, not an easement, to access the stadium parcel through specified portions of Franklin Park.

The plaintiffs separately argue that the construction and improvement of pedestrian and vehicular pathways and utility lines to the stadium parcel through Franklin Park will change

the affected areas' park use and implicate art. 97. But pathways, including vehicular pathways, are ordinary elements of a park landscape, and the plaintiffs have not shown that routes constructed outside the stadium parcel will differ in kind from existing routes through Franklin Park or otherwise interfere with park use. Compare Codman v. Crocker, 203 Mass. 146, 150-151 (1909) (construction of subway tunnel under Boston Common not inconsistent with existing use), and Boston v. Inhabitants of Brookline, 156 Mass. 172, 176-177 (1892) (laying utilities under land not inconsistent with prior public surface use), with Sacco v. Department of Pub. Works, 352 Mass. 670, 673 (1967) (filling in pond and replacing it with highway changes use).

Finally, the plaintiffs assert that the trial judge erred in denying their motion in limine to admit certain of the city's policies regarding alcohol use and traffic in parks, which they contend would have buttressed their argument that the project would result in changes to the use of Franklin Park. Having reviewed the proffered documents ourselves, we perceive neither an abuse of discretion in excluding them, nor any prejudice from the judge's ruling. See Pina v. McGill Dev. Corp., 388 Mass. 159, 164 (1983) (exclusion of evidence not grounds for reversal if nonprejudicial). At most, the documents reflect certain city policies regarding acceptable park activities; they do not show

that the project will change any area outside the stadium parcel to nonpark use.

Conclusion. The Superior Court's judgment is affirmed.

So ordered.