Upper Peninsula Land Conservancy,
Petitioner,

v

Michigamme Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 19-000636

Presiding Judge
Steven M. Bieda

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8)

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment (POJ) on June 23, 2021. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal in writing, by mail or by electronic filing, if available, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

On July 13, 2021, both Petitioner and Respondent filed exceptions to the POJ.

In its exceptions, Respondent states that while it agrees with the POJ's conclusion that the subject property is not entitled to the exemption, it disagrees with the conclusion that Petitioner is a charitable institution. This conclusion was based on the determination that Petitioner offers unrestricted access to the general public at several of its properties. However, the POJ only considered five of Petitioner's 36 properties, ignoring evidence to the contrary. Respondent contends that Petitioner has failed to carry its burden of proof that its other properties are open without restriction to the general public and has not substantiated any of its claims that its other properties are used for an educational purpose or educational events.

In its exceptions, Petitioner states that the POJ does not recognize its preservation of the subject property in its natural state, consistent with its charitable purpose, as qualifying for tax exempt status under MCL 211.7o(1). The POJ also improperly

concludes that Petitioner is not entitled to an exemption under MCL 211.7o(5) because the trail was not completed by the end of the 2020 tax year. Petitioner cites *City of Mt. Pleasant v State Tax Comm'n*[1] where the court allowed an exemption while a project was still under construction. Petitioner states that there is nothing in the statute that requires a "universal access" or "barrier free" trail and boardwalk on the subject property to secure public access. Petitioner states that the POJ's conclusion that the subject property does not qualify for exemption under MCL 211.7o(5) because neighboring property owners have greater access than the general public, lacks statutory and case law support. Petitioner has provided access to the public through two locations and enhanced walkability through the development and creation of the trail and boardwalk.

On July 27, 2021, Respondent filed a response to Petitioner's exceptions. In the response, Respondent states that Petitioner's assertion that the subject property should be independently exempt under MCL 211.7o(1) regardless of the requirements of MCL 211.7o(5), is based on the false premise that conservation property may be exempt under either subsection (1) or subsection (5). This assumption is contrary to accepted rules of statutory construction and relies on a misapplication of the relevant case law. Respondent states that "unrestricted access" is not a fabricated requirement for exemption as the requirement that charity provided at the subject property must not be restricted is well established in binding case law. Respondent further states that the west access to the subject property does not provide unrestricted public access. Although Petitioner may have begun planning the trail from Craig Lake State Park prior to the tax year at issue, the fact that the trail was not complete as of December 31, 2019, disqualifies Petitioner for the exemption for the 2020 tax year.

On July 27, 2021, Petitioner filed a response to Respondent's exceptions. In the response, Petitioner states that the POJ's determination that Petitioner is a charitable institution was proper and supported by the evidence. Respondent's exception is not based in statutory authority or support from case law and Respondent attempts to place additional evidentiary burdens and standards on Petitioner.

The Tribunal has considered the exceptions, responses, and the case file and finds that the Administrative Law Judge (ALJ) properly considered the testimony and evidence submitted in the rendering of the POJ. More specifically, regarding Respondent's objection to the POJ's determination that Petitioner is a charitable institution, the Tribunal finds the ALJ appropriately considered all of the evidence in reaching his conclusion. The evidence demonstrates that in considering Petitioner's activities as a whole, it generally offers charity to the public and that this is sufficient for purposes of determining whether Petitioner is a charitable institution. As a whole, the Tribunal finds that Petitioner satisfies the *Wexford*[2] factors to be considered a charitable institution for purposes of MCL 211.7o(5). Regarding Petitioner's contention that the POJ wrongly determined the subject property is not eligible for the exemption, the record clearly indicates that the property was not "open to all residents of this state for educational or

[1] See *City of Mt. Pleasant v State Tax Comm'n,* 447 Mich 50, 52; 729 NW2d 833 (2007).
[2] See *Wexford Med Group v City of Cadillac*, 474 Mich 192, 203; 713 NW2d 734 (2006).

recreational use"[3] by either relevant valuation date for tax years 2019 and 2020. While Petitioner states that the statute does not require "universal access" or a "barrier free" trail and boardwalk, the phrase "**open to all** residents of this state" [emphasis added] clearly indicates that the intention is to provide universal access to everyone. While neighboring property owners' access to the subject property may naturally be more readily available than that of the general public as Petitioner argues, in the instant case it is clear that the donor of the subject property and Petitioner's members have easier access than the public. While the court in *City of Mt. Pleasant* granted the exemption for property where a project was not yet complete, the facts in that case are distinguishable from this case. In *City of Mt. Pleasant*, the exemption sought was under a different section of the statute (MCL 211.7m)[4], the entity seeking the exemption was a public entity, and the land for which the exemption was sought was designated for economic development. Given the facts of this case, the Tribunal finds the subject property is not eligible for the exemption under MCL 211.7o.

