In Support of Property Tax Exemption for Land Trust Preserves

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EXECUTIVE SUMMARY

Maine Coast Heritage Trust, along with other land conservation organizations, is often called upon to explain the rationale behind its policy of requesting property tax exemption for many of its preserves, a practice followed by a majority of conservation groups in the State of Maine. This paper seeks to describe the ways conserved land provides public benefits to the people and municipalities of Maine and should therefore qualify for property tax exemption.

Most preserves owned by MCHT and similar conservation organizations have been granted tax exempt status by the relevant property taxing authority. Maine law is uncertain, however, as to whether preservation of land in its natural state and/or the provision of public recreational uses, by a charitable and benevolent institution established for those purposes, is sufficient to qualify for tax exempt status.

Recently the Town of Limington denied Francis Small Heritage Trust's (FSHT) exemption application. The FSHT case is under appeal and MCHT has filed a "friend of the court" brief, urging reversal of the decision of the State Board of Property Tax Review, which upheld Limington's denial. This paper provides a rationale for that recommendation.

In the broader context of non-profit conservation activities in Maine and in light of the long tradition of land trusts partnering with governmental agencies on conservation efforts, Maine's non-profit conservation organizations exemplify the charitable and benevolent purposes required for entitlement to property tax exemption under 36 M.R.S.A. Section 652(1)(A), by "maintaining public … works or otherwise lessening the burdens of government" [1] and "preserving the beauties of nature and the promotion of the aesthetic enjoyment of the community."[2]

However, there are still cases in which land conservation non-profits are denied exemption from property tax. The State Board of Property Tax Review, in the FSHT/Limington case, relied heavily on Maine's Law Court decision in *Holbrook Island Sanctuary v. Town of Brooksville*, 161 Me. 476, 214 A.2d 660 (1965), which held that a wildlife preserve was for the protection of animals and did not provide a public benefit to humans, and that a prohibition against hunting was contrary to public policy. It is MCHT's position that the reasons underlying the *Holbrook* decision in 1965, denying Holbrook Island Sanctuary tax-exempt status, are no

[1] Episcopal Camp Foundation, Inc. v. Town of Hope, 666 A.2d 108 at 110, quoting Johnson v. South Blue Hill Cemetery Ass'n., 221 A.2d 289, 287 (Me. 1966)],

[2] Restatement (Second) of Trusts, Section 374 comment f, (1959).

longer valid, though correct at the time based on then-current knowledge and environmental policy. Land conservation, as a charitable purpose, is now clearly consistent with public policy in Maine as evidenced by extensive environmental legislation passed since 1965, and successive years of voter approved bond issues for the Land for Maine's Future program.

It is also MCHT's opinion that the Board of Property Tax Review in the FSHT case incorrectly applied a rule of legal interpretation. It erroneously concluded that because the Farm and Open Space Tax Law[3] provides between a 50% and 95% tax reduction for non-profit owned conservation preserves, they are not eligible for full property tax exemption under the more general property tax exemption statute, Title 36 M.R.S.A. Section 652(1)(A).

The non-profit conservation community's willingness to take on long-term responsibilities for the cost of managing conservation land, funded primarily by charitable donations and governmental grants, is critical to the success of public conservation policy. If Maine's conservation organizations were held to be generally ineligible for tax exemption for its preserves, government alone would likely have to shoulder the long-term costs of conservation land ownership and management. With one of the smallest proportions of public land of any state in the nation (less than 5 % in 2001, now approximately 6%), Maine would continue to lose ground if government had to rely on tax dollars alone to purchase and manage lands for the recreational needs of a state that depends on outdoor recreational tourism for a significant part of its prosperity.

Without the critical government/land trust collaboration on saving Maine's most beloved natural places, important community resources would be lost to well-financed development interests in a global economy that targets high value land for vacation development. Ironically, this would result in degradation of the natural character of Maine that attracts that tourism and economic development in the first place.

