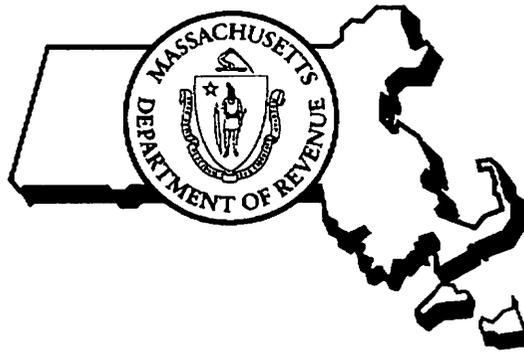

**Massachusetts Department of Revenue
Division of Local Services**

**LOCAL TAX EXEMPTIONS
Charitable, Religious and other Organizations**



2014

Workshop A

**Amy A. Pitter, Commissioner
Robert G. Nunes, Deputy Commissioner**

www.mass.gov/dls

Table of Contents

Case Study 1	1
Case Study 2	2
Case Study 3	4
Case Study 4	6
Case Study 5	7
Case Study 6	8
Case Study 7	9
Case Study 8	10
Case Study 9	11
Case Study 10.....	12
Case Study 11.....	13
Case Study 12.....	14
Case Study 13.....	15
Case Study 14.....	16
Case Study 15.....	17
Case Study 16.....	18
Case Study 17.....	19
Case Study 18.....	20
<i>New England Forestry Foundation, Inc. v. Assessors of Hawley</i> , 468 Mass. 138 (May 15, 2014)	21
<i>Wing’s Neck Conservation Foundation, Inc. v. Assessors of Bourne</i> , Mass. ATB Findings of Fact and Report 2003-329 (July 8, 2003)	37
Organizational Exemptions: Procedural Requirements	53

Case Study 1

Human Potential, Inc. is a non-profit corporation whose corporate purposes include providing residential and educational services for the developmentally disabled. They own four properties in Eastern Massachusetts which are used as group homes for low income developmentally disabled individuals. They acquired a fifth property on Cape Cod last year, with the intention of turning it into yet another group home. They owned this property on January 1st, and July 1st of 2014.

Human Potential, Inc. claims to be a charitable organization within the meaning of G.L. c. 59, § 5, Clause Third. However, they do not occupy any of the five properties they own. Instead, the organization leases the five properties to the Massachusetts Department of Developmental Services, an agency of the Executive Office of Health and Human Services, which operates the group homes for developmentally disabled clients.

- A. What are the filing requirements for obtaining charitable status in the new community in which Human Potential, Inc. owns property?
- B. Is Human Potential, Inc. eligible for a charitable exemption on the newly acquired fifth property in the Cape Cod community where it is located?
- C. What happens if Human Potential failed to file its Form 3ABC with the assessors on the original due date.

Case Study 2

The Land of the Free Forestry Foundation (“LFFF”) owns approximately 200 acres of forest land in a small Western Massachusetts town. Its mission is “to preserve the primal woodlands of pre-Columbian North America.” The land in question abuts the estates of four wealthy landowners and a river, with an easement road over one of the properties, that of Mr. Riff Ryder, connecting the site to the public ways. The easement and a river landing provide the only access onto the property. The LFFF has had its acreage under a forest management plan since it originally acquired the forest land 20 years ago. The LFFF is seeking to qualify the land for a charitable exemption under G.L. c. 59, § 5, Clause Third.

- A. What are the procedural steps the LFFF needs to take as a prerequisite to receiving consideration for charitable status by the local assessors? What are the time requirements? [What are the documents required to be filed and the relevant due dates?]
- B. Can forest management be a charitable purpose within the meaning of G.L. c. 59, § 5, Clause Third?
- C. How can LFFF be said to occupy the forest land for its charitable purposes?
- D. A large “no trespassing” sign appears at the entrance to the property from the easement road over the Ryder property. Apart from the river, this entrance is the only way onto the property without trespassing onto the properties of the abutting landowners.
- E. Would it make a difference if there were separate land access to the LFFF property, not posted against trespassing?
- F. How would it affect the claim for charitable exemption if the LFFF were funded solely by the three abutting private landowners, and access were restricted to the landowners and their invitees?
- G. How would the claim for charitable exemption fare if the LFFF had no forest management plans and left the forested area to lie fallow as its conservation strategy?
- H. What if a rare and endangered spotted owl had its nesting areas in the LFFF woodlands? How would that bear on the claim for exemption?
- I. What if access were permitted through the entrance to the property from the easement road over the Ryder property, but the LFFF took no steps to alert the public to the possibility of using the land?

- K. What if access to the property were closed during timber harvest season, but promptly reopened when the tree-cutting had ended?
- L. What if LFFF were a membership society and restricted access to its forest lands to members only?
- M. What if LFFF had monitors scouring the property to make sure no passersby gained access?

Case Study 3

A non-profit organization called “Second Amendment Solutions” in O’Kaycorral, Massachusetts owns two parcels of real estate totaling 30 acres. 10 acres lie in their natural state, while the remaining 20 acres are the site of various improvements including a club house, indoor and outdoor shooting ranges, a skeet shooting field, small sheds to hold equipment, a stocked pond for fishing, and archery targets.

Second Amendment Solutions’ corporate purposes included educating the “sportsmen of tomorrow” in marksmanship and gun safety; making the general public aware of the 2nd Amendment to the United States Constitution; increasing the populations of game, fish, and other wildlife for hunting purposes; and conserving forests and natural resources.

The group had 600 members on the July 1st qualifying date for the year at issue. Membership was open to anyone who had completed certain safety classes sponsored by the National Rifle Association. Annual dues are \$100, and various fees apply for use of the improvements on the group’s property. Members can bring along guests, also for a fee.

Members had to show their membership card to gain access to the club house and indoor shooting range. The outdoor shooting range and the skeet shooting field were fenced in and locked. The group offered educational programming aimed at young and beginner gun enthusiasts. A marksmanship course publicized through the local high school and an archery class were the educational offerings available to non-members.

The group maintained that it was open for joggers and other non-members, who might explore the grounds and fish at the man-made pond. However, there were two entrances to the property that didn’t require trespass over abutting properties. Both entrances were clearly marked with signs with messages including “no trespassing,” “private property,” and “private pond.”

- A. What is the two-part test governing claims for charitable exempt status under G.L. c. 59, § 5, Clause Third? What must Second Amendment Solutions prove if wants a complete exemption from property taxes?
- B. Is training in marksmanship a charitable activity? What about recreational shooting using Second Amendment Solutions’ facilities?
- C. What is the dominant purpose of Second Amendment Solutions’ operations, given the facts above?
- D. Is the charitable exemption available to a group that pursues multiple, related purposes, one of which includes education in gun safety?

- E. Is public access to the property required as a condition of exempt status?
- F. What if Second Amendment Solutions took down the No Trespassing Signs?
- G. Are the 20 acres left in their natural state potentially eligible for charitable exemption status?
- H. Can a membership organization ever be a charitable entity?

Case Study 4

30 acres are owned by a self-described religious organization, the “Tablets of Stone Foundation” (“TSF”). On this property is situated a private residence occupied by a husband and wife, who are both officers of TSF and call themselves the “clergy” of the TSF. The rest of the acreage is undeveloped and left largely in a natural state. There are walkways through a portion of the property with 2 benches alongside. 10 stone pillars bearing religious messages are scattered around the property.

The TSF mission statement asserts that stone tablets were the means by which God communicated with ancient believers, and that religious messages acquire mystical power when they are represented through stone carvings. The site is posted against trespassing. Yet signs at the entrances to the property invite inquirers to visit the residence, where they can hear and read about the religious message of the TSF and apply for membership. As members, they have unlimited access to the site.

The TSF has 10 members, including the residents of the house on the property. No religious observances or worship services take place on the site, although private meditations on the messages appearing on the stone tablets are encouraged in the group’s messaging. As a practical matter, the outdoor space on the site is not used during the winter months.

- A. Is the Tablets of Stone Foundation a bona fide religious organization or a sham intended to facilitate tax evasion? How would you make that determination?
- B. Can the practice of meditation occurring on the open-air site be deemed a religious activity? Do the areas set aside for meditation constitute Houses of Worship?
- C. Does the private residence qualify for exemption as a “parsonage”?
- D. Could the TSF qualify for exemption as a “charitable organization” dedicated to the propagation of the belief that the Word of God is most appropriately depicted through stone carvings? How could the 30 acre site be said to be “occupied” for charitable purposes?
- E. Suppose meditation sessions happened on the property year-round in a weatherized shed, and were led by the “clergy” of the TSF. Would that strengthen the claim for a religious exemption or a charitable exemption?

Case Study 5

A local mosque in Boston, Massachusetts lost its Imam in the spring after his visa expired and he was deported. He had occupied a clerical residence (or “parsonage” in the language of G.L. c. 59, § 5, Clause Eleventh) with his wife and two children. His family remained in the “parsonage” while no Imam was present at the mosque. The family occupied the property without the Imam on July 1st. Meanwhile, the Imam is urgently trying to renew his visa so he can return to Massachusetts. The mosque elders are debating whether to start a search for a new Imam, but have so far taken no action. Nor have there been any steps to evict the departed Imam’s family from the parsonage. However, the elders set a date to begin a search for the new Imam, assuming the former clergyman has not been able to return. They hope to have an Imam in place by Ramadan in 2015.

- A. Is the parsonage, which was unoccupied by a clergyman on the July 1st exemption qualifying date, entitled to the Clause Eleventh exemption for ministerial residences?
- B. Would it make any difference if the mosque had filed the required documentation to establish its status as a charitable organization for purposes of the Clause Third exemption?
- C. Would the exemption status of the parsonage change if the former Imam’s family were evicted?

Case Study 6

The 21st Century Veterans, Inc., a non-profit corporation organized under G.L. c. 180, has a membership consisting largely of veterans of the wars in Afghanistan and Iraq. They are oriented to veterans younger than those who traditionally participate in the VFW or American Legion. They recently purchased a building on Massachusetts Avenue in Cambridge for \$2,000,000. The building's facilities include a kitchen and dining room, a billiards room, two lounges, a library, and an auditorium. Only the auditorium is open to the public on certain occasions. They also maintain an emergency relief fund which provides monetary assistance to members who are experiencing financial difficulties.

Their corporate purposes entail promoting the social welfare of like-minded veterans and giving such veterans a place to come together and fraternize. Their purposes also include conducting public education on issues of war and peace. From time to time they host events such as lectures and exhibitions relating to military matters, which are open to the public free of charge. These events take place in the auditorium, which is also the setting for membership meetings of the group.

They proceeded to file their Form 1-B-3 with the Cambridge assessors, asserting tax exempt status under G.L. c. 59, § 5, Clause Third. They also timely filed a Form 3ABC listing the Massachusetts Ave. property as their only real estate holding.

- A. Are the 21st Century Veterans eligible for the Clause Third exemption? What is the inquiry the assessors need to make to answer this question?
- B. The assessors conclude that the 21st Century Veterans are not a charitable organization within the meaning of Clause Third. The group intends to appeal to the Appellate Tax Board.
- C. The assessors are looking for a compromise that will give the veterans group at least a partial exemption. They scour G.L. c. 59, § 5 for any exemptions that might be applicable. Are there exemptions other than that afforded by Clause Third that Cambridge might extend to the veterans group?
- D. Are the 21st Century Veterans subject to tax on their personal property?