Given the above, Petitioner and Respondent have failed to show good cause to justify the modifying of the POJ or the granting of a rehearing.[5] As such, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[6] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result:

Parcel Nos. 5209-305-001-00, 5209-305-001-30, 5209-305-002-00, 5209-431-004-00, 5209-432-006-00, 5209-432-007-00, 5209-432-009-00, 5209-432-010-00, 5209-432-013-00, 5209-432-014-00 are not entitled to an exemption under MCL 211.7o, for the 2019 and 2020 tax years. The properties' taxable values for the 2019 and 2020 tax years are affirmed.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(8) is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(10) is GRANTED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Final Opinion

[3] See MCL 211.7o(5).
[4] See MCL 211.7m Property owned or being acquired by county, township, city, village, school district, or political subdivision; parks.
[5] See MCL 205.762.
[6] See MCL 205.726.

and Judgment, subject to the processes of equalization.[7] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through December 31, 2021, at the rate of 4.25%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

## APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or

[7] See MCL 205.755.

personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By 

Entered: August 30, 2021
ssm

**PROOF OF SERVICE**

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk

Upper Peninsula Land Conservancy,
Petitioner,

v

Michigamme Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 19-000636

Presiding Judge
Peter M. Kopke

ORDER DENYING PETITIONER'S MOTION TO AMEND

ORDER SEVERING PETITIONER'S 2021 EXEMPTION APPEAL AND ASSIGNING IT TO MOAHR DOCKET NO. 21-002514

PROPOSED ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

PROPOSED ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8)

PROPOSED ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

PROPOSED OPINION AND JUDGMENT

## INTRODUCTION

As a result of a Prehearing Conference, the Tribunal issued a Scheduling Order on September 30, 2020, providing dates for the filing of Cross-Motions for Summary Disposition and Responses to those Motions. The parties did, however, file a Motion requesting an extension of those dates and the Tribunal enter an Order on November 25, 2020, granting the Motion. In compliance with that Order, the parties timely filed Cross-Motions on January 8, 2021, and Responses on January 29, 2021.

The Tribunal has reviewed the Motions, the Responses, and the case file and finds that denying Petitioner's Motion for Summary Disposition and granting Respondent's Motion for Summary Disposition is warranted.

## PROCEDURAL MATTER

As a preliminary matter, Petitioner filed a Motion on April 5, 2021, requesting that the Tribunal permit it to amend its Petition to include the subject properties' assessments for the 2021 tax year. In the Motion, Petitioner contends that "[t]his appeal involves issues relating to the property or properties' exemption from ad valorem taxation under MCL 211.7o(1) or, alternatively, MCL 211.7o(5)."[1]

On April 23, 2021, Respondent filed a Response to the Motion. In the Response, Respondent contends that:

a. "Despite Petitioner's title, the motion seeks to amend the pled and litigated facts for 2019 and 2020 by pleading additional facts pertinent to the use of the property during the 2021 tax year. For example, Petitioner contends that: the property is regularly visited by employees and members for conservation activities, the preserve is open to the public, and 'Petitioner's efforts with regard to the land indicate its active and purposeful engagement in using the land for public recreation that is available to the public without discrimination or restriction.'"
b. "The discovery conducted regarding the 2019 and the 2020 tax years, which are the tax years currently addressed in the pending cross-motions for summary judgment, was conducted to determine Petitioner's use of the property as of 12/31/2018 and 12/31/2019 . . . . There was no discovery conducted nor was evidence produced regarding the 2021 tax year that was included in the pending cross-motions for summary disposition, which were filed in January . . . . The

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[1] See also Petitioner's Prayer for Relief, which provides:

> WHEREFORE PETITIONER, requests that the Tribunal grant this Motion to Amend and find that the Petitioner is exempt from paying property taxes on the above-referenced parcels under MCL 211.7o(1), or, in the alternative, under MCL 211.7o(5), for 2017 and all future tax years.

Petitioner's reference to 2017 and all future tax years is, however, misleading, erroneous, and improper, as the Tribunal has no authority over the properties for the 2017 and 2018 tax years or any future tax years other than the 2019, 2020, and 2021 tax years. In that regard, the Tribunal entered a decision in MOAHR Docket No. 17-003964 addressing the properties' exemption status for the 2017 and 2018 tax years that was affirmed by the Michigan Court of Appeals in *Upper Peninsula Land Conservancy v Michigamme Township*, unpublished opinion *per curiam*, issued on June 11, 2020 (Docket No. 349492). Further, MCL 205.737(5)(a) provides, in pertinent part, "[i]f the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation, the appeal for each subsequent year **for which an assessment has been established** shall be added automatically to the petition." [Emphasis added.] As such, the Tribunal's authority is limited to the properties' exemption status for the 2019, 2020, and 2021 tax years or, in this case, the 2019 and 2020 tax years given the severing of Petitioner's exemption appeal for the 2021 tax year, as indicated herein.