Moreover, on both government and non-profit preserves, a proper and reasonable balance between public recreational use and necessary natural resources management is essential to long-term support and sustainability of the land. The exemption statute contemplates that exempt organizations will manage their land in ways that may bring in revenue, such as farming a farm preserve or timbering a forested preserve. As long as these activities are "incidental uses related to institutional necessity,"[4] or "de minimis uses of the property that do not interfere with the institution's major tax-exempt purposes,"[5] and the revenues are used for the charitable purposes of the charity, this activity is consistent with exemption.

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[3] Title 36 M.R.S.A. Section 1101 *et seq.*
[4] Hebron Academy Inc. v. Town of Hebron, 2013 ME 15, at PP 22-23.
[5] Id. At PP 24.

BACKGROUND AND OTHER USEFUL INFORMATION

Maine's 90+ land trusts employ a variety of legal tools to assist their conservation partners, landowners, state, local and federal agencies, and other non-profit organizations, in filling the need for land conservation in Maine's communities. This is essential work in the face of urban sprawl and fierce competition for Maine's finite scenic and ecological resources.

The emergence of local Maine land trusts over the past few decades has heralded huge conservation gains for Maine residents. From just a handful of Maine land trusts in existence in 1970, our state now benefits from the work of over 90 such organizations, who often collaborate and learn from each other through the Maine Land Trust Network, a program coordinated by Maine Coast Heritage Trust. Together, these local institutions own 1256 preserves in their communities, totaling 249,875 acres.[6]

In its 2009 survey of land trusts, MCHT determined that most land trusts (73%) use more than one approach to property tax. Requesting tax exempt status without payment or donations is the most common practice:

Property Tax Practices	Response Percent
Request tax exempt status, no payment in lieu or donation	58%
Enroll in current use programs (open space, farmland, tree growth)	46%
Request tax exempt status, make payment in lieu of taxes	31%
Pay full taxes	27%
Request tax exempt status, make donation to town	13%

Most land trusts (78%) have never been denied property tax exemption, though denials are not uncommon. Beyond town policy or preference, reasons reported for denial include lack of public access, prior land use, and current uses that generate income (e.g. fees for hiking).

The State Tax Assessor for the unorganized territories and most municipalities have recognized that conservation organizations and their preserves are eligible for property tax exemption. MCHT, for example, enjoys tax exemption for each of its four preserves located in the unorganized territories, and on most of its municipal-based preserves. In certain situations,

[6] 2009 Survey of Maine Land Trusts, Maine Land Trust Network, 2009; note that this does not include other large non-profit preserve owners in Maine, such as The Nature Conservancy, Appalachian Mountain Club, Maine Audubon Society, and the Forest Society of Maine.

due to technical disqualification, such as donor-retained rights, or to accommodate the town government's preference, MCHT and other land trusts choose or are required to keep their preserves on the tax rolls. Many make a voluntary payment in lieu of taxes, even if they obtain exemption.

Since the early 1970's, land trusts have worked closely with governmental agencies to assist them in protecting public lands by acquiring conservation easement and fee lands to buffer and benefit government parks and reserve lands, and by pre-acquiring land for eventual transfer to government agencies such as the Maine Department of Inland Fisheries and Wildlife, Maine Bureau of Parks and Lands, the National Park Service at Acadia National Park, and the U.S. Fish and Wildlife Service at Petit Manan, Moosehorn and Rachael Carson National Wildlife Refuges. The effectiveness of these land trusts in building public support for land conservation and in raising funds through charitable donations have allowed them to make significant contributions to government land conservation programs.

Public and Land Trust Conservation/Recreation Lands

	Acres		
MCHT Summary	**Fee**	**Easement**	**Total**
Federal	187,344	13,832	201,176
State	994,658	372,148	1,366,806
Municipal*	112,323	3,036	1,567,982
Land Trusts/NGO	**468,168	1,993,010	2,871,888
Total	****1,762,493**	**2,382,026**	**4,144,519**

*Municipal-owned forests, parks and recreation lands >10 acres. Excludes school-owned lands.