Case Study 7

Hermione Houndstooth, a resident of Eastacres, MA, is concerned that the property tax rate in her community is too high. She decides to audit the organizations awarded G.L. c. 59, § 5, Clause Third exemptions to see if the assessors are being overly generous.

- A. What information is Ms. Houndstooth entitled to from the assessors?
- B. The Mayor recently read the book *Bowling Alone*, about the decline in civic participation and group involvement in America, and decides to take policy steps to promote more active community involvement in Eastacres. He targets civic and fraternal associations for tax benefits. He instructs the assessors to award Clause Third charitable exemptions to the Rotary Club, and the Ukrainian-American League. What should the assessors do?
- C. What alternative exemptions under G.L. c. 59, § 5 might be appropriate for the Rotary Club and the Ukrainian-American League?
- D. The assessors award charitable exemptions to fraternal and membership groups whose eligibility Ms. Houndstooth is led by her research to question. Does she have any remedy to challenge the award of these exemptions?

Case Study 8

A non-profit organization, named “All Creatures Great and Small Foundation” (“ACGSF”) owns 100 acres of undeveloped property in Central Massachusetts, in addition to its two acre Boston headquarters. The Central Massachusetts property is heavily wooded with a large section of wetlands and a watershed protection district.

The organization’s purposes consist of providing pet adoption services, a veterinary clinic, a shelter for abused animals, educational programs regarding the humane treatment of animals; and maintaining a natural sanctuary for wildlife. Activities in furtherance of these purposes are carried out from the Boston headquarters. The Central Massachusetts property is used solely to provide a natural habitat for wildlife. There had been plans to build an animal shelter on site, but these were abandoned within a couple of years of the property’s acquisition. The property is fenced in and “no trespassing” signs are posted. No public access is allowed except by private arrangement with the group’s officers based at the Boston headquarters. There are no improvements on the property related to the group’s purposes—no kennels, animal shelters, or veterinary clinics. However, an officer of ACGSF occupies a small house at one edge of the property, surrounded by a clearing of approximately one acre. He performs no work-related duties on site and is based at the Boston headquarters. The private residence is not open to the public.

- A. Let’s first consider the Boston headquarters site. Do activities at the headquarters fall within the definition of “charitable”?
- B. Is it a charitable purpose to set aside land in its natural state for animal habitation, without any programs, facilities, or services provided on site?
- C. Is public access to the Central Massachusetts site a prerequisite for charitable exemption?
- D. Are there circumstances under which the land can be used for charitable purposes, though little or no public access is allowed?
- E. Does it matter if endangered species live on the Central Massachusetts property?
- F. Assuming the organization’s activities are charitable in character, how is it occupying the Central Massachusetts property for its charitable purposes?

Case Study 9

A water district with taxing authority has decided to extend water service to a section of town where a private nonprofit high school is located. For many years the water district relied solely on water rates to pay for its operations. For fiscal year 2015, however, a tax rate will be set by the Commissioner of Revenue. The district has also decided to fund the water extension project solely through betterments.

- A. Would the nonprofit school be exempt from the district tax?
- B. Would the nonprofit school be exempt from the water betterment? Would it make a difference if the school relied solely on its own wells for water?
- C. If water service is provided, would the private school be exempt from paying the water bills? How can the district collect any unpaid charges?

G.L. c. 40, § 42C

Williams College v. Williamstown, 219 Mass. 46 (1914)

Stepan Chemical Company v. Town of Wilmington, 8 Mass. App. 870 (1979)

Case Study 10

The United Kingdom in March 2014 purchased a property in town to be used as a residence for its consul general. The English government paid \$7.1 million for the two acre parcel improved by a fourteen room Colonial.

- A. The 4th quarter fiscal year 2014 real estate bill remains unpaid. What action should the collector take with regard to the fiscal year 2014 taxes? What about the FY 2015 taxes?
- B. The consul general and the employees of the consulate registered motor vehicles in their own names. Excise taxes were assessed. The collector is not sure whether these excise taxes are collectible. Should these excise bills be exempted?

Vienna Convention on Consular Relations

Case Study 11

The Oliver Goldsmith Repertory Theatre Fund, Inc. was formed as a Chapter 180 nonprofit corporation in 2007 for the following purposes:-

To enlighten and educate the public concerning the value of the Repertory Theatre as a vital factor toward the higher development of dramatic art and to establish a permanent playhouse where the best plays of all times may be presented, where competent actors may be afforded an opportunity of appearing before the public under favorable conditions, and to encourage playwrights and actors in the best traditions of the dramatic profession.

The corporation had initially rented a building in a suburban town where it operated a theatre. In May 2014 the corporation bought a parcel of vacant land in an adjacent town on which it planned to build a theatre.

- A. Would the vacant parcel be exempt from taxes for fiscal year 2015? What evidence should the corporation present to the assessors to demonstrate eligibility for exemption?
- B. The corporation built the theatre and then purchased a large single family Victorian to provide housing to the visiting performers and the interns. Would the house be exempt?

G.L. c. 59, § 5, Cl. 3

Mount Auburn Hospital v. Board of Assessors of Watertown, 55 Mass. App. 611 (2002), review denied 438 Mass. 1102

Trustees of Boston College v. Board of Assessors of Boston, ATB 2010-96 (February 4, 2010)

Charlesbank Homes v. City of Boston, 218 Mass. 14 (1914)

Franklin Square House v. City of Boston, 188 Mass. 409 (1905)

Case Study 12

Questions have been raised about the scope of exemption for a private college.

- A. The private college consists of two disjointed parcels: the Main Campus and the South Campus. The South Campus is about a third of a mile from the Main Campus and contains 12 acres of land which are used as athletic fields. The South Campus also has two buildings: a club house and the house where the athletic director resides. What is the tax status of the athletic director's house? Is it taxable?
- B. The college bought a new house for its President. The house is located on the other side of town. Is the college President's house exempt?
- C. The college has an increased enrollment and there are more boarding students. The college owns a dormitory building which is adjacent to the college President's house and it is quite distant from the Main Campus. Is the dormitory exempt?

Bay Path College v. Assessors of Longmeadow, 57 Mass. App. 807 (2003)

Trustees of Boston University v. Board of Assessors of Brookline, 11 Mass. App. 325 (1981)

Case Study 13

There has been some controversy in town about actions by the tax collector.

- A. The tax collector sent tax bills to residents who lease dwellings on park land owned by the Commonwealth and controlled by the Department of Environmental Management (DEM). The lessees are DEM employees who use the dwellings as their domiciles. The residents claim the houses are exempt. Are the residents correct? If taxable, how can the collector enforce collection of these taxes?
- B. The collector sent excise bills to a private school whose vehicles were leased. The private school claims to be exempt from excise. Is the private school taxable on leased motor vehicles?
- C. The collector sent another tax bill to the private school for the ATM which is located in the school's campus center. Is the ATM taxable? Is the ATM personal property or real estate?

G.L. c. 59, § 2B

G.L. c. 60A, § 1

G.L. c. 59, § 5, Cl. 16

Rudnick Realty v. Board of Assessors of Westborough, 373 Mass. 856 (1977)

Case Study 14

A religious organization owns a two acre parcel which contains the following: a church, the parsonage, the church hall and a parking lot.

- A. The church is located in a summer resort community. The church parking lot is used by church attendees and by tourists. The tourists pay a modest charge for use of the lot. Is the parking lot exempt?
- B. The church hall is used for religious instruction and for meetings by various church organizations. The hall is also used for wedding receptions. Is the church hall exempt?
- C. The church planned to sell its current site and purchase a larger building in town due to the increased size of the congregation. Both the sale of the old building and the purchase of the new building were to take place on June 30, 2014. Due to the mortgagee bank's financing concerns, the actual purchase of the new building was delayed until July 7, 2014. Is the new building exempt for fiscal year 2015?

G.L. c. 59, § 5, Cl. 11

The Church in Cambridge, Inc. v. Assessors of Cambridge, (ATB docket #238931, October 6, 1998)

Case Study 15

Richard and Mary Ramsey conveyed their Beacon Hill house to the Richard and Mary Ramsey Trust for Historic Preservation. Under the provisions of the declaration of trust, the charitable goal is the preservation of this Colonial era property. Article 2 of the declaration of trust states that the house will be open to the public twice a year: on the first Saturday in May and the first Saturday in November.

- A. Would this Beacon Hill property be tax exempt?
- B. Assume the Ramseys conveyed the house to the Massachusetts Historical Society, a nonprofit corporation formed in 1794, but they retained a life estate in the premises until both husband and wife passed away. How would the property be assessed? Would the house be exempt?

G.L. c. 59, § 11

Breare v. Assessors of Peabody, 350 Mass. 391 (1966)

Case Study 16

Two “nursing homes” are operating in your community. Their tax status has been questioned.

- A. John Adams Nursing Home, LLC was formed as a single member limited liability company (LLC) under Delaware law with its sole member being ElderTrust of Florida, Inc. (ElderTrust), a Florida nonprofit corporation formed for the purpose of owning and operating elder care facilities. ElderTrust enjoys federal tax exempt status and has full and complete authority in the management and operation of the nursing home. Is the nursing home exempt? Does the formation of the corporation outside of Massachusetts have an impact on its tax status?
- B. Healthy Aging, Inc. (Aging) is a Chapter 180 nonprofit corporation whose income is exempt from federal income tax by virtue of §501 (c) (3) of the Internal Revenue Code. Aging was formed to provide housing, nursing care, recreational and other services to the elderly so that they can maintain an independent lifestyle. Aging has built a continuing care retirement community with three levels of care. There are 117 independent living units, 54 assisted living units and a 40 bed skilled nursing facility. An applicant must be at least 65 years of age, in good health and have sound finances. Entrance fees range from \$100,000 for a one bedroom apartment to \$230,000 for a two- bedroom apartment. Monthly service fees range from \$1,300 to \$2,100. Is the property tax exempt? Does the §501 (c) (3) federal tax status influence your decision? Could there be a partial exemption? How should the property be classified? Residential or commercial?

John Adams Nursing Home, LLC v. Board of Assessors of Quincy, 453 Mass. 404 (2009)

Mary C. Wheeler School, Inc. v. Assessors of Seekonk, 368 Mass. 344 (1975)

Western Massachusetts Lifecare Corp. v. Assessors of Springfield, 434 Mass. 96 (2001)

Mary Ann Morse Healthcare Corp. v. Assessors of Framingham, 74 Mass. App. 701 (2009)

McNeill v. Assessors of West Springfield, 396 Mass. 603 (1986)

Case Study 17

The Ancient and Honorable Artillery Company of Massachusetts (Ancient) may be familiar to you due to its presence at many parades and events during the year. Ancient is the oldest chartered military organization in the Western Hemisphere. Its charter dates from Colonial times. Specifically, in 1638 its charter was approved by the Legislature and signed by the Governor. Ancient was originally formed to train its members as officers in military service. Its role has changed over the years. Its present mission is the preservation of the historic and patriotic traditions of Boston, the Commonwealth and the nation.

Ancient presently has an office in Boston's Faneuil Hall. Assume Ancient has recently decided to acquire a parade ground to prepare for its various functions. The newly acquired parcel contains a small house on one and half acres of land. Ancient believes this parcel located in Boston would be ideal.

A question has been raised about the tax status of this newly acquired parcel. Could the parcel be exempt? What basis could there be for exemption?