Tribunal lacks the information necessary to determine whether Petitioner's use of the property qualifies for the exemption for tax year 2021."

c. "Granting Petitioner's motion to amend to add the 2021 tax year would severely prejudice Respondent because both the discovery period and time for the filing of briefs has already passed. Respondent lacks the ability to conduct discovery pertaining to the 2021 tax year and is precluded from responding to the new facts introduced in Petitioner's Motion to Amend."

The Tribunal has reviewed the Motion, the Response, and the case file and finds that the Motion is moot, as the properties' assessments or, more specifically, exemption status for the 2021 tax year was pending at the time the Motion was filed (i.e., "added automatically"), as the Petition was properly pending, and those assessments were established by Respondent's 2021 March Board of Review. Nevertheless, Respondent would, given the lack of discovery, be prejudiced by the consideration of Petitioner's exemption appeal for the 2021 tax year in this case. As such, the severing and assignment of a new docket number to Petitioner's exemption appeal for the 2021 tax year would not only address said prejudice, but also facilitate the efficient administration of justice. Therefore,

IT IS ORDERED that Petitioner's Motion to Amend to include the 2021 tax year is DENIED.

IT IS FURTHER ORDERED that Petitioner's exemption appeal for the 2021 tax year shall be SEVERED and assigned to MOAHR Docket No. 21-002514.

IT IS FURTHER ORDERED that Petitioner shall, **within 21 days of the entry of this Order**, file a Petition addressing Petitioner's exemption appeal for the 2021 tax year. The petition shall note the docket number assigned by the Tribunal for the 2021 tax year and, **if filed utilizing the Tribunal's e-filing system**, must be filed on the assigned to the 2021 docket as a "Severed Petition." There is no fee for the filing of this Petition, given the filing of the Motion to Amend and the payment of the fee required for the filing of that Motion. Failure to comply with this Order may result in dismissal of the appeal for the 2021 tax year.[2]

[2] See TTR 231(1) and (4). See also See *Grimm v Department of Treasury,* 291 Mich App 140; 810 NW2d 65 (2010) citing *Vicencio v Jaime Ramirez, MD, PC.,* 211 Mich App 501; 536 NW2d 280 (1995) and MCL 205.732(c).

## PETITIONER'S CONTENTIONS

With respect to the Motion for Summary Disposition, Petitioner claims, in its Motion, that the subject properties (the "the Indian Lake Preserve" or "Preserve") is owned by Petitioner and entitled to a tax exemption under MCL 211.7o(1) and 211.70(5) for the 2019 and 2020 tax years. Petitioner also claims:

1. "The Preserve protects the headwaters of the Peshekee River, the source of freshwater that thousands of people depend on for healthy drinking water, clean fish to eat, safe recreation of many kinds, and its waters provide clean water for healthy forest ecosystems . . . . The Preserve also provides a remarkable recreational and biological asset open to the public in a rural Upper Peninsula setting . . . . The [P]reserve is 635 acres of pristine, archetypal Michigamme Highlands wilderness with incredibly diverse habitat ranges and is home to a healthy moose population, black bears, eagles, loons and wolves."
2. Petitioner "meets the definition of a charitable institution for purposes of" MCL 211.7o(1) and 211.7o(5). In that regard, Petitioner "is a recognized 501(c)(3) charitable organization that is responsible for preserving and protecting over 6,000 acres of land either by conservation easement or direct ownership of preserves and reserves."
3. Petitioner "performs educational programs or outings each year and maintains an educational partnership with both Michigan Technological and Northern Michigan Universities."
4. Petitioner "does not charge for its events or for people to access its preserves and provides its services without discrimination."
5. "Any member of the public has access to events and preserves, and [Petitioner] welcomes efforts by all persons within its service area to preserve and protect natural resources."
6. "A previous appeal for the 2017-2018 tax years was denied primarily due to a lack of sufficient public access to the property."
7. Petitioner "has remedied this deficiency by developing a western access trailhead, trail and parking area allowing any person to get to the preserve through Craig Lake State Park."
8. "The State of Michigan has expressly recognized that the West Access and the inclusion of the Preserve into the State's existing trial system for the area 'lessens the burdens of government.'"
9. "The Preserve performs an important ecological function as the headwaters of the Peshekee River as well as significant habitat for plants and wildlife."
10. "Preserving the land in its natural state for its ecological benefits is consistent with [Petitioner's] charitable mission."

