

## SJC Case Could Result in Loss of Property Tax Exemptions for Certain Conservation Land

January 16, 2014

A property tax dispute involving a \$172 property tax on conservation land owned by The New England Forestry Foundation (the “Foundation”) in the Town of Hawley could impact land conservation organizations throughout the Commonwealth.

In a case argued before the Supreme Judicial Court (“SJC”) on January 6, 2014, the Town of Hawley asserted that 120 acres of conservation land owned by the Foundation were not eligible for the property tax exemption afforded to charitable organizations under [M.G.L. Ch. 59, § 5, Clause Third](#). Instead, the Town imposed the reduced tax rate applicable to forestry land, as provided in [M.G.L. Ch. 61](#). The Town’s tax assessment was upheld by the Appellate Tax Board (“ATB”).

Charitable conservation organizations throughout the Commonwealth will want to closely monitor this case and should be prepared to modify their land use policies in light of the SJC’s forthcoming ruling regarding whether conservation land is eligible for the property tax exemption.

### What Constitutes “Occupation of Land” for Property Tax Exemption Purposes?

An issue in the SJC case is how to interpret Clause Third, which states that “real estate owned by or held in trust for a charitable organization *and occupied by it or its officers for the purposes for which it is organized*” is exempt from local property taxes. (Emphasis added.)

#### The Town’s Argument: Occupation Requires Promotion of Public Use

The Town argued that the ATB correctly ruled that the Foundation’s mere ownership of the 120 acres did not satisfy the statutory requirement that land eligible for the property tax exemption be “occupied” by the charity. The Town urged the SJC to uphold the ATB’s ruling that the Foundation had “failed to show that it was a charitable organization that made active appropriation of the land to an immediate charitable purpose.”

Although the land in question is accessible to the public, is described and mapped on the Foundation’s website, and is used by members of the public for hiking, hunting, skiing, and snowmobiling, the Foundation’s alleged failure to actively promote widespread public use of the land or hold frequent programs or events on the land was cited by the Town as evidence that the land was not sufficiently “occupied” for the purposes of Clause Third.

#### The Foundation’s Argument: Occupation Does Not Require Public Use

In response, the Foundation asserted that its current level of occupation of the land is consistent with its charitable mission of protecting and conserving New England’s forests, which involves managing the land to preserve its open and natural character. Such management practices require, by necessity, limiting (or in some cases, eliminating) human activity from the land.

The Foundation argued that its activities “of protecting the natural beauty, biological integrity, recreational availability, and long-term viability of the land” benefit a large and fluid group of beneficiaries and thereby align with the traditional hallmarks of charitable activities. Specific benefits include improved air and water quality, recreational opportunities, natural beauty, and effective stewardship of natural resources.

The Foundation further noted that it has implemented an ecologically sustainable and conservation-oriented forest management plan that provides for forestry activities on the land at intervals of 7-1/2 years.

The Foundation's case was supported by five amicus briefs submitted on behalf of eight conservation organizations, including the Trustees of Reservations, the Massachusetts Audubon Society, The Nature Conservancy, and The Massachusetts Land Trust Coalition. All of the briefs submitted to the SJC are [available here](#).

## Next Steps

The SJC is expected to issue a ruling on or before May 15, 2014. Foley Hoag will be watching this case closely, and will provide an analysis of the ruling when it is released.

### RELATED INDUSTRIES

■ [Professional Services](#)

---

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2022 Foley Hoag LLP. All rights reserved.