All data current as of Dec 2010 except as noted, with the more recent Plum Creek easement added at 363,000 acres

**Updated March 23, 2016 to correct a calculation error

Total Maine Acreage	22,000,000
% conserved	18.4%

In many cases, the private charitable dollars they raise, and the value of land they preserve, is required as "match" for government funding for conservation. Grants from the U.S. Fish and Wildlife Service, National Coastal Wetlands Conservation Grant, the national Forest Legacy Program, North American Wetland Conservation Act program, and Maine's own Land for Maine's Future program, have provided formal governmental recognition for land conservation organizations' long standing tradition of assisting government by acquiring and accepting long-term management responsibility of natural land important to the public.

Maine voters have provided, since 1987, over $131 Million dollars to the Land for Maine's Future program, to fund acquisition of state-owned and nonprofit-owned preserve lands

and conservation easements for multiple conservation purposes: conservation, water access, outdoor recreation, wildlife and fish habitat, and farm and forest land preservation. The bond generally requires a non-profit recipient of bond funds to provide a 1/1 match with other public and private contributions, which, the bond statute specifically states, may include other gifts of land to "cooperating entities,"[7] as non-profit conservation organizations are known in the Land For Maine's Future statute[8].

The Land for Maine's Future website[9] provides the following information, adapted and *updated* by R. Collin Therrien, Senior Planner/Project Manager of the program:

> **Accomplishments**: The Land for Maine's Future Program has *completed 294 projects*, conserving over *561,100 acres, 36 working farms conserved, 19 working waterfront projects, 52 water access projects, and 187 conservation/recreation projects*. Projects have included mountain summits, river shoreline, lakes, ponds, coastal islands, coastal beaches, forest, grasslands, farmland, and wetlands ....**placing these special places in the public trust forever**. *(*Emphasis added)

The website notes that "With the 1999 round of funding, ownership and management of the properties can include partnerships with local groups including municipalities and private land trusts." These partnerships rely on the willingness of Maine's land trusts to take on costly long term ownership and management responsibility for land protected in the public interest.

Maine's land trusts own conservation preserves, many funded by government and foundation grants. Land trusts manage their preserves in the public interest, funded primarily by grants, charitable donations, and volunteer time. The management of fee lands and conservation easements is costly. For example, MCHT's 2012 budget for annually recurring management costs of its approximately 400 easement and fee holdings was $1.6 Million, raised mainly

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[7] P.L.1999, Ch. 514, Section A-6(3), "The bond funds must be matched with at least $25Million in public and private contributions. Seventy percent of that amount must be in the form of land, cash or other tangible assets. The remaining 30% may be matching contributions and include the value of project-related, in-kind contributions of goods and services to and by cooperating entities and the value of real property interests acquired by or contributed to cooperating entities when property interests have a relationship to the property proposed for protection, as determined by the Land for Maine's Future Board." (emphasis added)

[8] 5 M.R.S.A. Section 6200, 2nd P: "The Legislature further finds that Maine's private, nonprofit organizations, local conservation commissions, local governments and federal agencies have made significant contributions to the protection of the State's natural areas and that these agencies should be encouraged to further expand and coordinate their efforts by working with state agencies as "cooperating entities" in order to help acquire, pay for and manage new state acquisitions of high priority natural lands. See also Title 5 Sec. 6201(2) for definition of cooperating entity.

[9] http://www.maine.gov/doc/commissioner/lmf/

through endowment income and charitable gifts. MCHT has built approximately 58 miles of trail, and many kiosks and signs inviting the public onto its land (and guiding them in its proper use!). More than 5600 visitors signed into its preserves (indicating a total use much higher) and its staff guided 44 walks and coordinated the work of almost 300 volunteers. Smaller land trusts do extraordinary work as well, relying on donations and volunteer time. The State depends on these cooperating entities to do what government would otherwise do with tax dollars. The property tax exemption was designed to avoid imposing a property tax on charities that perform costly governmental land management services for the benefit of the general public.