In its Response to Respondent's Motion for Summary Disposition, Petitioner claims that:

1. "Avoiding repetition, [Petitioner] incorporates the statement of facts in its summary disposition brief by reference. However, [Petitioner] highlights below the facts presented in the affidavits accompanying this response. The affidavits are provided to refute the Township's contention that [Petitioner] is not a charitable institution and does not provide sufficient access to the Peshekee Headwaters Preserve. A summary of the testimony and its purpose is as follows."
2. "Darcy Ruthkowski, the former Executive Director and Project Manager for the Upper Peninsula Resources Conservation and Development Council, describes how the [Petitioner] partnered with her organization to obtain a large grant from the U.S. Fish and Wildlife Service. By offering the Peshekee Headwaters property as a donation, [Petitioner] assumed the Michigan DNR's obligation to provide the final matching value required for the grant. [Ex. 16, Affidavit of Darcy Rutkowski]"
3. "Neil Marzella, the former legal counsel, director, and secretary/treasurer for Forest for the Future (FFF), explains how [Petitioner] has assumed and carried on FFF's charitable work after FFF's dissolution. FFF's mission was the preservation of hardwood forests and sustainable forest management practice. When FFF realized land management had become too difficult for its volunteers and that it needed to transfer properties to other nonprofits, it found [Petitioner]. After a thorough vetting, FFF transferred some properties to [Petitioner] for continued protection. The Attorney General approved these transfers and ensured the [Petitioner] was a proper nonprofit to protect the lands. [Ex. 17, Affidavit of Neil Marzella]"
4. "Elise Desjarlais, Coordinator for the Lake to Lake Cooperative Invasive Species Management Area, explains her organization's partnership with [Petitioner]. CISMA has monitored the Peshekee Headwaters Nature Preserve and identifies it as some of the most pristine intact environments in their service area. The partnership prevents invasive species from degrading the ecosystem through monitoring and removing invasive species. [Ex.18, Affidavit of Elise Desjarlais]"
5. "Jeffrey Towner, current chairman of the Laughing Whitefish Chapter of the Audubon Society in Marquette and Alger Counties, provides insight into the ecological values of the Preserve. He explains that the Peshekee Headwaters Nature Preserve provides essential ecosystem habitat for the feeding, breeding, and sheltering of many bird species. He states that members of his society use and wish to continue to use the preserves of [Petitioner], including the Peshekee Headwaters area to observe and enjoy birds. [Ex. 19, Affidavit of Jeffrey Towner]"
6. "Mark Salo has done forestry work since 1996. He has previously worked for Forest For Future and eventually with [Petitioner]. He reiterates that the lands

owned by [Petitioner] are open to the public, and some open for public hunting and fishing. [Ex. 20, Affidavit of Mark Salo]"

7. "Lori Hauswirth is the Executive Director of Noquemanon Trails Network Council located in Marquette. She states that [Petitioner] has made public access and education key in connecting the public with natural areas but has also made sure to adhere to its conservation mission. [Petitioner] has partnered to help expand access through trail development. [Petitioner] also helped to connect the public to nature during the pandemic with NTN and Travel Marquette. [Ex. 32, Affidavit of Lori Hauswirth]"
8. "Jon L Saari, A [Petitioner] board member, states that the list of public users will be different for each preserve, depending on location, size, and specific landforms. But the intent is the same: to protect the conservation values of the land into the indefinite future, for the benefit of future generations. [Ex. 33, Affidavit of Jon Saari]"
9. "Leo Lopez testified about his volunteer work with [Petitioner] for a class project, mapping out mobile-friendly trails on the Peshekee Peserve so that the public can see the trail locations and get the status of trail conditions directly on their phones. [Ex. 21, Affidavit of Leo Lopez]"
10. "Lynnae Branham, founder and previous President of NMU Conservation Crew, discusses how her student group and local residents help maintain and keep clear [Petitioner's] trails. [Ex. 22, Affidavit of Lynnae Branham]"
11. "Peter Bosma is an instructor with the Outdoor Recreational Leadership and Management program at Northern Michigan University. He has used [Petitioner's] properties to assist his instruction in two of his courses. He is also aware of another professor using [Petitioner] properties for class. He finds having access to a close preserve beneficial to teach students about local ecology, the benefits of community green space, and local land management. The property also helps students practice their skills of teaching outdoors. [Ex. 23, Affidavit of Peter Bosma]"
12. "Elise Oswald is a former Stewardship Intern at [Petitioner]. She interned from May 2019 to August 2019. During her time with [Petitioner], she monitored the Peshekee Headwaters Nature Preserve and assisted in mapping out and establishing the trail network. She feels her time at [Petitioner] made her part of the goal of protecting land for future generations to use and enjoy. [Ex. 24, Affidavit of Elise Oswald]"
13. "Marc LaBeau is the Board Chair for the [Petitioner]. He explains that typically, [Petitioner] hosts at least 12 educational events each year on its preserves. Like many organizations, [Petitioner] has had to suspend or convert many of its events this past year due to the pandemic. The Conservancy promotes events through local media outlets like the local paper called the Mining Journal, emails, and social media. [Petitioner] events are free to the public, and all are welcomed and encouraged to participate. [Petitioner] maintains insurance on its preserves because they are open to the public to protect against any potential liability. [Ex. 25, Affidavit of Marc LaBeau]"

