

SJC Upholds Charitable Property Tax Exemption for Land Conservation Organization

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On May 15, the Supreme Judicial Court released its opinion in *New England Forestry Foundation v. Hawley*, ruling that a 120-acre parcel of forest land owned by the Foundation in the Town of Hawley was eligible for the charitable property tax exemption under Mass. General Laws c. 59, sec. 5, Third ("Clause Third").

Three key aspects of the Court's decision are of importance to land conservation organizations:

- First, the decision strongly affirmed the charitable nature of land conservation activities, and clarified the eligibility criteria for property tax exemptions for land conservation organizations.
- Second, the decision distinguished between conservation lands that permit public access and conservation lands from which the public is excluded, imposing a heightened requirement for the exemption in the latter case.
- Third, the decision provided valuable guidance to Massachusetts land conservation organizations, identifying several key factors that could "prove relevant" for determining that a nonprofit entity is a "bona fide" land conservation organization—and thus entitled to a property tax exemption.

The board of assessors of Hawley had denied the Foundation's application for a charitable tax exemption under Clause Third. The Appellate Tax Board ("ATB") upheld the assessors' denial, asserting that the Foundation had failed to show that it occupied the land for a charitable purpose under Clause Third. The SJC reversed.

Background

The Foundation is a Massachusetts charitable nonprofit organization whose stated purposes include providing "for the conservation and ecologically sound management of privately owned forestlands in New England." The Foundation is one of the largest land conservation organizations in Massachusetts, owning 7,500 acres in Massachusetts alone and holding conservation easements on over one million acres in seven states.

In 1999, the Foundation purchased the 120-acre tract of forest land in Hawley, and in 2009, the Foundation submitted an application to the Hawley board of assessors for a Clause Third property tax exemption. Clause Third provides that the real property of a charitable organization is exempt from taxation if the land is "occupied" by the charitable organization or its officers in furtherance of its charitable purposes.

Our previous client alert provides additional factual background and discusses the legal arguments asserted by the Foundation and the board of assessors.

Exemptions for Conservation Organizations Under Clause Third

The Court devoted most of its discussion to how Clause Third's two-prong test for property tax exemption applies to conservation organizations. The Court quickly addressed and dismissed the board of assessors' alternate argument, which was that the Foundation was entitled only to use a separate statute authorizing *reduced* taxation for privately-held forest land.

Prong One: Conservation Organizations Can Have a Charitable Purpose

Citing its longstanding precedent from the 1867 case of *Jackson v. Phillips*, the Court concluded the Foundation's conservation purposes "are traditionally charitable within the meaning of Clause Third and the definition of charity set forth in *Jackson*." The Court emphasized that in order to qualify for the Clause Third exemption, an organization must establish that its operations are indeed charitable. While "charity" encompasses more than "mere alms giving", the dominant purpose of an organization that claims to be charitable must be to perform work for the public good, not merely for the benefit of its own members.

Focusing specifically on nonprofit conservation organizations like the Foundation, the Court acknowledged that as the science of conservation has advanced, it is now understood that conservation of large forested blocks of land contributes to "ecosystem resilience," and that such blocks of land promote biodiversity by protecting robust wildlife habitats. The Court reasoned that these benefits of the Foundation's activities do therefore inure to an indefinite number of people, even though few people may physically enter the Foundation's forest land.

The Court also held that the Foundation's conservation work on the forest land lessened the burdens of government, by assisting the state in achieving the state's conservation policy goals. The Court noted that conservation organizations like the Foundation that align their missions with the state's conservation goals are frequently identified as essential partners in statewide conservation efforts (citing several statutory schemes that make conservation nonprofits essential partners in conservation and land use programs).

Prong Two: Land Conservation Organizations Can "Occupy" Land For Charitable Purposes

The Court also found that the Foundation's land conservation activities satisfied the occupancy requirement under Clause Third.

Under Massachusetts law, "occupancy" for charitable purposes requires more than mere possession. Rather, it involves an active appropriation of the property to the owner's charitable activities and mission, and the dominant use of the property must be for charitable purposes.

The assessors had asserted, and the ATB had agreed, that the Foundation's alleged failure to actively promote widespread public use of the land or hold frequent programs or events on the land was evidence that the land was not sufficiently "occupied" for the purposes of Clause Third.

The Court sharply disagreed. In light of the conservation purposes and forest management practices of the Foundation, the Court concluded that physical entry by the public onto the forest land was not necessary for the Foundation to achieve its charitable purposes, and thus was not necessary to demonstrate "occupancy" of the land for the purposes of Clause Third.

The Court further stated that the Foundation's activities involving sustainable forestry practices, along with the enhancement of environmental quality through the promotion of improved water quality and biodiversity, helped establish that the Foundation had sufficiently "occupied" the land for charitable purposes. The fact that the Foundation's land directly abuts a state forest was cited as an additional indication that the Foundation occupies the land in furtherance of its charitable purposes (and not merely to create a buffer zone around private land).

The Court did establish certain parameters on the scope of its ruling, noting that if a charitable conservation organization takes affirmative steps to exclude the public from its land — such as through physical barriers, "no trespassing" signs, or actively patrolling the land — the organization will face a heightened burden to demonstrate that such exclusion of the public is necessary to achieving its charitable purposes. In order to meet this heightened burden, a charity must present "compelling facts demonstrating that the exclusion of the public is necessary to achieve a public benefit," such as where the conservation activities pose a threat to public safety or where the ecosystem is so fragile that *any* human activity could undermine conservation efforts.

Here, however, the Foundation did not take active steps to exclude the public from its forest land in Hawley. In fact, the Foundation took steps to inform the public that the land was available for recreation. The forest land was accessible to the public and was used by members of the public for hiking, hunting, and snowmobiling.

Valuable Guidance for Establishing a "Bona Fide" Land Conservation Organization

Of particular importance, the Court has now provided valuable guidance for land conservation organizations seeking property tax exemptions under Clause Third.

While the ATB has previously required such organizations to demonstrate that they invite, encourage, and facilitate the entry of the

public at large onto their lands, the Court rejected the ATB's narrow requirement.

The Court instead emphasized that "public access to the land is not *required* for a nonprofit conservation organization to qualify for a Clause Third exemption provided that the organization can demonstrate that in practice it is an organization carrying out land conservation and environmental protection activities of the sort whose benefits inure to the public at large."

To that end, the Court provided several factors that "may prove relevant" in the determination that an organization is such a "bona fide" land conservation organization:

- Membership in regional, State or national coalitions of conservation organizations;
- Recognition by government entities or the scientific or academic community as a trusted community resource;
- Partnership with local municipalities in carrying out land-related statutory programs;
- Ownership of multiple parcels in various locations of a similar ecological sort or of a variety consistent with the organization's stated mission;
- Expertise of staff members in land conservation and environmental initiatives;
- Success in receiving competitive grants from Federal or State agencies;
- Certifications or accreditations from government or other appropriate entities;
- Invitations from policy makers or State agencies to participate in regional or Statewide strategic planning initiatives; or
- Like indicia of the organization's status as a genuine land-conservation organization.

We expect that this type of clear guidance will help facilitate applications for Clause Third property tax exemptions by other land conservation organizations in Massachusetts.

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