Case Study 18

Participants were informed today that private schools, nonprofit hospitals, museums and churches are generally exempt from local taxation. Even conservation land can be exempt according to the Supreme Judicial Court. Yet, municipalities require additional revenue to run government operations due to limits on local property taxation and because of reduced federal and State financial assistance.

What tools can municipalities employ to obtain additional revenue from these tax exempt entities? Are there disadvantages?

NEW ENGLAND FORESTRY FOUNDATION, INC. vs. BOARD OF ASSESSORS OF
HAWLEY.

SJC-11432

SUPREME JUDICIAL COURT OF MASSACHUSETTS

468 Mass. 138; 9 N.E.3d 310; 2014 Mass. LEXIS 305

January 6, 2014, Argued

May 15, 2014, Decided

PRIOR HISTORY: [***1]

Suffolk. Appeal from a decision of the Appellate Tax Board. The Supreme Judicial Court granted an application for direct appellate review.

HEADNOTES

Administrative Law, Agency's interpretation of statute, Findings, Judicial review, Appellate Tax Board: final decision. *Taxation*, Real estate tax: charity, Real estate tax: exemption, Appellate Tax Board: appeal to Supreme Judicial Court, Appellate Tax Board: findings, Judicial review. *Charity. Corporation*, Non-profit corporation. *Statute*, Construction.

COUNSEL: Douglas Hallward-Driemeier (Jesse Mohan Boodoo & Jacob Scott with him) for the plaintiff.

Rosemary Crowley (David J. Martel with her) for the defendant.

The following submitted briefs for amici curiae: Robert H. Levin, of Maine, for Massachusetts Land Trust Coalition, Inc., & another.

Gregor I. McGregor & Luke H. Legere for Massachusetts Association of Conservation Commissions, Inc., & another.

James F. Sullivan for Massachusetts Association of Assessing Officers.

Robert E. McDonnell & Patrick Strawbridge for The Nature Conservancy, & another.

Lisa C. Goodheart, Susan A. Hartnett, Phelps T. Turner, & Joshua D. Nadreau for The Trustees of Reservations.

JUDGES: Present: Ireland, C.J., Spina, Cordy, Botsford, Gants, Duffly, & Lenk, JJ.

OPINION BY: SPINA

OPINION

[*139] [**312] SPINA, J. This case comes to us on direct appellate review from a decision of the Appellate Tax Board (board). The taxpayer, New England Forestry Foundation, Inc. (NEFF), is a nonprofit corporation organized under *G. L. c. 180*. NEFF is the record owner of a 120-acre parcel of forest land in the town of Hawley. In 2009, NEFF applied [***2] to the board of assessors of Hawley (assessors) for a charitable tax exemption on the parcel under *G. L. c. 59, § 5*, Third (Clause Third).¹ The assessors denied NEFF's application, and NEFF appealed to the board. The board likewise denied the application on the basis that NEFF had failed to carry its burden to show that it occupied the land in Hawley for a charitable purpose within the meaning of Clause Third. NEFF again appealed, and both NEFF and the assessors filed appli-

cations for direct appellate review. We granted the parties' applications, and we reverse the board's decision.²

1 *General Laws c. 59, § 5*, Third (Clause Third), in relevant part, exempts from taxation "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."

2 We acknowledge the amicus briefs submitted in support of New England Forestry Foundation, Inc. (NEFF), by The Nature Conservancy and Massachusetts Audubon Society; The Trustees of Reservations; Massachusetts Land Trust Coalition, Inc., and Land Trust Alliance, Inc., and Massachusetts Association of Conservation Commissions, Inc.; and The Compact of Cape Cod Conservation [***3] Trusts, Inc. We also acknowledge the amicus brief submitted in support of the board of assessors of Hawley (assessors) by Massachusetts Association of Assessing Officers.

[**313] 1. Background. The taxpayer, NEFF, is a Massachusetts nonprofit corporation organized under *G. L. c. 180*, and it has received tax-exempt status from the Federal government under *26 U.S.C. § 501(c)(3) (2006)*. NEFF was incorporated in 1944 and pursues the mission of "providing for the conservation and ecologically sound management of privately owned forestlands in New England, throughout the Americas and beyond." NEFF is dedicated to several activities in furtherance of this mission [*140] including "[e]ducating landowners, foresters, forest product industries, and the general public about the benefits of forest stewardship and multi-generational forestland planning"; "[p]ermanently protecting forests through gifts and acquisi-

tions of land for the benefit of future generations"; "[a]ctively managing [f]oundation lands as demonstration and educational forests"; "[c]onservation, through sustainable yield forestry, of a working landscape that supports economic welfare and quality of life"; and "[s]upporting the development and [***4] implementation of forest policy and forest practices that encourage and sustain private ownership." In its 2010 restated articles of organization, NEFF described its charitable purposes in part as to "create, foster, and support conservation, habitat, water resource, open space preservation, recreational, and other activities" by "promoting, supporting, and practicing forest management policies and techniques to increase the production of timber in an ecologically and economically prudent manner," to utilize "best management practices . . . to protect habitat, water, and other natural resources," and to "support and engage in and advance scientific understanding of environmental issues through research." As one of the largest land-conservation organizations in Massachusetts, NEFF owns over 23,000 acres of land in five States and holds conservation easements on over one million additional acres across seven States. Of NEFF's land holdings, approximately 7,500 acres are located in Massachusetts in thirty-nine municipalities.

The property at issue in this case is a 120-acre parcel of forested land known as the Stetson-Phelps Pine Ridge Farm (Hawley forest). NEFF purchased the forest as [***5] part of a larger tract of land in 1999 from private landowners, Muriel Shippee and her brother, Harold Phelps. According to NEFF, the farm and its surrounding land had been in Shippee's family for generations, and she sold the land to NEFF in order to ensure that it would not be developed. After NEFF purchased the entire tract, it subdivided the land and sold a portion containing a

house and barns and approximately twenty acres of open field to private landowners with no connection to the organization. However, NEFF retained a conservation restriction over the property to ensure that it is not developed in the future. The remainder of the [*141] land, owned by NEFF, constitutes the Hawley forest and is abutted on two sides by the Kenneth Dubuque Memorial State Forest, which is owned and maintained by the Department of Conservation and Recreation.

Soon after acquiring the forest from Shippee and Phelps, NEFF hired an independent licensed forester to develop a "forest management plan" for the maintenance of the forest.³ The first round of [*314] activities recommended by the plan was carried out in 2000, and included such actions as removal of "mature and poor quality white pine and spruce saw logs" [***6] to "release good quality growing stock"; "[c]ombination strip cuts and patch cuts for wildlife and softwood regeneration," and the layout of a "loop demonstration trail" near "old growth type hemlocks" taking into consideration "erosion on fragile soils." In 2009, the plan was updated, and a tree inventory of the forest was conducted. The 2009 plan recommended that NEFF conduct a patch harvest of approximately sixty-five acres in 2010 and a harvest of a second patch in 2016.

3 According to the testimony of NEFF's conservation easement coordinator and forester, a "forest management plan" is a strategic plan for the maintenance of a forest that identifies characteristics of the forest that need to be managed and goals for the long-term management of the natural resources contained in a forest. Foresters in Massachusetts must be licensed pursuant to *G. L. c. 132, §§ 47-50*,

and 302 Code Mass. Regs. §§ 14.00 (2013).

Prior to tax year 2010, NEFF had applied for and received forest-land classification for the Hawley forest under *G. L. c. 61, § 2*. Chapter 61 sets forth a reduced-taxation scheme for private landowners who hold forest land in an undeveloped state and manage the land according to [***7] a forest management plan issued by a licensed State forester. *G. L. c. 61, §§ 1-8*. Accordingly, for tax year 2010, property tax on the Hawley forest was assessed to NEFF at a reduced rate totaling less than two hundred dollars, despite the land's \$96,000 value. In a letter to the assessors, NEFF explained that it subsequently applied for a full property tax exemption under Clause Third, rather than accepting the reduced taxation under *G. L. c. 61*, due in part to the administrative costs of preparing for and filing for *G. L. c. 61* status on all its properties because *G. L. c. 61, § 2*, requires renewal every ten years.

NEFF submitted its application for a Clause Third property [*142] tax exemption in November, 2009. 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 for the purposes for which it was organized. In April, 2010, the assessors deemed NEFF's application denied as of February, 2010, on the basis that NEFF had failed to provide sufficient information to enable the assessors to make a decision regarding its application for exemption within the three-month period required [***8] by statute. See *G. L. c. 59, § 64*.

NEFF appealed to the board under formal adjudication procedures set forth in *G. L. c. 58A, § 7*, and *G. L. c. 59, §§ 64 and 65*. Following an adjudicatory hearing, the board issued a thorough, written opinion including findings of fact and

conclusions of law. The board denied NEFF's request for an exemption on the basis that NEFF had failed to carry its burden to show that it occupied the land in Hawley for a charitable purpose within the meaning of Clause Third. Specifically, the board concluded that NEFF was not carrying out a charitable purpose within the meaning of the statute because forest management is not a traditional charitable purpose and because the benefits of NEFF's activities in the Hawley forest do not inure to a sufficiently large and fluid class of persons due in part to NEFF's insufficient efforts to promote the use of the land by the public. The board further concluded that NEFF did not occupy the Hawley forest in furtherance of its claimed charitable purposes because it offered "at best vague testimony" regarding what it termed "active management" of the land, and provided evidence of only one planned educational activity to take [***9] place in the Hawley forest. Additionally, the board concluded that a Clause Third exemption was not available to NEFF because the tax-reduction scheme for forest land under *G. L. c. 61* demonstrates that the Legislature intended only to reduce the tax burden [**315] on forest land, not to eliminate it completely. Although the board's findings of fact are supported by substantial evidence, we conclude that the board erred in denying NEFF a charitable tax exemption under Clause Third.

2. Application of *G. L. c. 59, § 5, Third*. As a threshold matter, the assessors argue, as the board held, that a Clause Third exemption is not available to NEFF in part because the Legislature [*143] intended *G. L. c. 61* to be the extent of the tax benefit afforded to private landowners holding undeveloped forest land. Similarly, the assessors now argue that Clause Third does not apply to land-conservation organizations like NEFF because the Legislature intended for The Trustees of

Reservations to be the only private, non-profit entity permitted to hold conservation land completely free from property taxes. Neither of these arguments is availing.

a. *General Laws c. 61, "Classification and Taxation of Forest Land and Forest [***10] Products."* *General Laws cc. 61, 61A, and 61B*, together set forth a reduced-taxation scheme for land privately held as forest, agricultural, or recreational land. The assessors argue that the enactment of this statutory scheme demonstrates a legislative intent to provide for reduced taxation, but not a complete exemption, for privately held, undeveloped forest land. Specifically, *G. L. c. 61, § 2*, permits any private landowner holding not less than ten acres of land for forest production to apply to the local board of assessors for a forest-land classification, which subjects that land to property taxation at a reduced rate. See *G. L. c. 61, §§ 2, 2A; South St. Nominee Trust v. Assessors of Carlisle, 70 Mass. App. Ct. 853, 854, 878 N.E.2d 931 (2007)*. In order to obtain forest-land classification, the landowner must implement a forest management plan and submit to compliance monitoring by the State forester. See *G. L. c. 61, § 2; South St. Nominee Trust, supra at 854-855*. The classification must be renewed every ten years. *G. L. c. 61, § 2*. Additionally, *G. L. c. 61* contains provisions discouraging the conversion of the land to another use. For example, if a landowner wishes to sell the land to a buyer [***11] who plans to remove it from forest-land classification, the sale will be subject to conveyance taxes based on the total value of the sale of the land. *Id.* at § 6. However, if the landowner sells the land to the State or municipality, or to a nonprofit conservation organization, no conveyance tax is assessed. *Id.* Similarly, if the landowner wishes to sell the land during a period in which it is classified and taxed as forest land, the municipality

in which the land is located has a right of first refusal to "meet a bona fide offer" to purchase the land. *Id.* at § 8. A municipality also may assign this right to a non-profit land-conservation organization of its choosing. *Id.* [*144] Therefore, *G. L. c. 61* creates financial incentives for private landowners to hold land as undeveloped forest land and provides mechanisms to protect forest land from development. The assessors argue that such a result demonstrates that the Legislature could not have intended Clause Third to apply to land-conservation organizations because Clause Third does not, by its terms, help to ensure that land is held in its undeveloped state as does *G. L. c. 61*.

