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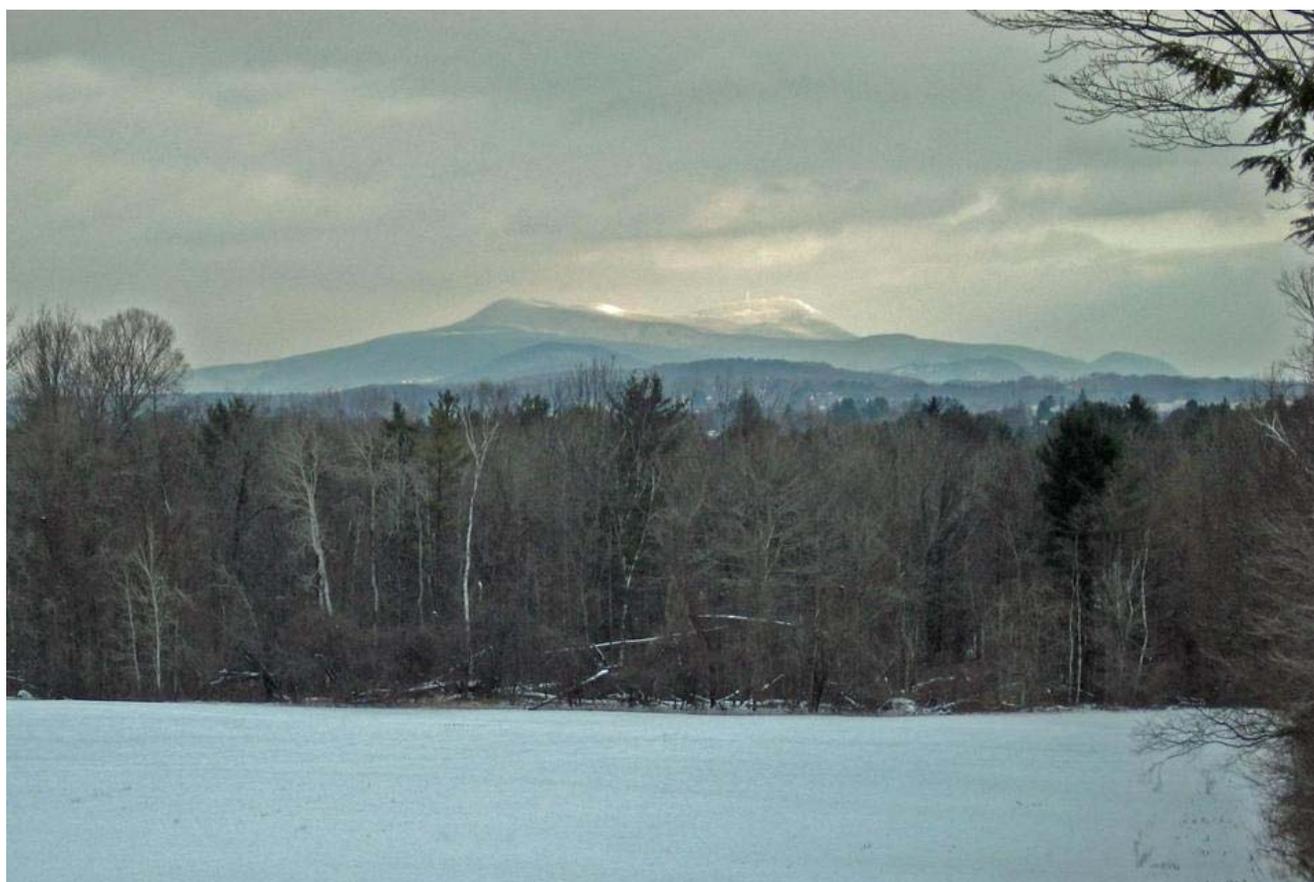
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Metro

Tax-exempt status of conservation land in dispute

Conservation groups say case before SJC could have wide impact

By **Michael Levenson** | GLOBE STAFF JANUARY 06, 2014



BERKSHIRE HISTORICAL SOCIETY AT ARROWHEAD

If Hawley wins its case, cash-strapped communities probably will follow the town's lead and scrutinize conservation land as a possible source of cash, legal specialists say.