14. "Jennifer Hill is an environmental planner and educator. She has participated in [Petitioner's] educational programs every year since 2014 and she explains the importance of outdoor education. [Ex 30, Affidavit of Jennifer Hill]"
15. "Brock Robinson is a member of the Board of Directors for [Petitioner]. Because the East Access was difficult to use, the organization acquired a parcel to connect the Peshekee Headwaters Nature Preserve to the Craig Lake State Park by trail. The Michigan DNR indicated an interest in a joint trail project but could not move forward until warmer weather when the DNR staff could inspect the location. The Michigan DNR granted the permit in late October 2019, effective August 2019. [Petitioner] was ready with the trail location flagged on the State Park and already cleared on the preserve property. [Petitioner] could not clear the CLSP portion until it received the DNR permit. In late November 2019, [Petitioner] organized a trail development work session, clearing the entire trail connection and posting preliminary signage. To help visitors navigate the trail, he installed a temporary kiosk at the trailhead in mid-July 2020. To complete the trail, [Petitioner] needed a special permit to build a boardwalk in the wetland area. EGLE issued the permit on July 22, 2020. On August 12, 2020, volunteers built the boardwalk. On October 27, 2020, he installed a permanent kiosk at the trailhead and permanent signs along the trail. [Ex. 26, Affidavit of Brock Robinson]
16. Johnny Weting, a [Petitioner] volunteer, explains how he helped develop and maintain trails for the Peshekee Headwaters Nature Preserve and design the Preserve boardwalk. The boardwalk makes it easier for visitors to walk through the bog and protects the ecologically sensitive area. [Ex. 27, Affidavit of Johnny Weting]."

## RESPONDENT'S CONTENTIONS

In its Motion, Respondent claims that Petitioner "seeks a charitable exemption under MCL 211.7o(1) and (5) for 10 parcels of land on Indian Lake in Michigamme Township." Respondent also claims that:

1. In the 2017 Case, the Tribunal dismissed [Petitioner's] appeal on the grounds that [Petitioner] was not a 'nonprofit charitable institution' under the Michigan Supreme Court's definition of that term in *Wexford Medical Group v Cadillac*, 474 Mich 192; 713 NW2d 734 (2006). Specifically, the Tribunal held that [Petitioner] does not provide any 'charitable gift to the general public without restriction or for the benefit of an indefinite number of persons' and that

'Petitioner's property, as noted above, is not open to the public, nor does Petitioner qualify as a nonprofit charitable institution.'"[3]

2. "Deposition testimony of [Petitioner's] Executive Director and documents produced in discovery demonstrate that [Petitioner] is still not a 'charitable institution' as required by MCL 211.7o(1) and that access to the Subject Property remains restricted and is therefore not 'open to all residents of this state' as required by MCL 211.7o(5)."
3. Petitioner "acquired the Subject Property through a donation on December 29, 2014, from Mark Murphy through his single-member LLC, Peshekee Headwaters, LLC. Mr. Murphy excluded from the donation his personal lodge on Indian Lake and reserved easement rights to the donated land. Other neighboring landowners also enjoy unrestricted access to the Property. Murphy is the only person, other than UPLC, with frontage on the lake that enjoys unrestricted free access to the entire lake frontage and all lands surrounding the lake."
4. "Few of Mr. Murphy's and the neighboring landowners' access privileges are extended to the public. There is no evidence of any member of the public engaging in any recreational activity on the Property. (Deposition of Andrea Denham, Exhibit E, pages 94-95; UPLC Occupancy Logs, Exhibit F). There is no handicap access that complies with ADA standards. (Petitioner's Responses to Respondent's First Pre-Valuation Discovery, Exhibit G, page 18). There is no legally permissible public parking along the private two-track road leading to the Property. (Exhibit E, at 82-86)."
5. "During the tax years at issue, access to the Property is exclusively by a single private, two-track road off of the Peshekee Grade/Highway 607 (the 'Peshekee Grade'), that cuts through the property at two points, both of which are gated and locked. (Exhibit G, pages 7-8). The adjacent landowners enjoy unrestricted access to the Property and control the locks preventing public access to the Property along the private road off of County Road 607. To the public, the gates remain locked, except to allow approved guests to visit the property for scheduled events. Even while events are ongoing, the gates are immediately locked to prevent access to any other than those specifically approved in advance to enter the property for the scheduled event."[4]

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[3] As correctly indicated by Respondent, "[t]he Tribunal's decision was affirmed by the Michigan Court of Appeals, which held that [Petitioner] did not qualify as a charitable institution because 'the subject property was not used or offered for the benefit of the general public or an indefinite number of persons.'"