Although Clause Third does not protect land from development, this [***12] does not defeat the application of Clause Third to NEFF or any other land-conservation organization. *General Laws c. 61* and Clause Third serve distinct purposes. *General Laws c. 61* is part of a broader statutory scheme animated by conservationist values that expressly creates a program of incentives to encourage conservation [**316] by private landowners, whether charitable corporations or otherwise. In contrast, Clause Third does not seek to encourage charitable organizations to pursue particular substantive policy goals or charitable activities. Rather, if a corporation qualifies as a "charitable" enterprise within the meaning of the statute, Clause Third exempts the organization's property from taxation based on the theory that property held for philanthropic, charitable, religious, or other quasi-public purposes in fact helps to relieve the burdens of government. *Opinion of the Justices, 324 Mass. 724, 730-731, 85 N.E.2d 222 (1949)*. Therefore, a charitable organization makes a sufficient "in-kind" contribution to the community that its property may be exempt from taxation without offending the notions of fairness and proportionality

inherent in the system of taxation in the Commonwealth. See *id.* *Chapter 61* [***13] and Clause Third may overlap in their application to certain taxpayers, but they are components of distinct statutory schemes. Chapter 61 provides a scheme of tax incentives for any nongovernment landowner who holds undeveloped forest land. Clause Third provides a tax exemption for property held by any qualifying charitable organization. Although a particular taxpayer, like NEFF, may be eligible for both of these tax benefits, such overlap does not indicate a legislative intent for one statute to somehow "preempt" the other.

Furthermore, the Legislature has had multiple opportunities [*145] to address the interaction of *G. L. c. 61* and Clause Third and never has indicated that the statutes are mutually exclusive. For example, the preamble to *G. L. c. 59, § 5*, lists certain tax exemptions included in § 5 that may not be combined with other exemptions or tax benefits also included in the section. *General Laws c. 59, § 5, Twenty-Sixth*, expressly references *c. 61*. When that clause was added to § 5, the Legislature could have added a reference to it in the preamble of § 5 providing that charitable organizations could not obtain both a property tax reduction under *c. 61* and a tax exemption under [***14] Clause Third. However, the Legislature chose not to do so. Therefore, *G. L. c. 59, § 5*, does not contain any express or implied language precluding conservation organizations from seeking the property tax exemption available to eligible charitable organizations under Clause Third.

Similarly, *G. L. c. 61* does not contain any express or implied indication that the Legislature intended for *c. 61* to preclude land conservation organizations from seeking or qualifying for a property tax exemption under Clause Third. Chapter 61 references expressly "nonprofit conservation organization[s]." *G. L. c. 61, §§*

6, 8. Thus, the Legislature considered nonprofit land-conservation organizations when it enacted the statute. Yet the Legislature never stated that c. 61 should serve as the only source of a property tax benefit for nonprofit conservation organizations. Indeed references to nonprofit land-conservation organizations in c. 61 demonstrate a view of these organizations as assisting municipalities in carrying out the purposes of the statute rather than acting as private landowners who must be encouraged to preserve land in its undeveloped state. Therefore, we conclude that the board erred in holding [***15] that c. 61 precludes NEFF from eligibility for a Clause Third property tax exemption.

b. Statute creating The Trustees of Reservations. The Trustees of Reservations (Trustees) were established by St. 1891, c. 352, § 1 (Trustees' enabling act) under the name "The Trustees of Public Reservations" for the purpose of "acquiring, holding, arranging, maintaining and [**317] opening to the public, under suitable regulations, beautiful and historical places and tracts of land within this Commonwealth." By the express terms of the original statute, lands up to \$1 million in value acquired by the Trustees [*146] and kept open to the public in accordance with the statute were exempt from taxation "in the same manner and to the same extent as the property of literary, benevolent, charitable and scientific institutions incorporated within this Commonwealth"⁴ St. 1891, c. 352, §§ 2, 3. The assessors assert that the Legislature's grant within the Trustees' enabling act of a tax exemption for property held by the Trustees demonstrates that the Legislature did not otherwise intend for land privately held for conservation purposes to qualify for a property tax exemption under Clause Third. Rather, the assessors [***16] argue, the Legislature intended that the Trustees alone be permitted to hold only a limited amount of Commonwealth land

free from taxation for the purposes of conservation.

4 At the time, the statute providing for a property tax exemption for charitable organizations was substantially the same as it is today. Compare St. 1888, c. 158, § 1 (exempting from taxation "[t]he personal property of literary, benevolent, charitable and scientific institutions and temperance societies incorporated within this Commonwealth, and the real estate belonging to [them] occupied by them or their officers for the purposes for which they were incorporated"), with *G. L. c. 59, § 5, Third* (exempting from taxation "[p]ersonal property of a . . . literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth . . . and 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").

However, the assessors' arguments disregard the historical context in which the Trustees' enabling act was passed. The Trustees of Reservations was the first land-conservation entity of its kind anywhere [***17] in the United States. G. Abbot, *Saving Special Places: A Centennial History of The Trustees of Reservations* 4 (1993). The statute creating the Trustees was inspired by the writings of Charles Eliot who proposed the creation of a board of trustees that would be empowered to hold important parcels of land for preservation and public enjoyment much like The Trustees of the Museum of Fine Arts had been established to "erect[] a museum for the preservation and exhibition of works of art" and the Trustees of the Public Library had been tasked with

the "care and control" of the Boston Public Library. St. 1878, c. 114, §§ 1, 5. St. 1870, c. 4, § 1. Hocker, *Land Trusts: Key Elements in the Struggle Against Sprawl*, 15 *Nat. Resources & Env't* 244, 244 (2001). Additionally, other statutes establishing nonprofit or benevolent organizations in the same [*147] era also contained language similar to the Trustees' enabling act referencing the general tax exemption for charitable organizations. E.g., St. 1882, c. 248, § 3 ("An Act to incorporate the Longfellow Memorial Association"). Consequently, the language treating land acquired by the Trustees as exempt "to the same extent" as land held by other charitable [***18] organizations likely demonstrates the Legislature's intent to ensure that organizations like the Trustees were covered by the general charitable tax exemption, not to acknowledge that they were not.

Furthermore, the fact that the Trustees were created by statute does not indicate a legislative intent that they were to serve as the Commonwealth's only land-conservation organization. In the 1800s, and even earlier, numerous private charitable organizations were established by statute, including Massachusetts General Hospital and the Museum of Fine Arts, as well as Harvard College, which was established by [**318] colonial charter in 1650. St. 1870, c. 4 ("An Act to incorporate The Trustees of the Museum of Fine Arts"). St. 1811, c. XCIV ("An Act to incorporate certain persons, by the name of The Massachusetts General Hospital"). The Charter of the President and Fellows of Harvard College (May 31, 1650). None of these statutes purports to establish the exclusive hospital, museum, or college in the Commonwealth that may be eligible for a charitable tax exemption.

Additionally, the initial limitation on the total amount of property the Trustees could hold was increased over time, and the limit was [***19] eliminated alto-

gether in 1971. St. 1963, c. 289 (increasing amount of land the Trustees could hold to \$10 million). St. 1971, c. 819, § 3 (amending *G. L. c. 180, § 6*, to permit charitable corporations, including the Trustees, to hold real and personal property in unlimited amount). Therefore, the limit initially imposed by the Legislature on the amount of Trustee property that may be exempt from taxation cannot be used to support an argument that the Legislature presently intends to limit the amount of tax-exempt conservation land in the Commonwealth. Furthermore, in a context similar to this case, the board has granted the Trustees a property tax exemption under Clause Third, therefore implicitly contradicting the argument that the Legislature intended for the Trustees' enabling act to serve as the exclusive source of a property tax exemption for [*148] conservation land in the Commonwealth. *Trustees of Reservations vs. Assessors of Windsor*, App. Tax Bd., No. 159046, 1991 Mass. Tax LEXIS 18 (Dec. 2, 1991).⁵ We conclude that neither the Trustees' enabling act, nor the present legal treatment of the Trustees is evidence of a legislative intent to exclude from property tax exemption land-conservation organizations [***20] that otherwise meet the requirements of Clause Third.

⁵ We stated in *Milton v. Ladd*, 348 Mass. 762, 766, 206 N.E.2d 161 (1965), that "[w]e read [the Trustees' enabling act] to provide a somewhat broader exemption . . . than would be available under the general exemption statute." However, in that same decision we immediately went on to acknowledge that the enabling act could likewise be subject to a more narrow interpretation than Clause Third, placing on the Trustees an additional obligation, not required of all charitable organizations, that it make its lands open to the public. In *Ladd*, we did

not go so far as to resolve the precise boundaries between Clause Third and the Trustees' enabling act. The holding of Ladd was based on an interpretation of the Trustees' enabling act alone. *Id.* Therefore, our statements in *Ladd* do not lend support to the assessors' argument that the Trustees' enabling act somehow demonstrates a legislative intent to preclude conservation organizations from qualifying for a charitable tax exemption under Clause Third.

3. Property tax exemption under *G. L. c. 59, § 5, Third*. Clause Third provides an exemption from taxation of real property when such property is held by a "charitable [***21] organization" and "occupied by [the organization] or its officers for the purposes for which it is organized." *G. L. c. 59, § 5, Third*. Qualification for a tax exemption under Clause Third is a two-pronged test. *Mary Ann Morse Healthcare Corp. v. Assessors of Framingham*, 74 Mass. App. Ct. 701, 703, 910 N.E.2d 394 (2009). See *Harvard Community Health Plan, Inc. v. Assessors of Cambridge*, 384 Mass. 536, 541, 427 N.E.2d 1159 (1981). The first requirement is that the organization seeking the exemption qualify as a "charitable" organization within the meaning of Clause Third. *Harvard Community Health Plan, supra*. The second is that the organization occupy the property in furtherance of its charitable purposes. *Id.* *Mary Ann Morse Healthcare Corp., supra* at 705. [**319] Although each prong is closely related, and certain facts may be relevant to both, each requirement should be considered in turn.