KEY POINTS

MCHT's Amicus brief for the Francis Small Heritage Trust case outlined three key points in its argument in support of property tax exemption for land trust preserves:

ISSUE #1:

Maine's conservation land trusts are organized for charitable and benevolent purposes, and their ownership and management of conservation preserves provides a significant benefit to the general public and lessens the burdens of government in their efforts to protect fragile natural resources, such as wildlife habitat, air quality and water quality, and to provide areas for scenic beauty and public outdoor recreation. Hence, they are eligible for tax exemption under Title 36 M.R.S.A. Section 652(1)(A) as charitable and benevolent institutions.

Any understanding of the tax exempt eligibility of Maine's land trusts must consider the broader context of non-profit conservation activities in Maine, and the long tradition of partnership between conservation land trusts and government. Maine's non-profit conservation organizations exemplify the charitable and benevolent purposes required for entitlement to property tax exemption under 36 M.R.S.A. Section 652(1)(A), by "lessening the burdens of government"[10] and "preserving the beauties of nature and the promotion of the aesthetic enjoyment of the community."[11]

One must look to the *Cushing* law court decision[12] to recognize the obsolescence of the rationale in the *Holbrook* case, which held that a wildlife sanctuary was not of benefit to humans, and therefore could not be charitable and benevolent. *Holbrook* also held that a prohibition against hunting was contrary to public policy and therefore inconsistent with the public benefit needed for a

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[10] Episcopal Camp Foundation, Inc. v. Town of Hope, 666 A.2d 108 at 110, quoting Johnson v. South Blue Hill Cemetery Ass'n., 221 A.2d 289, 287 (Me. 1966)],

[11] Restatement (Second) of Trusts, Section 374 comment f, (1959).

[12] Cushing Nature and Preservation Center v. Town of Cushing, 2001 ME 149, 785 A.2d 342.

charitable purpose to obtain [13] The *Cushing* court clarified that this was not the meaning of Holbrook, but rather that "when the **purpose** of an alleged charitable use violates public policy, it cannot be classified as charitable." (*Cushing* at PP.13). This is not the same as holding that conservation or preservation of nature preserves is contrary to public policy and hence not charitable. The *Holbrook* case does not prevent owner-imposed rules and limitations on the use by the public of nature preserves, but rather that a preserve owner will only be ineligible for exemption if their "purpose" is contrary to public policy.

Moreover, the rationale of *Holbrook* is obsolete in light of current knowledge of the public benefits of ecosystem preservation, the need for biodiversity, and the now generally accepted notion that a preserve to protect wildlife does indeed provide a significant benefit to humans. See "Weighing the Costs and Benefits of Property Tax Exemption: Nonprofit Organization Land Conservation," by Kirk G. Siegel, Maine Law Review, Volume 49, Number 2 (1997), p.416. In fact, shortly after the decision in the *Holbrook* case, the preserve that purportedly provided no benefit to the public was acquired as a state-owned property.

The 2001 Maine Supreme Judicial Court decision in the *Cushing* case set out a clear set of criteria for determining whether an organization's property qualifies for the charitable tax exemption. It directs the court to "undertake a 'careful examination' of the facts presented to determine (1) whether the owner of the land is organized and conducting its operation for purely benevolent and charitable purposes in good faith; (2) whether there is any profit motive revealed or concealed; (3) whether there is any pretense to evade taxation; and (4) whether any production of revenue is purely incidental to a dominant purpose that is benevolent and charitable." *Cushing* at [***17], quoting Green Acre Baha'i Inst. 150 Me at 354, 110 A.2d at 584 [***13]. In the *Cushing* case, the charity presented no evidence that they were engaged in land conservation or had preserved the land for public use, and in fact there was a question of fact as to whether the land was held for investment purposes. This is entirely different from the FSHT preserves, which are dedicated to public use, and in the case of certain of the 8 lots, restricted by legally binding covenants to the State of Maine and others, prohibiting conversion to non-conservation uses, and in some cases prohibiting timbering.