A wide range of conservation groups in Massachusetts are worried their finances could take a major hit if a small town in the Berkshires wins a case slated to come before the state's highest court Monday.

The case could determine whether cities and towns, which are hungry for cash, can tax

conservation land owned by groups such as the Nature Conservancy and the Massachusetts Audubon Society. More than 1.25 million acres in Massachusetts have been protected from development.

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The dispute revolves around how publicly accessible and active the land needs to be to qualify for a charitable tax exemption. Conservation groups argue that merely preserving the land for public use should be sufficient to exempt it from taxes. But a small town in Western Massachusetts has challenged that paradigm by arguing that the land needs to be broadly available or else face a tax bill.

The battle began when officials in Hawley sent the New England Forestry Foundation a \$173 property tax bill for a 120-acre parcel of woodland that the group owns in the town an hour north of Springfield. The town argued the Forestry Foundation had done little to encourage public use of the woods, and that it therefore did not qualify for a tax exemption.

By claiming to serve the public interest, the foundation was effectively “carving out its own piece of tax-free, private land,” said Rosemary Crowley, a lawyer for the Hawley Board of Assessors.

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The conservation groups, which also include the Trustees of Reservations, argue that line of reasoning would set a dangerous precedent, and they worry that their land could be taxed, as well, if the town of Hawley prevails before the Supreme Judicial Court. The groups contend that the taxes they face would threaten their ability to buy new land and protect it from development.

“If we lose this case, it would signal to every town that has conservation land to ask for taxes to be paid on those properties,” said Chuck Knox, of the Massachusetts Land Trust Coalition, which represents 130 trusts and has filed a brief siding with the Forestry Foundation. “In some instances, it could spell the demise of the smaller land trusts.”

The Audubon Society sounded a warning about the consequences of the case in a brief it filed with the court, which will hear arguments Monday and rule at a later date.

“Audubon’s land conservation and stewardship activities lessen the burdens of government, and the loss of its tax-exempt property status would severely and permanently reduce the resources that can be applied to those efforts,” the brief said.

The case hinges on the ability of the Forestry Foundation to show that its woodland in Hawley

truly benefits the public. The foundation bought the land, known as the Stetson-Phelps Memorial Forest, from a couple in 1999, and opened it to the public, posting a sign that reads, “We invite respectful public visits.”

But Hawley officials argue the foundation’s public efforts essentially stopped there.

A 2013 ruling by the Appellate Tax Board found that there was a lack of signage on the road to the forest, that there was no mention of it on the foundation’s website, and that it was located at the end of a dirt road that appeared to be a private driveway. The foundation also installed a gate to limit vehicle access to the forest.

Those factors suggest the foundation did not promote enough public use to qualify for a tax exemption, according to the town of Hawley, which suggested the foundation could have hosted nature walks or scientific research.

“They should freely invite people to use the land, to have public programs on the land, and have it more than just sit there,” said David J. Martel, a lawyer who represents the Hawley Board of Assessors.

Robert Perschel, executive director of the Forestry Foundation, disagreed. He said public activity is just one way to measure the benefit of conservation land. He said the public also benefits by having clean air, water, and wildlife.

“It’s in the interests of the people of Massachusetts to keep some of the land open and free of development,” he said.

Other cities and towns are watching the case closely, believing they may have similar conservation land in their communities that could be taxed.

Robert J. Ellia, executive director of the Massachusetts Association of Assessing Officers, said local officials think vast tracts of conservation land — particularly forests in Western Massachusetts — are improperly classified as tax-exempt.

This case, he said, could change that.

“I really see it as fairly broad, affecting quite a bit of property throughout the state,” said Ellia, whose group has filed a brief siding with the town of Hawley. “I don’t think it’s just a small local matter. The repercussions of it are not necessarily minor.”

If Hawley wins, cash-strapped communities probably will follow the town’s lead and scrutinize conservation land as a possible source of cash, legal specialists say.

“Obviously, the towns are hungry for revenue and, if they think there’s a gray area, then they may start assessing properties that have not been historically assessed, if there’s not enough public access,” said David G. Saliba, vice-chairman of the Taxation Law Section of the Massachusetts Bar Association. “. . . It’s a judgment call.”

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