Exemption statutes are strictly construed, and the burden lies with the party seeking an exemption to demonstrate that it qualifies according to the express terms or the necessary implication of a statute providing the exemption. *Milton v. Ladd*,

348 Mass. 762, 765, 206 N.E.2d 161 [*149] (1965), citing *Animal Rescue League of Boston v. Assessors of Bourne*, 310 Mass. 330, 332, 37 N.E.2d 1019 (1941). [***22] We uphold findings of fact of the board that are supported by substantial evidence. We review conclusions of law, including questions of statutory construction, de novo. *Bridgewater State Univ. Found. v. Assessors of Bridgewater*, 463 Mass. 154, 156, 972 N.E.2d 1016 (2012). We conclude that the board erred in denying NEFF a property tax exemption and that NEFF is a charitable organization that, during the relevant tax year, occupied its parcel in Hawley for its charitable purposes within the meaning of *G. L. c. 59, § 5, Third*.

a. Charitable purpose requirement. The text of Clause Third defines a charitable organization as "a literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth" or a trust created for the same purposes. An organization's legal status as a charitable corporation or its exemption from Federal taxation under § 501(c)(3) of the United States tax code is not sufficient to satisfy this requirement. An organization must prove that "it is in fact so conducted that in actual operation it is a public charity." *Western Mass. Lifecare Corp. v. Assessors of Springfield*, 434 Mass. 96, 102, 747 N.E.2d 97 (2001), quoting *Jacob's Pillow Dance Festival, Inc. v. Assessors of Becket*, 320 Mass. 311, 313, 69 N.E.2d 463 (1946).

In [***23] the context of the property tax exemption, we have long recognized that "charity" may constitute more than "mere alms giving." *Boston Symphony Orchestra, Inc. v. Assessors of Boston*, 294 Mass. 248, 255, 1 N.E.2d 6 (1936), quoting *New England Sanitarium v. Stoneham*, 205 Mass. 335, 342, 91 N.E. 385 (1910). The dominant purpose of a charitable organization must be to perform work for the public good, not merely

its own members. *New Habitat, Inc. v. Tax Collector of Cambridge*, 451 Mass. 729, 732, 889 N.E.2d 414 (2008), citing *Massachusetts Med. Soc'y v. Assessors of Boston*, 340 Mass. 327, 332, 164 N.E.2d 325 (1960). As Justice Gray, writing for the court in 1867, stated, in the legal sense, a charity is "a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining [*150] public buildings or works or by otherwise lessening the burdens of government." *Jackson v. Phillips*, 96 Mass. 539, 14 Allen 539, 556 (1867). See *New Habitat, supra*. This definition describes the "traditional objects and methods [***24] of charity." *Id.* The closer an organization's dominant purposes and methods hew to these traditional charitable purposes, the more likely the organization is to qualify as a "charitable organization" under Clause Third. *Id. at 733*. When an organization's dominant purposes are further from these traditionally charitable purposes, additional factors become more significant in determining whether the organization qualifies as charitable within [**320] the meaning of the statute.⁶

6 The additional factors relevant to this analysis include, but are not limited to, "whether the organization provides low-cost or free services to those unable to pay"; "whether it charges fees for its services and how much those fees are"; "whether it offers its services to a large or 'fluid' group of beneficiaries and how large or fluid that group is"; "whether the organization provides its services to those from all segments of society and from all walks of life"; and "whether the

organization limits its services to those who fulfil certain qualifications and how those limitations help advance the organization's charitable purposes." *New Habitat, Inc. v. Tax Collector of Cambridge*, 451 Mass. 729, 732-733, 889 N.E.2d 414 (2008).

NEFF's [***25] purposes are traditionally charitable within the meaning of Clause Third and the definition of charity set forth in *Jackson, supra*. First, NEFF's charitable programs and activities, both in Hawley and throughout New England, are of the sort that their benefit inures to an indefinite number of people. Historically, the "benefit" provided by land held as open space or in its natural state has been measured by the direct access of people to that land for such purposes as recreation, scenic views, or education. See, e.g., *Holbrook Island Sanctuary v. Brooksville*, 161 Me. 476, 486, 214 A.2d 660 (1965); *Hawk Mountain Sanctuary Ass'n v. Board for the Assessment & Revision of Taxes of Berks County*, 188 Pa. Super. 54, 57, 145 A.2d 723 (1958). However, as the science of conservation has advanced, it has become more apparent that properly preserved and managed conservation land can provide a tangible benefit to a community even if few people enter the land. For example, the climate change adaptation advisory committee of the Executive Office of Energy and Environmental Affairs has identified the conservation of large forested blocks of land as an effective means of contributing to "ecosystem resilience" in the face of rising [***26] temperatures and more severe [*151] storms because forests naturally absorb carbon and other harmful emissions.⁷ Additionally, open space land naturally absorbs and helps dissipate stormwater runoff without the need for drainage systems that are required in paved and developed areas.⁸ Furthermore, forest land helps to clean the air by filtering particu-

lates naturally, and it regulates and purifies the fresh water supply by stabilizing soils that store water over time and filter contaminants.⁹ Such benefits may extend beyond the parcel of land itself. Consequently, NEFF's activities are not of the sort that inure only to a limited group of people such as the organization's own members.¹⁰ Contrast *Nature Preserve, [**321] Inc. vs. Assessors of Pembroke, App. Tax Bd., No. F246663, ATB 2000-796, [*152] 797, 799, 807, 811, 2000 Mass. Tax LEXIS 85 (Sept. 25, 2000)* (denying exemption to organization that held sixty-five acres of forest land on which it conducted no conservation activities but had installed benches, trails, and pond for recreation and meditation and was open only to registered members). Therefore, by holding land in its natural pristine condition and thereby protecting wildlife habitats, filtering the air and water supply, [***27] and absorbing carbon emissions, combined with engaging in sustainable harvests to ensure the longevity of the forest, NEFF engages in charitable activities of a type that may benefit the general public.¹¹ See *Carroll v. Commissioner of Corps. & Taxation, 343 Mass. 409, 413, 179 N.E.2d 260 (1961)* ("it is in the general public interest that [the] waste of natural resources be overcome").

7 Executive Office of Energy and Environmental Affairs, Massachusetts Climate Change Adaptation Report 12, 26, 38, 39 (Sept. 2011) (Climate Change Report).

8 Climate Change Report, supra at 34. According to an independent report commissioned by the Trust for Public Land, the city of Boston alone saves approximately \$553,000 annually as a result of carbon, sulfur, and ozone absorption by trees and shrubs in city parks. The Trust for Public Land, *The Return on Investment in Parks*

and Open Space in Massachusetts 18 (Sept. 2013) (Return on Investment). Additionally, it is estimated that the city's parks provide natural stormwater retention services valued at \$8.67 million annually based on city water management costs. *Id.* 9 Return on Investment, supra at 13.

10 The Appellate Tax Board has required land-conservation organizations [***28] seeking a property tax exemption to show that they are a charitable organization under Clause Third by demonstrating that they invite, encourage, and facilitate the entry of the public at large onto their lands. See, e.g., *Brookline Conservation Land Trust vs. Assessors of Brookline, App. Tax Bd., Nos. 281854-56, 285517-19, ATB 2208-679, 693-695 (June 5, 2008)*; *Forges Farm, Inc. vs. Assessors of Plymouth, App. Tax Bd., Nos. F283127, F283128, F283129, ATB 2007-1197, 1205-1206, 2007 Mass. Tax LEXIS 70 (Oct. 18, 2007)*. Although this inquiry may be somewhat useful in seeking to ensure that an organization is a "bona fide" land conservation organization, as opposed to a group organized as a charity that simply is seeking to set aside land for its own private use or as a buffer around members' own private property, we emphasize 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. We do not propose a precise formula for determining [***29] whether an organization is a "bona

vide" conservation organization, but factors that may prove relevant could include 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 *G. L. c. 61, 61A, or 61B* (such as being selected by a town or city to exercise its right of first refusal under *G. L. c. 61, § 8*); 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.

11 Similarly, other jurisdictions have held that land conservation activities can benefit the general public regardless [***30] of the public's access to the land itself. For example, the New Mexico Court of Appeals held that a land-conservation organization that held land in the Pecos River Canyon in its "natural and undisturbed" state provided a "substantial benefit to the public" through its "environmental preservation and beautification" of the region. Therefore the land qualified for a property tax exemption despite the absence of any evidence that the public used the land for recreation or its own

scenic views. *Pecos River Open Spaces, Inc. vs. County of San Miguel*, 2013-NMCA-029 at P16 (Jan. 11, 2013). See *Turner v. Trust for Pub. Land*, 445 So. 2d 1124, 1126 (*Fla. Dist. Ct. App.* 1984) (stating that "[t]here can be little question that conservation serves a public purpose" and concluding that particular parcel served "greatest public good" when it was left entirely undeveloped -- without trails, walkways, or educational facilities).

Moreover, NEFF's work in Hawley, and throughout Massachusetts, is traditionally charitable in the sense that it assists in lessening the burdens of government. See *New Habitat*, 451 Mass. at 732. Conservation and environmental protection are express obligations [***31] of the government in Massachusetts. *Article 97 of the Amendments to the Massachusetts Constitution* provides a right of the people to "clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, [*153] historic, and esthetic qualities of their environment" and identifies as a "public purpose" the government's [**322] protection of people in their right to the conservation, development, and utilization of natural resources. Therefore, the safeguarding of natural resources and basic environmental quality in the Commonwealth is a duty of the government. Moreover, in *G. L. c. 21A*, the Legislature established the Executive Office of Energy and Environmental Affairs (EEA) and within it, among other entities, the Departments of Environmental Protection, Conservation and Recreation, and Fish and Game. *G. L. c. 21A, §§ 1, 7. General Laws c. 21, § 2*, requires the EEA and its departments to carry out State environmental policy, including, the "management of air, water and land resources to assure the protection and balanced utilization of such resources

within the commonwealth" and "promot[ing] the perpetuation, extension, and proper management of the public and private forest [***32] lands of the commonwealth."

In Hawley, NEFF is acting in a manner that assists the State in achieving its conservation policy goals. The Hawley forest is abutted on two sides by the Kenneth Dubuque Memorial State Forest. By acquiring property that directly abuts the State Forest, NEFF has helped to extend a block of forested land preserved by the State. The preservation of increasingly large and contiguous forested blocks has been identified by the EEA as important to the preservation of species that require a certain amount of continuous area to thrive and to the biodiversity of forest lands more generally.¹² Furthermore, NEFF is committed to managing its forest lands according to many of the same principles the Department of Conservation and Recreation has set forth for the management of its own forest lands.¹³

12 See Massachusetts Division of Fisheries & Wildlife, Department of Fish & Game, Executive Office of Environmental Affairs, Comprehensive Wildlife Conservation Strategy 15-16 (rev. Sept. 2006).

13 The Department of Conservation and Recreation seeks to utilize its woodlands to provide, among other objectives, "educational examples of excellent forestry to landowners and the general [***33] public," "protect[] forest productivity through sustainable forestry," enhance ecosystem resilience in watershed forests through active management, and produce high-quality, high-value local forest products. See Department of Conservation & Recreation, Landscape Designations for DCR Parks &

Forests: Selection Criteria and Management Guidelines 37 (Mar. 2012). Similarly, NEFF is committed to managing its lands actively as demonstration and educational forests, conserving forest resources through sustainable forestry, increasing the production of timber in an "ecologically and economically prudent manner," and, with regard to the Hawley forest in particular, "[m]aintain[ing] and/or enhanc[ing]" recreational or aesthetic qualities and wildlife habitats, producing income from periodic timber harvests, and managing the timber resource over the long term to produce "high quality saw logs."