Governmental recognition of the public importance of land conservation has grown by leaps and bounds since the 1965 *Holbrook* case. Even before Holbrook, the Restatement of Trusts recognized as charitable "preserving the beauties of nature and the promotion of the aesthetic enjoyment of the community."[14] Since 1965, Maine has passed many statutes that protect the environment, and whose preambles wax poetic on the public benefit provided by environmental protection; such as the Natural Resources Protection Act at 38 MRS Section 480-

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[13] Holbrook Island Sanctuary v Inhabitants of Town of Brooksville,161 Me. 476, 214 A.2d 660 (1965)

[14] Restatement (Second) of Trusts, Section 374 comment f, (1959).

A, the Site Location of Development Act at 38 MRS Section 481 et seq., the Mandatory Shoreland Zoning Act at 38 MRS Section 438 et seq., the Growth Management Law at 30-A MRS Section 4212(3), Coastal Barrier Resources system at 38 MRS Section 1901 et seq., Critical Areas Registry at 5 MRS 3311 et seq. Furthermore, in 2007, the legislature recognized the charitable trust nature of conservation easements, by passing specific amendment requirements that mimic the standards for amending charitable trusts.

MCHT also urged the Court to acknowledge, as has been done in other jurisdictions, that the terms "use" and "occupancy" in the Tax Exemption statute should not be read to require intensive or unlimited human use on conservation land, which may serve the organization's charitable purpose and provide a significant public benefit simply by being left alone. In a very recent case out of New Mexico, an appellate court found that conservation is a charitable use, and that "the way conservation benefits the public is through maintaining the Property for the public benefit in its natural, pristine state without any particular human activities or construction." *Pecos River Open Spaces Inc. v. County of San Miguel,* No. 30,865 (N.M. Ct. App. 1/11/13).

Similarly, in *Turner v. Trust for Public Land*, 445 S.2d 1124, 1126 (Fla.App. 5 Dist. 1984) a Florida court found that the land in question "serves the greatest public good if left in its natural state." In *Santa Catalina Island Conservancy v. Los Angeles*, App., 178 Cal Rptr. 708, 720 (1982) the California court noted that there was considerable public use but said that the "use" test could be satisfied simply by the fact of the land's dedication to the preservation of unique geographical features and rare plants, and that the preservation of such land "provides incalculable benefit to every member of society in an era of scarce and vanishing ecological resources."

ISSUE #2:

The Legislature, in passing an amendment to the Farm and Open Space Tax Law that specifically provides property tax reductions for nonprofit-owned conservation preserves, did not intend to signal ineligibility of otherwise qualified organizations or their lands for tax exemption under the general tax exemption statute of Title 36 M.R.S.A. Section 652(1)(A).

In the FSHT/Limington case, the Town argued, and the State Board of Property Tax Review agreed, that FSHT was ineligible for property tax exemption, in part, because of the availability of specific tax reductions under the Farm and Open Space Tax Law[15] for "the same dedicated use." (SBPTR, at p 6). The Board opined, based on a vacated Superior Court decision[16], that the availability of a statutory property tax reduction for non-profit conservation preserves, under the Farm and Open Space Tax Law, proves that the Legislature did not intend

[15] Title 36 M.R.S.A. Section 1101 *et seq.*

[16] Cushing Nature and Preservation Center v. Inhabitants of the Town of Cushing, 2001 WL 1729095 (Me. Super. May 30, 2001.

for non-profit conservation preserves to be eligible for full property tax exemption. The result of this application of a general rule of construction articulated in *Butler v Killoran*, 1998 ME 147, 714 A.2d 129, is contrary to logic in this situation, and is certainly contrary to the legislative intent of the Open Space program.