[4] In that regard, Respondent also claims that:

> "The subject property is **entirely surrounded by privately-owned property**. (Exhibit H, Affidavit of William Seppanen.) There is **no** public roadway that provides access to the property. The only road access to the property is from County Road 607, where visitors must turn onto an unmarked, private, two-track road. According to UPLC's website as it existed on March 25, 2020, this two[-]track road is **not** maintained year[-]round. (Exhibit I, at p. 9). There are **no signs** along County Road 607 or the two[-]track road itself advising the public that this private road leads to the Preserve. Exhibit J, Affidavit of Jacqueline

6. "The relevant facts pertaining to the public's ability to access the Property via the Peshekee Grade/County Road 607 have not changed in since the Tribunal and Court of Appeals found that the two[-]track road is restricted and benefits only [Petitioner's] members and neighboring landowners. The private road remains unmarked and locked gates still prohibit the public from accessing the Property using the private road. Unlike the public, Mr. Murphy and the other neighboring landowners are still able to bypass the locked gate without first obtaining permission or assistance from [Petitioner]."
7. Petitioner "claims that the public may access the Property by hiking along a trail that begins in Craig Lake State Park. As of the tax dates relevant to this appeal, the public could not access the Property via the Craig Lake State Park trail."
8. "According to the testimony of [Petitioner's] Executive Director at her deposition on June 16, 2020, the trail was not completed by the tax date for either the 2019 or 2020 tax years. While [Petitioner's] answers to discovery requests indicate that the trail from Craig Lake State Park was available to the public in August[] 2019, other documents submitted prove that the trail was not completed in 2019. First, Petitioner entered into an agreement with the Michigan DNR to install the trail on October 22, 2019. (Exhibit K, Operating Agreement, page 10.) The Operating Agreement was signed on October 22, 2019 but leases state land for [Petitioner's] use as of August[] 2019. [Petitioner's] own 2019 occupancy logs show that UPLC was still obtaining volunteer help to clear the trails through at least November[] 2019. [Petitioner's] Executive Director testified that the trail had been partially completed in 2019 except that a boardwalk still needed to be constructed over a marshy area of the trail."
9. "In June[] 2020, the Michigamme Township Supervisor and Assessor attempted to access the Preserve by hiking the trail from Craig Lake State Park to the Preserve. Upon entering Craig Lake State Park, the Assessor observed no signs, directions, or other indications as to how a member of the public could access the Property from the Park. A recreational passport, and therefore a fee, is required for entry into the state park. While there were no signs directing her to the trailhead leading to the Property, the Assessor was able to use a map to find the trailhead, which is located over 5 miles from the park entrance along an access road within the Park. Upon reaching the trailhead, the Assessor noted very little parking. The trail itself was rough, with fallen trees blocking the path and with areas with no apparent cleared path. Less than a half mile from the trailhead, the trail reaches a swampy wetland where no boardwalk had yet been constructed although a sign indicated that a boardwalk would be constructed sometime in the future. The Assessor attempted to follow the trail through the wetland[,] but the terrain became impassable approximately 0.6 miles from the trailhead where flags seemed to

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Solomon. This method of access is **also barred** by a locked gate **and** '**no** trespassing' signs." [Emphasis added.]

indicate that visitors should traverse a large fallen tree and continue through thick ferns approximately waist-height. On the return trip, the Assessor had even more difficulty following the trail because the trail markers, which included ribbons tied to trees, spray-painted spots on trees, and small directional signs posted to trees, were often not visible as they were not posted on both sides of the trees. Due to the rough and incomplete nature of the trail, the Assessor and Supervisor were unable to reach the Property by hiking the trail from Craig Lake State Park."

10. "While [Petitioner] opened the Property for a single class project at the request of a Michigan Technological University professor, this constitutes the sole educational use of the Property during the tax years at issue in this appeal. Apart from the 'public' events described above and in [Petitioner's] occupancy logs, [Petitioner] has not provided any other evidence of programs or educational opportunities open to the public and was unable to provide information as to whether any member of the public actually attempted to visit the Preserve by hiking around the locked gates, calling ahead to make arrangements for [Petitioner] to unlock the gates, or by hiking to the Preserve from Craig Lake State Park. [Petitioner] does not work with the Michigan DNR to host educational events at the Preserve. Together, these facts are materially indistinguishable from the facts considered by the Tribunal and the Court of Appeals in the 2017 Case."[5]

In its Response to Petitioner's Motion, Respondent claims that:

1. "According to Petitioner," the Tribunal is required "to consider [Petitioner's] actions and activities at its other properties to determine whether the Subject Property qualifies for exemption. Brief, at 10-11."
2. "The general provision of [MCL 211.7o](1) exempting property owned and occupied by a charitable institution 'embraces' matters included in the specific provision of [MCL 211.7o](5). Therefore, Subsection (5) controls and merely meeting the requirements of the general Subsection (1) is insufficient to exempt real property owned by a qualified conservation organization for conservation purposes. Both Subsection (1) and (5) are property[]specific. They require that the real property [be]: (a) held for conservation purposes, and (b) open to the public for educational or recreational use. Petitioner's activities at other properties are irrelevant to whether the Subject Property is eligible for exemption under MCL 211.7o(5)."[6]

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[5] As for Petitioner's "public" events, Respondent also claims that:

> "The number of events is similar in 2019, when the Property lists **eight total events, with three events listed as being open to the public**. Aside from [Petitioner's] members, Mark Murphy and his 'friends,' only five members of the public attended events at the Property during 2019. Two of the three public events in 2019 involved trail building work to connect the Property to Craig Lake State Park." [Emphasis added.]

[6] In support of this claim, Respondent also states that:

3. "Even if Petitioner's activities at its other properties could qualify it as a 'charitable institution' for purposes of the Subject Property's exemption from tax, Petitioner has failed to demonstrate that its operation of other properties qualifies Petitioner as a charitable institution. Petitioner merely states, without

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1. "Relying on language used by Michigan courts in *Wexford* and *Baruch SLS, Inc v Tittabawassee Twp*, 500 Mich 345, 352-353; 901 NW2d 843 (2017), Petitioner contends that the Subject Property's eligibility for the exemption under MCL 211.7o requires an analysis of Petitioner's other properties; that is, according to Petitioner's if its activities at other properties, 'as a whole' qualify for the exemption, then any property Petitioner owns is exempt. Brief, at 10. **Petitioner argues that exempt properties in other taxing jurisdictions exempt the subject property regardless of the particular facts relevant to the subject property**." [Emphasis added.]
2. "Though Petitioner cites to *Baruch* as support for this proposition, Petitioner has materially altered the language of *Wexford* and *Baruch* from 'it is improper to focus on one particular facet or activity' to: it is improper to 'focus[] on one aspect or property owned by the organization.' Brief, at 10 (emphasis added). The facts of the cases cited by Petitioner undermine Petitioner's argument."
3. "In concluding that petitioner's operation of its medical clinic in the City of Cadillac as a whole qualified petitioner as a charitable institution, the Court [in *Wexford*] considered several predecessor cases that support the notion that the charitable exemption is property-specific. *Michigan Sanitarium & Benevolent Ass'n v Battle Creek*, 138 Mich 676; 101 NW 855 (1904) (finding that the petitioner was 'charitable hospital' due to its operation of the hospital at issue); *Auditor General v R B Smith Mem Hosp Ass'n*, 293 Mich 36, 38; 291 NW 213 (1940) ('The determination of the exemption in a particular case seems to depend . . . upon two things: First, whether the organization claiming the exemption is a charitable one; and, second, whether the property on which the exemption is claimed is being devoted to charitable purposes[]')[.]"
4. "Two cases cited by the Michigan Supreme Court in *Wexford* are particularly instructive to the instant case because they involve multiple properties owned by a single petitioner. In *Michigan Baptist Homes & Dev Co v City of Ann Arbor*, 396 Mich 660, 671, 674; 242 NW2d 749 (1976) the Court found that, where the petitioner owned and operated two nursing homes, one could be eligible for tax-exempt status while the other could not depending on the operation of each specific nursing home. Similarly, in *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 343, 346; 330 NW2d 682 (1982), the Michigan Supreme Court held that a petitioner's operation as a charitable institution with respect to a nursing home and home for the aged did not entitle petitioner's operation of an apartment building to the same exemption merely by its association with the tax-exempt property. Instead, the Court held that the apartment complex needed to be examined separately. *Id* at 346."
5. "Petitioner is correct that *Wexford* requires an analysis of the organization's activities 'as a whole' but is incorrect that 'as a whole' refers to the way that Petitioner operates its other properties. **As the cases above demonstrate**, whether Petitioner's ownership of the Subject Property qualifies for tax exemption under MCL 211.7o(5) **depends on Petitioner's entire activities at the Subject Property, not on Petitioner's activities elsewhere in the state**. The *Wexford* Court's endorsement of its conclusions in *Retirement Homes of the Detroit Annual Conference*, *supra*, shows that a petitioner may operate some properties in a way that qualifies the petitioner as a 'charitable institution,' but such activities do not support a finding that a petitioner's activities at a different property qualify that property for the charitable exemption. **Rather, each property must be analyzed separately according to its specific use**. *Retirement Homes of the Detroit Annual Conference*, *supra*, at 346." [Emphasis added.]