More broadly, too, NEFF and other conservation organizations [*154] that align their missions with the conservation goals of the State have been identified as essential partners in Statewide conservation efforts. For example, a number of statutory schemes make nonprofit land-conservation organizations the partners [***34] of municipalities in conservation and land use programs. E.g., *G. L. c. 44B, § 12 (a)* (permitting municipalities to appropriate funds for purchase of open space "community preservation" lands so long as lands are encumbered by conservation restrictions held by another government entity or nonprofit organization); *G. L. c. 184, §§ 31-33* (permitting conservation restrictions to be held by government entity or by charitable corporation or trust with conservationist purpose); *G. L. c. 61, § 8* (permitting municipality to assign to nonprofit conservation organization its right of first refusal to purchase land from private [**323] landowner intending to remove land from forest classification). Furthermore, the contribution that privately held forest land can make to improving air and water quality and mitigating the effects of erosion, rising tem-

peratures, and other ecosystem disruptions assists the government by reducing the cost associated with safeguarding air and water supplies and responding to the effects of pollution.¹⁴

14 See Return on Investment, *supra* at 13, 18.

Moreover, we are not alone in recognizing conservation organizations as serving a traditionally charitable purpose by lessening [***35] the burdens of government. For example, in California, which, like Massachusetts has a strong public policy in favor of environmental protection, and which has adopted the definition of "charity" first set forth by this court in 1867 in *Jackson, 14 Allen at 556*, at least one appellate court has recognized that property used exclusively as a nature preserve to protect native plants or animals may qualify as charitable because it lessens the government's burden to preserve ecological communities and native flora and fauna. *Santa Catalina Island Conservancy [*155] v. County of Los Angeles, 126 Cal. App. 3d 221, 236, 237, 178 Cal. Rptr. 708 (Cal. Ct. App. 1981)*. Therefore, because NEFF's stated mission and land conservation activities are of the sort to inure to an indefinite number of people and lessen the burdens of government, NEFF pursues traditionally charitable purposes and activities within the meaning of Clause Third.

b. Occupancy requirement. In order to qualify for a charitable tax exemption, NEFF must do more than satisfy the charitable status requirement. It must also show that it "occupies" the Hawley Forest in furtherance of its charitable purposes. *G. L. c. 59, § 5, Third*. Occupancy is "something more [***36] than that which results from simple ownership and possession. It signifies an active appropriation to the immediate uses of the charitable cause for which the owner was organized." *Assessors of Boston v. Vincent*

Club, 351 Mass. 10, 14, 217 N.E.2d 757 (1966), quoting *Babcock v. Leopold Morse Home for Infirm Hebrews & Orphanage, 225 Mass. 418, 421, 114 N.E. 712 (1917)*. The dominant use of the property must be "such as to contribute immediately to the promotion of the charity and to participate physically in the forwarding of its beneficent objects." *Vincent Club, supra*, quoting *Babcock, supra at 422*. Although extent of use is a factor, it is not decisive. *Vincent Club, supra*, quoting *Babcock, supra at 421-422*. However, if the charitable use of the property is "merely incidental" to a noncharitable use, the property will not be exempt from taxation. See *Boston Symphony Orchestra, Inc., 294 Mass. at 257*.

We also have held that so 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. *Assessors of Dover v. Dominican Fathers Province of St. Joseph, 334 Mass. 530, 540-541, 137 N.E.2d 225 (1956)*. [***37] The decisions of the organization will be entitled to deference so long as the directors act in good faith and not unreasonably in determining how to occupy and use the property at issue. *Id. at 541*.

The requirement contained in Clause Third that the charity "occupy" the land and the deferential rule set forth in *Dominican Fathers* can best be reconciled by considering the purpose [*156] of Clause [**324] Third. See *Bridgewater State Univ. Found., 463 Mass. at 160 & n.10*. Clause Third recognizes the contribution a charity makes to the public either on, or through, its use of its property. Unlike a private landowner whose land ownership burdens the government by making use of a range of public services and benefits, the burden a charity's ownership of land

places on the government may be offset by its use of the land in a manner that benefits the public and lessens the burdens of government. See *Opinion of the Justices*, 324 Mass. at 730. Thus, it is fair and proportional to tax privately held land but to exempt those lands that are held charitably so long as the charity in fact uses the land in a manner that contributes to the community and reduces the burdens of government. *Id.* at 730-731, 733. The [***38] requirement that land be occupied for the organization's charitable purposes, then, is best understood as the Legislature seeking to ensure that the land is not being held as a private landowner would hold it but that it is being held as an entity would hold it for the public good.

In the case of open space or conservation land, this inquiry is complicated by the fact that both private and charitable landowners may have an incentive to hold land in an undeveloped state. See, e.g., *G. L. c. 61, §§ 2, 2A* (providing reduced taxation rate for privately owned forest land on application by landowner). As a result, even after an organization has demonstrated that it is a bona fide charitable organization within the meaning of Clause Third, it also must demonstrate that it occupies the parcel at issue in a manner less like a private landowner and more like an entity seeking to further the public good.

In the case of NEFF, the board approached this inquiry by focusing on the degree of public access NEFF encouraged and achieved at the Hawley forest and concluded that NEFF's promotion of public access was insufficient to demonstrate that it occupied the land for the benefit of the public. However, [***39] Clause Third does not require imposing an affirmative duty to promote and facilitate public access on conservation lands in order to satisfy the occupancy requirement. To impose this sort of duty exceeds the scope of the inquiry at the core of

Clause Third's occupancy requirement. Additionally, in certain circumstances, such as in the case of a particularly fragile habitat or ecosystem, [*157] a public access requirement could operate to thwart the very conservation objectives an organization is seeking to achieve. See *Mary Ann Morse Healthcare Corp.*, 74 Mass. App. Ct. at 706 (Clause Third should not be interpreted in manner that results in penalizing organization for pursuing its charitable mission).

Therefore, we conclude that in a case such as NEFF's where the entry of the public onto the land is not necessary for the organization to achieve its charitable purposes, the promotion and achievement of public access is not required to demonstrate occupancy of the land in order to qualify for a Clause Third exemption. The right that is most central to the "bundle" of rights enjoyed by a private property owner is not the freedom from an obligation to invite visitors, it is the affirmative right [***40] to exclude others from one's property. *United States v. Craft*, 535 U.S. 274, 278, 122 S. Ct. 1414, 152 L. Ed. 2d 437 (2002). See *Kaiser Aetna v. United States*, 444 U.S. 164, 179-180, 100 S. Ct. 383, 62 L. Ed. 2d 332 (1979) (describing right to exclude as "universally held to be a fundamental element of the property right"). Consequently, the appropriate inquiry begins with whether the entity takes affirmative steps to exclude the public from the land, such as through physical [**325] barriers, "no trespassing" signs, or actively patrolling the land.

If a charitable organization engages in such exclusion, the organization faces a heightened burden to show that such exclusion of the public is necessary to enable it to achieve its charitable purposes. Although an organization may succeed in meeting this burden, it may do so only by presenting compelling facts demonstrating that the exclusion of the public is

necessary to achieve a public benefit through other activities carried out on, or through use of, the land, such as when conservation activities may pose a danger to public safety or where the ecosystem is so fragile that any human presence could undermine the organization's conservation efforts. Such rationales may often be time-limited, such as during a timber [***41] harvest when trees are being felled or during the nesting period of a vulnerable species. Placing a high burden on organizations that actively exclude the general public from their lands helps to identify and exclude from exemption those land-conservation organizations that treat their land more as a private club or a buffer zone around [*158] the private property of organization insiders. However this requirement also acknowledges that in particular circumstances the exclusion of the public from the land may be necessary for a bona fide land-conservation organization to carry out its mission and therefore should not per se preclude an organization from otherwise demonstrating that it occupies the land.

Here, the evidence presented to the board demonstrated that NEFF did not take active steps to exclude the public from its land during the tax year in question. Rather, it took steps to inform the public that the land is available for recreation, and it permits the land's regular use by a snowmobiling club and keeps the land open for hiking and hunting. If NEFF's only claimed charitable purpose were recreational or educational, it may have had to demonstrate more regular use of the land for [***42] recreation or education in order to carry its burden to show that the land was appropriated immediately to its charitable purposes. See, e.g., *Wheaton College v. Norton*, 232 Mass. 141, 148-149, 122 N.E. 280 (1919) (granting exemption to "wild woodland" owned by college where paths through

woods were "favorite walks" of pupils and thereby important to health and enjoyment of students and essential to college's accomplishment of its charitable purposes). However, NEFF's charitable purposes also involve the conservation of forest land through sustainable forestry practices along with the enhancement of environmental quality through the promotion of improved water quality and biodiversity. NEFF presented evidence that it engages in sustainable forestry practices at appropriate intervals in the Hawley forest, and that the Hawley forest serves as a location where NEFF can track the effects of its land management. Additionally, NEFF produces a range of awareness-raising materials and holds conferences and continuing education programs for foresters regarding sustainable forestry practices to educate even those who may not enter a NEFF property to view it pre- or post-harvest. Further, the fact that the [***43] Hawley forest directly abuts a State forest on two sides promotes biodiversity by extending the habitat area for species in the State forest. The fact that the Hawley forest abuts the State forest, rather than the private property of organization insiders, also tends to show that NEFF occupies the land in furtherance of its charitable purposes, and not merely to create a [*159] buffer zone around private land. Furthermore, on acquiring the Hawley forest, NEFF not only immediately placed the land under a forest management plan, but also hired an outside forestry consulting [**326] firm, rather than having one of the licensed foresters on its own staff develop the plan. This also tends to show that NEFF immediately appropriated the land in furtherance of its conservation goals and did not merely implement a forest management plan for the purposes of a tax reduction under *G. L. c. 61, §§ 2, 2A*. Consequently, where NEFF does not exclude the public from its land and offered evidence demonstrating how NEFF uses the land as a site on which it

carries out sustainable forestry practices, the board erred in concluding that NEFF did not meet its burden to show that it occupied the Hawley forest within the meaning [***44] of Clause Third.

4. Conclusion. For the foregoing reasons, the decision of the board is reversed.

So ordered.

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

WING'S NECK CONSERVATION
FOUNDATION, INC.

v. BOARD OF ASSESSORS OF
THE TOWN OF BOURNE

Docket Nos. F262914, F262915
F262916

Promulgated:
July 8, 2003

These are appeals filed under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65 from the refusal of the appellee to abate taxes on certain real estate located in the Town of Bourne assessed under G.L. c. 59, §§ 11 and 38 for fiscal year 2002.

Commissioner Rose heard these appeals and was joined in the decision for the appellee by Chairman Burns and Commissioners Scharaffa, Gorton and Egan.

These findings of fact and report are made at the request of the appellant pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32.

Walter G. Van Dorn, Esq. and Anne P. Hristov, Esq.,
for the appellant.

Donna Barakauskas, Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

Wings Neck is a 400-acre peninsula, which extends into Buzzards Bay at the western entrance to the Cape Cod Canal. Wings Neck Trust ("the Trust") was formed in 1902 for the purpose of acquiring approximately 350 acres of land on Wings Neck. Although most of the land was later sold to individual homeowners, approximately 70 acres are still owned by the Trust in "Conservation Restriction." In addition, the Trust has improved a 1.65-acre parcel with two tennis courts. Only Wings Neck landowners who belong to the Wings Neck Trust Association, a group of landowners who pay an annual assessment to the Trust for use of Trust lands, are permitted access onto the Trust lands that are clearly marked "Private Property."