The Farm and Open Space Tax Law was amended in 1993, (P.L.1993, c. 452) to provide a percent reduction equation that favored "permanently protected," open space land. It defines as "permanently protected," land that is subject to a perpetual conservation easement or that is "an open space preserve owned and operated by a nonprofit entity in accordance with section 1109, subsection 3, paragraph H." 36 M.R.S.A. Section 1106-A(3)(A) (Supp.2000). The qualifying Section 1109(3)(H) specifies that the preserve must be owned by "a nonprofit entity committed to conservation of the property that will permanently preserve the land in its natural, scenic, or open character."

MCHT and other conservation partners worked closely with the Legislature, the Joint Standing Committee of the Legislature on Taxation, Maine Municipal Association, and the Bureau of Revenue Services, in crafting and supporting passage of these 1993 amendments to Open Space program. The Legislature included specific tax reductions for conservation preserves, at MCHT's urging, to supplement tax exemption as an option for non-profit conservation preserves. Open Space is the logical taxing regime for preserves if the land fails to meet the technical requirements of tax exemption. Along these lines, the land of an otherwise charitable institution might not be eligible for exemption for any number of reasons, such as the existence of a private right of way across the preserve reserved by the original donor (*The Nature Conservancy v. Bristol* (1978) Me., 385 A.2d 39)[17], or because buildings on the property may be subject to a reserved life estate or are leased to non-qualified renters, rendering the entire property ineligible for exemption,[18] or because the conservation organization isn't qualified for tax exempt status because it is organized in another state.[19] More often, Open Space is chosen as a courtesy to the town in recognition of some use of municipal services, or to avoid controversy with the town in the face of difficult and conflicting interpretations of the tax exemption statute.[20]

As long ago as 1996, a legislative commission, the "Commission to Study the Growth of Tax-Exempt Property in Maine's Towns, Cities, Counties and Regions", reiterated governmental recognition of the eligibility of non-profit conservation preserves for tax-exempt status. The

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[17] See also *Stanwood Wildlife Sanctuary v. Stockton Springs*, No. CV 88-77 and CV 89-144, Sup. Ct., Waldo, June 2, 1989, and July 31, 1990.
[18] See *Lewiston v. Marcotte Congregate Housing*, 673 A2d 209 (1996)
[19] Title 36 M.R.S.A. Section 652(1)(A).
[20] *See* Kirk G. Siegel, "Weighing the Costs and Benefits of Property Tax Exemption: Nonprofit Organization Land Conservation," 49 Maine Law Review, No.2, 339, 439 (1977).

Commission conducted a year-long study that resulted in a recommendation to provide towns with the option of charging mandatory service fees for tax-exempt property that uses significant municipal services.[21] This proposed law, which would have imposed rather high service fees, specifically exempted conservation preserves without building development from payment of service fees. The rationale for this special exception was that conservation preserves not only receive almost no municipal services compared to the more urban developed tax-exempt properties, they also stem the tide of rising municipal costs by reducing residential development, which is acknowledged to require a high level of costly municipal services, including schools.

ISSUE #3

Land Trusts that own nature preserves for the benefit of the general public may manage the land as farms and working forests consistent with their obligation to use the land solely for their charitable and benevolent purposes.

A very recent case from Maine's Supreme Judicial Court held that incidental use of the institution's property, conducted in furtherance of its tax-exempt purposes, will not frustrate eligibility for exemption.[22] It also set out a second category of permitted uses, which though they are not directly in aid of exempt purposes and may be commercial, are incidental and *de minimis* uses that do not interfere with the exempt purpose.[23] In the *Hebron* case, it was rental of unoccupied buildings for commercial activity. In the case of FSHT, timbering on a preserve is both incidental and in aid of the land trust's charitable purposes, and *de minimis*.

