

## In Landmark Ruling, Massachusetts SJC Upholds Tax Exemption for Charitable Conservation Land

On May 15, 2014, the Massachusetts Supreme Judicial Court (“SJC”) issued a landmark decision, *New England Forestry Foundation, Inc. v. Board of Assessors of Hawley*, SJC-11432 (May 15, 2014), upholding the tax exempt status of conservation land held by charitable conservation organizations. The SJC’s decision is a ringing endorsement of the public benefit provided by conservation groups, and more generally reaffirms the deference to which the officers of charitable organizations are entitled in deciding how best to utilize their property in furtherance of their missions. Supporters of charities can now be reassured that their donations of land will support the recipient’s charitable purposes, rather than become the basis for a new tax liability. The New England Forestry Foundation, Inc. (NEFF), the prevailing party in the case, was represented in its successful appeal to the SJC by Ropes & Gray.

The initial dispute arose out of the Western Massachusetts Town of Hawley’s attempt to impose a property tax on a 120-acre parcel of forestland owned by NEFF, one of the oldest and largest forestland conservation organizations in New England. NEFF purchased the property, which abuts a state forest on two sides, to prevent development at the edge of the forest and to expand the protected ecosystem around the state forest. NEFF maintains the parcel primarily for the purposes of conservation and sustainable forestry, while opening it to public use and recreation to the extent consistent with those purposes.

The Hawley assessors denied NEFF’s application for a charitable tax exemption for the parcel, and the Massachusetts Appellate Tax Board agreed with the assessors. The Tax Board concluded that land conservation is not a “charitable” activity in Massachusetts because it does not benefit “a sufficiently large and fluid class of persons” and that preserving the land in its natural state did not qualify as “occupying” the land as required under the charitable property tax exemption. The Tax Board’s decision raised concerns among the conservation community, and other charitable organizations, that the case could establish precedent for municipalities seeking to tax charitable organizations’ real estate throughout Massachusetts.

NEFF appealed the Tax Board’s decision to the SJC. In a unanimous decision, the SJC reversed the Tax Board and ruled that bona fide conservation land in Massachusetts is entitled to charitable tax exemption. The decision establishes favorable precedent for charities generally. The SJC emphasized that when an organization performs work that is “traditionally charitable”—such as the provision of health care by hospitals or education by universities—that organization will presumptively qualify as “charitable” under the exemption statute. Noting Massachusetts’ history as a conservation leader, the SJC recognized land conservation as a “traditionally charitable” purpose, noting its beneficial contributions to the environmental sustainability, natural beauty, and public health of the entire state.

The SJC rejected the Tax Board’s narrow construction of the statute’s “occupancy” requirement, and specifically disavowed the Tax Board’s “public access” requirement with respect to conservation land as an inappropriate intrusion into the discretion of charities to determine how best to use their land. “[S]o long as the property is immediately appropriated to a use that furthers the organization’s purposes, the courts shall defer to the organization’s officers and directors in determining the extent of property required and the specific uses of the land that will best promote those purposes.”

For further advice as to how *New England Forestry Foundation* might affect your charitable organization, please contact your usual Ropes & Gray attorney.