Mr. Nicholas Baker, who testified on behalf of the Foundation, and his wife Joan ("the Bakers") established the Foundation on August 11, 1998. Under the Foundation By-Laws, its membership is limited to five members. The Bakers were the only original members. Until Joan's death in June of 2000, the Bakers were also the only officers of the Foundation and members of the three-member board of directors. Pursuant to its Articles of Organization, the Foundation was formed to "promote and carry out charitable, educational and scientific purposes, including, (i) the

acquisition and preservation of environmentally or ecologically significant land for open-space conservation purposes." According to Mr. Baker, the Foundation's goal is "protecting wildlife habitat" on Wings Neck.

On January 1, 2001, the Foundation was the assessed owner of three parcels of real estate located at 173 and 187 South Road, and 335 Wings Neck Road, on Wings Neck ("the subject properties"). On January 14, 2002, the Foundation timely filed three applications for abatement with the Board of Assessors of the Town of Bourne ("the assessors"), which were denied on April 8, 2002. Subsequently, on April 16, 2002, the Foundation timely filed its appeals with the Appellate Tax Board ("the Board"). On the basis of these facts, the Board found that it had jurisdiction over the subject appeals.

The first of the three parcels at issue in these appeals is a 2.6-acre parcel of vacant land located at 335 Wings Neck Road. The Foundation purchased the parcel on March 10, 1999 for \$250,000. Members of the Hardon family had owned the land for many years, and also own the adjacent property, which is improved with a residence. The Hardons wished to dispose of the 2.6-acre parcel but did not want additional development on Wings Neck. The parcel

is surrounded by privately owned lands, which are improved with residences.

The second parcel at issue is a 2.0-acre parcel of vacant land located at 173 South Road. The Foundation purchased this parcel in May of 1999 for \$1,000,000. According to the Foundation's August 1999 newsletter, this particular parcel was carved out of a larger 7.06-acre parcel owned by the Lombard family. The Foundation purchased the 2.0-acre parcel from the Lombards, who, at the same time, sold the remaining 5.06 acres to a third party, Eric Schwarz. The property purchased by Mr. Schwarz is improved with a residence, a garage and a tennis court. Members of Mr. Schwarz's extended family own the properties adjacent to the parcels sold by the Lombards.

In its newsletter, the Foundation suggested that its purchase of this parcel "effectively prohibits further development of the original 7.0-acre lot." A diagram attached to the August 1999 newsletter indicates that the parcel had been improved with a driveway, which is the only access from South Road to the Schwarz property. As part of the sale transaction, the Foundation gave a right-of-way easement to the Schwarz family for continued use of the driveway.

The third parcel at issue is a 2.0-acre parcel of vacant land located at 187 South Road, which the Foundation purchased on June 6, 2000 for \$300,000. This lot was also carved out of a larger 6.4-acre lot owned by the Lombards. The Lombards retained ownership of the remaining 4.4 acres. As evidenced by the Foundation's June 2000 newsletter and accompanying diagram, the Lombards intended to build a driveway "splitting-off" from the existing driveway located on the Foundation's property at 173 South Road.

In its first year of existence, the Foundation reported contributions totaling \$1,316,856, of which the Bakers themselves contributed approximately eighty-seven percent, \$1,142,986. In its second and third year, the Foundation's contributions decreased significantly. During these years, a majority of the donations came from members of the Baker family and other Wings Neck landowners.

In support of its contention that the subject properties were purchased in furtherance of the Foundation's charitable purpose to acquire and preserve environmentally and ecologically sensitive land, the Foundation offered the report and testimony of Donald Schall. Mr. Schall holds a Bachelor degree in biology and a Masters degree in forest ecology. Mr. Schall described Wings Neck as a predominantly forest habitat,

which includes native trees and shrubbery, some rare plant species, and various wildlife species.

In his report, Mr. Schall noted the existence of many species of large and small mammals, including white-tailed deer, gray squirrel, Eastern chipmunk, and white-footed mouse. He also reported the existence of an Eastern box turtle, a "Special Concern species." He explained the importance of maintaining the forest as it functions as a breeding area for birds and mammals, as well as a wildlife food source and shelter. Ultimately, he concluded that a landscape management plan should be implemented to monitor invasive, non-native plants that present a potential threat to the native plant communities.

The Foundation also offered the testimony of Stephen Johnson, an environmental consultant. Mr. Johnson echoed the sentiments of Mr. Schall that, if left in their natural, undisturbed state, the Foundation's properties are well suited to protect the existing populations of native and threatened plant and animal species. He also noted the importance of protecting the properties from residential development and from undue pressure from public access. He explained that, given the small size of the Foundation properties, it would be "very unusual that there would be formal public access provided." He suggested that a hike

across two acres would not be a very strenuous walk yet, the same two acres could provide a critical habitat. He opined that opening up properties such as these would not only bring increased human traffic, which may be more than the small parcels can sustain and still serve to protect the habitat, but it would also bring increased domestic animals which would negatively affect the habitat. He concluded that the properties, left in their undeveloped state, help to protect the native species located on Wings Neck.

Based on the evidence presented, the Board made the following findings of fact. Wings Neck peninsula is a 400-acre tract of land located at the mouth of the Cape Cod Canal. The majority of properties are owned by individuals and are improved with residences. Although the main roads on Wings Neck are open to the public, they lead only to privately owned properties on Wings Neck. There are no public parking or other public areas on Wings Neck. Consequently, for all practical purposes, only residents and their guests go to Wings Neck. Although the Wings Neck Trust owns a large portion of land, its properties are open only to members of its association, comprised of existing Wings Neck landowners who pay an association fee, and their guests. Similarly, the Foundation's properties, which are

at issue in these appeals are also closed to the general public. As a result, there are no "public" lands for non-residents to visit.

The Foundation argued that to allow public access to the subject properties would negatively "affect the delicate environment" thereby contravening its charitable purpose. The Foundation suggested that it acquired the subject properties "to prevent development and intrusion that would perpetually affect the delicate environment."

The Board found that although the conservation of open-space for the benefit of the general public is a most laudable goal, in the present appeals the Foundation failed to prove that it was in actual operation a charitable organization. The Board found that the appellant's acquisition of the subject properties was primarily for the benefit of a limited class of beneficiaries, the Bakers themselves and existing Wings Neck landowners, and that the benefit to the public, if any, was merely incidental.

The Board also found that the Foundation allowed use of its properties by adjacent landowners. For example, as part of the sale transaction for 173 South Road, the Foundation granted a right-of-way easement for continued use of an existing driveway, which traverses the Foundation's property. Also, the Foundation indicated that

it would allow the owners of 181 South Road to construct a split-off from the existing driveway on Foundation property. Accordingly, the building of this additional driveway would result in the type of increased pedestrian and vehicle traffic over the Foundation's property, which the appellant's experts testified would be detrimental to the delicate environment of Wings Neck.

Accordingly, the Board found that the benefit to the general public through the conservation of open-space was only incidental and that the primary benefit was to the residents of Wings Neck. Accordingly, the Board issued a Decision for the appellee.

OPINION

All property, real and personal, situated within the Commonwealth is subject to local property tax, unless expressly exempt. G.L. c. 59, § 2. G.L. c. 59, § 5 lists those classes of property which are exempt from property tax. Specifically, § 5, Clause Third, exempts from taxation all "personal property of a charitable organization, . . . and real estate owned . . . and occupied by it or its officers for the purposes for which it is organized" G.L. c. 59, § 5(Third).

It has long been established that "[a] corporation claiming that its property is exempt under § 5, Third, has the burden of proving that it comes within the exemption, and that it is in fact operated as a public charity." **Town of Norwood v. Norwood Civic Association**, 40 Mass. 518, 525 (1960) (citing **American Institute for Economic Research**, 324 Mass. 509, 512-514 (1949)). The "party claiming exemption bears a grave burden of proving the claim." **Harvard Community Health Plan, Inc. v. Assessors of Boston**, 384 Mass. 536, 543 (1981). See also **Meadowbrooke Day Care Center, Inc. v. Assessors of Lowell**, 374 Mass. 509, 513 (1978); **Boston Lodge Order of Elks v. Boston**, 217 Mass. 176, 177 (1914). "Any doubt must operate against the one claiming a tax exemption." **Boston Symphony Orchestra**, 294 Mass. 248, 257 (1936) (citing **Springfield Young Men's Christian Association v. Board of Assessors**, 284 Mass. 1, 5 (1933)).

Statutory exemptions from taxation must be strictly construed. **Children's Hospital Medical Center v. Boston Board of Assessors**, 388 Mass. 832, 838 (1983) (citing **Assessors of Wilmington v. Avco Corporation**, 357 Mass. 704, 706 (1970)). "Exemption from taxation is a matter of special favor or grace. It will be recognized only where the property falls clearly and unmistakably within the

express words of a legislative command." **Boston Chamber of Commerce**, 315 Mass. 712, 716 (1943).

A charitable organization which owns and occupies real estate is "not entitled to tax exemption if the property is occupied by it for a purpose other than that for which it is organized.'" **Lynn Hospital v. Board of Assessors of Lynn**, 383 Mass. 14, 18 (1981) (quoting **Milton Hospital & Convalescent Home v. Assessors of Milton**, 360 Mass. 63, 69 (1971)). Therefore, to qualify for the charitable exemption the taxpayer must (1) be a charitable organization and (2) occupy the property for its charitable purpose.

A qualified "charitable organization" may include literary, charitable, benevolent or scientific institutions and temperance societies. G.L. c. 59, § 5, Third. The Supreme Judicial Court has consistently held that "the term 'charitable' includes more than almsgiving and assistance to the needy." **Harvard Community Health Plan v. Assessors of Cambridge**, 384 Mass. at 543. See also **Assessors of Boston v. The Vincent Club**, 351 Mass. 10, 12 (1966); **New England Sanitarium v. Stoneham**, 205 Mass. 335, 342 (1910). A traditionally accepted definition of a charity is that it is a:

gift, to be applied consistently with existing laws, for the benefit of an **indefinite number of persons**, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Boston Symphony Orchestra, 294 Mass. at 254-255 (emphasis added).

Ultimately, an organization's classification as a charitable organization "depends upon 'the language of its charter or articles of association, constitution and by-laws, and upon the objects which it serves and the method of its administration.'" **The Vincent Club**, 351 Mass. at 12 (quoting **Little v. Newburyport**, 210 Mass. 414, 415 (1912)).

Stated charitable purposes, as specified in the association or corporation's organizational documents, however, will not by themselves suffice to establish the property tax exemption. The appellant must prove that "it is in fact so conducted that in actual operation it is a public charity," not a mere pleasure, recreational or social club or mutual benefit society. **Jacob's Pillow Dance Festival, Inc. v. Assessors of Becket**, 320 Mass. 311, 313 (1946) (citing **Little**, 210 Mass. at 415).

"An institution will be classed as charitable if the dominant purpose of its work is for the public good and the work done for its members is but the means adopted for this purpose." **Massachusetts Medical Society v. Assessors of Boston**, 340 Mass. 327, 332 (1960). If, however, the dominant purpose of its work is to benefit the members, such organization will not be classified as "charitable" even though the public will derive an incidental benefit. **Id.** See also **American Institute for Economic Research**, 324 Mass. at 513; **Boston Chamber of Commerce**, 315 Mass. at 716-717; **Newton Centre Woman's Club, Inc. v. Newton**, 258 Mass. 326 (1927); **Little**, 210 Mass. at 417. "The umbrella for charitable organizations is broad, but not limitless The test for charitable nature is whether the organization works for the good of society." **New England Legal Foundation v. City of Boston**, 423 Mass. 602, 610 (1996).