Farming and forestry are legitimate incidental uses of property dedicated to the charitable purpose of land conservation. Federal tax law recognizes four distinct categories of conservation purposes for qualified conservation contributions: "(*i) the preservation of land areas for outdoor recreation by, or education of the general public, (ii) the protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystem, (iii) the preservation of open space (including* ***farmland and forest land****)* (emphasis added), *where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State or local governmental conservation policy, and will yield a significant public benefit, or (iv) preservation of historically important land areas or a certified historic structure*." Internal Revenue Code Section 170(h)(4)(A)(i)-(iv). These are all important public purposes that often co-exist on the same property and must be integrated and balanced to maintain the integrity and public value of each feature.

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[21] *See* Roy W. Lenardson & Shirrin Blaisdell, Office of Policy and Legal Analysis, The Commission to Study the Growth of Tax-Exempt Property in Maine's Towns, Cities, Counties and Regions 7. (1996)

[22] Hebron Academy, Inc. v. Town of Hebron, Id at PP 23.

[23] Id. At PP 24, and footnote 4

In determining whether an entity is eligible for tax exempt status under federal tax law rules, IRS also applies a two- part test to discover whether the entity is both "organized" and "operated exclusively" for charitable purposes.[24] "In determining whether an organization meets the operational test, the issue is whether the particular activity undertaken by the organization is appropriately in furtherance of the organization's exempt purpose, and not whether the particular activity in and of itself would be considered charitable… The law of charity provides no basis for weighing or evaluating the objective merits of specific activities carried on in furtherance of a charitable purpose, if those activities are reasonably related to the accomplishment of the charitable purpose, and are not illegal or contrary to public policy."[25]

Many Maine land trusts own farms and woodlands as preserves. The Land for Maine's Future earmarks specific monies for farmland protection. MCHT owns and operates its Aldermere Farm program, on an exempt property in Rockport, operated in the public interest as a demonstration Belted Galloway cattle farm. Its nearby Erickson Fields, in Camden, supports a Teen-Ag program that involves community farming. FSHT has preserves on both working forests and farm land.

Most forested non-profit preserves must be managed simply to preserve the scenic, ecological, and recreational resource values for which they were protected, and most land trust owners do some timbering for this purpose, and to help support its public programs on the lands. Proceeds of sale are incidental and do not evidence a profit motive, but rather are generated from an "institutional use related to institutional necessity." (*Hebron Academy* at PP 22 and 23) Public benefit for ecological purposes and outdoor recreation depends on protecting these lands from commercial and residential *development*, but their scenic, recreational and ecological value would be quite different if they were left to grow untended, or left fallow in the case of farmland. Land trusts, whose benevolent and charitable purposes include natural resource protection, must not be rendered ineligible when they manage those working forest and farm resources responsibly, as long as there is no profit *motive*. (*Cushing*,[26] at Par.17) In fact, the exemption statute itself contemplates that some commercial activity will be engaged in by exempt organizations in its requirement at Section 652 (1)(C)(3), that "any *profits* derived from the *operation* thereof *(its exempt land)*… are devoted exclusively to the purposes for which it is organized."

[24] Treasury Regulations at Title 26 CFR 1.501(c)(3)- 1(a).
[25] IRS Revenue Ruling 80-279, 1980-2 C.B. 176
[26] Cushing Nature and Preservation Center v. Town of Cushing, 2001 ME 149, 785 A.2d 342

CONCLUSION

Maine Coast Heritage Trust wishes to encourage towns and the court, in their interpretation of the tax exempt statute, as applied to land trusts and their preserves, to consider the following:

- the broader context of Maine's nonprofit land conservation organizations,
- their long tradition of partnership with governmental conservation efforts,
- their reliance on the property tax exemption for conservation preserves,
- the advances in knowledge of the benefit to humans, even our critical dependence on, the ecological health of our earth and its natural resources, and
- the consequent need on both government and non-profit preserves for a proper and reasonable balance between public recreational use and the many other conservation purposes of high public importance.

When these factors are considered MCHT believes that towns and courts will find that land conservation is indeed a charitable and benevolent purpose, entitling otherwise-eligible land trust preserves to property tax exemption.