Even where an organization's activities are of a noble cause, such as the preservation of open space, where the primary benefits inure to a limited class of private individuals, the organization will not qualify as charitable. In **Massachusetts Medical Society**, the court found the taxpayer's activities, "aimed at improving the knowledge and skills of the medical profession," to be

"most laudable." 340 Mass. at 333. The court concluded, however, that although the public will derive a benefit from a more enlightened medical profession, "this indirect benefit is not sufficient to bring the society within the class traditionally recognized as charities." *Id.* In ***Boston Chamber of Commerce***, the court also found the organization's activities to be "highly commendable and of great public benefit." 315 Mass. at 718. Nevertheless, the Court held that "since the primary benefit would accrue to the business community rather than to the public it was not entitled to an exemption." *Id.*

In the present appeal, the Board found and ruled that although the conservation of ecologically and environmentally significant lands and wildlife is a commendable activity, the Foundation failed to establish that it was in actual operation a charitable organization. Although the general public may derive an incidental benefit from the preservation of rare species of plants and wildlife, the Foundation's primary purpose was in fact to benefit a limited class of individuals, the Bakers themselves and existing Wings Neck landowners. The Board found and ruled that any benefit to the public was merely incidental.

Moreover, the absence of public access to land has consistently proven fatal to a landowner's claim of charitable exemption. See, e.g., **Animal Rescue League v. Assessors of Pembroke**, 2000 Mass. ATB Adv. Sh. 96, *aff'd* 54 Mass. App. Ct. Rep. 1113 (although leaving property in its natural state was beneficial to animals and therefore in furtherance of owner's charitable purpose, exemption denied where there were no trails for hiking or recreation, the public was not invited to use the land, and "no trespassing" signs were posted on land); **Nature Preserve, Inc. v. Assessors of Pembroke**, 2000 Mass. ATB Adv. Sh. 796 (maintenance of "nature trails" on land preserved in its natural state did not justify exemption where access limited to appellant's members); **Marshfield Rod & Gun Club v. Assessors of Marshfield**, 1998 Mass. ATB Adv. Sh. 1130 (charitable exemption denied where only members and their guests could access majority of property). Similarly, in the present appeals, the Board found that the appellant's properties were not open to the general public and that only residents of Wing's Neck and their guests had access to the parcels.

Accordingly, the Board found and ruled that the Foundation failed to meet its burden of proving that it was a charitable organization and that the subject property was used in furtherance of charitable purposes. The Board, therefore, issued a Decision for the appellee.

APPELLATE TAX BOARD

BY: _____
Abigail A. Burns, Chairman

A true copy,

Attest: _____
Clerk of the Board

TABLE 1. Exempt Charitable, Fraternal, Religious and Veteran Organizations - Jurisdictional Filing Requirements

ORGANIZATION AND PROPERTY	EXEMPTION APPLICATION	PROPERTY RETURN (FORM 3ABC)	PUBLIC CHARITIES REPORT¹ (FORM PC WITH FEDERAL FORM 990)²
Charitable – Personal property G.L. c. 59, § 5(3)	1 st fiscal year exemption claimed by organization	Annual	Annual
Charitable – Real property G.L. c. 59, § 5(3)	1 st fiscal year exemption claimed for particular parcel	Annual	Annual
Fraternal – Personal property G.L. c. 59, § 5(7)	Not required ³	Not required	Not required
Fraternal – Real property G.L. c. 59, § 5(3)	1 st fiscal year exemption claimed for particular parcel	Annual	Not required
Religious – Personal property G.L. c. 59, § 5(10)	Not required ⁴	Not required	Not required
Religious – House of worship or parsonage G.L. c. 59, § 5(11)	Not required ⁵	Not required	Not required
Religious – Other real property G.L. c. 59, § 5(3)	1 st fiscal year exemption claimed for particular parcel	Annual	Not required
Veterans – Real or personal property G.L. c. 59, § 5(5, 5A, 5B, 5C)	Not required ⁶	Annual	Not required

¹ Complete report must be attached to return for annual filing requirement to be met.

² Effective for fiscal years ending on or after December 31, 2010 (first reporting on 5/15/2011), Attorney General no longer requires small organizations (gross support and revenue of \$5,000 or less) to include Form 990 with Form PC.

³ Organization must file timely abatement application if a tax bill is issued for the property.

⁴ Organization must file timely abatement application if a tax bill is issued for the property.

⁵ Organization must file timely abatement application if a tax bill is issued for the property.

⁶ Organization must file timely abatement application if a tax bill is issued for the property.

TABLE 2. Exempt Charitable, Fraternal, Religious and Veteran Organizations – Exemption Application Filing Requirements

INITIAL APPLICATION MUST BE FILED FOR PROPERTY OWNED BY/ HELD IN TRUST FOR ORGANIZATION ON JULY 1

APPLICATION (Form 1-B-3 or 128) DUE SAME DAY ABATEMENT APPLICATIONS DUE FOR FISCAL YEAR

Assessors may review exemption application received before actual tax bills are issued.

If tax bill issued, entity must reapply by abatement application due date (or appeal directly to Appellate Tax Board under G.L. c. 59, § 5B)

ORGANIZATION AND PROPERTY	FILING YEAR	SUPPORTING INFORMATION
<ul style="list-style-type: none"> • Charitable – Real/personal property • Fraternal – Real property • Religious – Real property (except house of worship/parsonage) 	<ul style="list-style-type: none"> • 1st fiscal year exemption claimed by organization • 1st fiscal year exemption claimed for real estate parcels not included in initial or additional application 	<ul style="list-style-type: none"> • CHARITABLE STATUS <ul style="list-style-type: none"> • Articles of incorporation or charter • Organization's by-laws • If charitable trust, the recorded trust and schedule of beneficiaries • List of names and residential addresses of current officers and directors or trustees of the organization • Certificate of exemption from Massachusetts sales tax • Federal exemption 501(c)(3) letter • Most recent annual financial report • Brochures or literature describing charitable activities • REAL PROPERTY USE <ul style="list-style-type: none"> • Copy of recorded deed if not yet received from Registry of Deeds • Description of organization's use of space • If vacant, reason for purchase and plans for use • List of all tenants, amount of space each rents and how space is used • For each charitable tenant, all of the information listed above under Charitable Status

TABLE 3. Exempt Charitable Organizations – Initial Determination of Exempt Status

<u>DETERMINATION</u>	<u>DOCUMENTATION</u>
<p>1. Did the organization file a property return by March 1 (unless extension approved) for all personalty and/or parcels of real estate it owned on January 1?</p>	<ul style="list-style-type: none"> • Form 3ABC • Form PC, including federal 990 (Complete report must be attached to return for annual filing requirement to be met. Effective for fiscal years ending on or after December 31, 2010 (first reporting on 5/15/2011), Attorney General no longer requires small organizations (gross support and revenue of \$5,000 or less) to include Form 990 with Form PC.)
<p>2. Did the organization file an initial exemption application by the abatement filing deadline for the fiscal year for which it first claims a tax exemption on personalty, or particular real estate parcel?</p>	<ul style="list-style-type: none"> • Form 1-B-3 (Clause 3 exemption application) or Form 128 (abatement application)
<p>3. Is the organization a charity as of July 1?</p> <ul style="list-style-type: none"> • Charitable purpose • Operates to benefit public • No private inurement 	<ul style="list-style-type: none"> • Articles of incorporation or charter • Organization's by-laws • If charitable trust, the recorded trust and schedule of beneficiaries • List of names and residential addresses of current officers and directors or trustees of the organization • Certificate of exemption from Massachusetts sales tax • Federal exemption 501(c)(3) letter • Most recent annual financial report • Brochures or literature describing charitable activities
<p>4. Did the organization own each parcel of real estate on July 1?</p>	<ul style="list-style-type: none"> • Copy of recorded deed if not yet received from Registry of Deeds
<p>5. Is each parcel of real estate occupied by the organization for its charitable purposes or another charity for its charitable purposes on July 1?</p>	<ul style="list-style-type: none"> • Description of organization's use of space • If vacant, reason for purchase and plans for use • List of tenants, amount of space each rents and how space is used • If any tenant claims charitable status, all of the information listed above in item 3

TABLE 4. Exempt Charitable, Fraternal, Religious and Veteran Organizations – Annual Property Return Filing Requirements

ANNUAL RETURN MUST BE FILED FOR PROPERTY OWNED BY/ HELD IN TRUST FOR ORGANIZATION ON JANUARY 1

RETURN DUE MARCH 1 UNLESS ASSESSORS GRANT WRITTEN EXTENSION
(Latest Extended Due Date is Date Abatement Applications for Fiscal Year)

ORGANIZATION AND PROPERTY	PROPERTY RETURN (FORM 3ABC)	PUBLIC CHARITIES REPORT ¹ (FORM PC WITH FEDERAL FORM 990) ²
Charitable – Real and personal property G.L. c. 59, § 5(3)	Annual	Annual
Fraternal – Real property G.L. c. 59, § 5(3)	Annual	Not required
Religious – Real property (except house of worship/parsonage) G.L. c. 59, § 5(3)	Annual	Not required
Veterans – Real and personal property G.L. c. 59, § 5(5, 5A, 5B, 5C)	Annual	Not required

¹ Complete report must be attached to return for annual filing requirement to be met.

² Effective for fiscal years ending on or after December 31, 2010 (first reporting on 5/15/2011), Attorney General no longer requires small organizations (gross support and revenue of \$5,000 or less) to include Form 990 with Form PC.

TABLE 5. Exempt Charitable Organizations – Annual Review of Exempt Status

<u>DETERMINATION</u>	<u>DOCUMENTATION</u>
<p>1. Did the organization file a property return by March 1 (unless extension approved) for all personalty and/or parcels of real estate it owned on January 1?</p>	<ul style="list-style-type: none"> • Form 3ABC • Form PC, including federal 990
<p>2. Did the organization file an exemption application by the abatement filing deadline for the fiscal year for any parcel of real estate not exempt the prior year for which an exemption is now claimed?</p>	<ul style="list-style-type: none"> • Form 1-B-3 (Clause 3 exemption application) or Form 128 (abatement application)
<p>3. Is the organization still a charity as of July 1?</p>	<ul style="list-style-type: none"> • Amendments to articles of incorporation or charter • Amendments to organization's by-laws • If charitable trust, amendments to the recorded trust and schedule of beneficiaries • Description of changes in activities
<p>4. Did the organization own each parcel of real estate on July 1?</p>	<ul style="list-style-type: none"> • Copy of recorded deed if not yet received from Registry of Deeds
<p>5. Is each parcel of previously exempt real estate still occupied by the organization or another charity for charitable purposes on July 1?</p>	<ul style="list-style-type: none"> • Changes in organization's use of space • If new tenants, amount of space rented and use • If new tenant claims charitable status, same information about organization as listed in item 3 for initial determination of exempt status
<p>6. Is each parcel of newly acquired real estate occupied by the organization for its charitable purposes or another charity for its charitable purposes on July 1?</p>	<ul style="list-style-type: none"> • Description of organization's use of space • If vacant, reason for purchase and plans for use • List of tenants, amount of space each rents and how space is used • If any tenant claims charitable status, all of the information listed in item 3 for initial determination of exempt status