evidentiary support, that its maintenance of other properties qualifies it as a charitable institution."[7]

4. "Not only does Petitioner fail to provide any support for its statements regarding its activities at other properties, **documents provided in discovery undermine Petitioner's status as a charitable institution**. Many of Petitioner's other preserve properties suffer from the same critical ailment afflicting the Property at issue: while Petitioner asserts that they are 'open to the public,' **they are not open to the public without restriction**. **The public is unable to access the properties or, like the Subject Property, is actively discouraged from doing so**. On September 15, 2020, Petitioner provided its Third Supplemental Discovery Responses to Respondent, which contained Management Reports and Monitoring Reports for some, but not all, of Petitioner's other preserve properties that Petitioner appears to reference in its Brief. **These Management Reports and Monitoring Reports indicate that at least 12 of Petitioner's properties contain no signage referencing the fact that the properties are held for public recreation or owned by Petitioner. Aside from the subject property, at least two other properties feature 'No Trespassing' signs, while another features a 'private property' sign discouraging public access**. Apart from signage, **Petitioner's reports specifically state that at least eleven of Petitioner's properties contain no legal means by which the public can access the property: some properties are completely surrounded by private land,**

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[7] In support of this claim, Respondent also states that:

1. "Petitioner raised this same argument (that its activities as a whole support a finding that Petitioner is a charitable institution) to the Michigan Court of Appeals in its appeal of the Subject Property's tax[-]exempt status for tax years 2017 and 2018 (the '2017 Case'). As support, Petitioner contended that its Articles of Incorporation, Bylaws, and newsletter, which were submitted to the Tax Tribunal, demonstrated its corporate activities. While the Court of Appeals found that Petitioner failed to clearly present this argument to the Tax Tribunal, it indicated that these documents alone may have been insufficient:

   > Although the tax tribunal did not focus on the few pieces of evidence relating to [Petitioner's] larger role as an organization, petitioner, in turn, did not highlight this evidence to make the specific argument it raised in its motion for reconsideration. COA Op., p.4."

2. "Here, Petitioner has relied on nearly the exact same evidence, namely, its Articles of Incorporation and Bylaws. The only material changes to the evidence presented in support of Petitioner's argument here are screenshots from Petitioner's website (taken as of January 8, 2021, after the tax dates at issue), and Petitioner's accreditation by the Land Trust Alliance. In addition, Petitioner generally refers to the deposition testimony of its Executive Director, who also testified that she had not visited several of Petitioner's other properties.
3. The evidence that Petitioner has presented is largely the same evidence that it presented to the Tribunal and Court of Appeals in the 2017 Case, where the court held that Petitioner failed to demonstrate that it was a charitable institution under Wexford. The same evidence presented by the same Petitioner involving the same Property should result in the same conclusion: Petitioner has failed to demonstrate that it is a charitable institution."

**some require the public to obtain permission from the landowner to access the property, some may only be accessed seasonally, and others are not accessible by vehicle at all**. **Like the subject property**, another property requires the public to navigate around a locked gate maintained by that property's donor and walk approximately one[-]half mile over the donor's private property to reach the preserve. Aside from the subject, four of Petitioner's properties block public access with locked gates. Finally, one of Petitioner's properties is expressly held for private club members only and, according to the property's deed: 'the property shall not be available to the general public.'" [Emphasis added.]

5. "Petitioner's management of these properties shows that, as a whole, no charitable gift is provided to the general public without restriction. Brief, at 14. **Petitioner maintains its lands primarily for the benefit of its donors, not the general public**. Indeed, the subject property is **not** the only property where the donor enjoys unrestricted access while the public is actively restricted from entering. The Vielmetti-Peters property tells a similar story: public access is restricted by a locked gate maintained by the donor; the public must hike over private property to reach the preserve; and, perhaps most telling, the donor retains the right to hunt, trap, and fish on the Vielmetti-Peters preserve and controls public outreach and activities that may occur at the property, while the general public must first seek written permission to hunt, trap, or fish. **At the Subject Property, Petitioner has been unwilling to erect signage along the Peshekee Grade for fear of 'agitating' the neighboring landowners, who do not want the public to enjoy unrestricted access to the Subject**." [Emphasis added.]
6. These facts emphasize that Petitioner's use of both the Subject Property and its other "preserve" properties serve the interests of donors and neighboring landowners over the interests of the general public. Not only do donors and landowners receive access and use benefits not available to the general public, but donors receive a substantial income tax deduction under IRC §170, which may be carried forward for up to five years. IRC §170(b)(D)(ii). Similarly, Petitioner, as a nonprofit organization, avoids income tax liability relating to the donated properties; importantly, however, nonprofit organizations are required to pay income tax on its non-exempt activities under IRC §511, which imposes a tax on nonprofit organizations for 'unrelated business taxable income.' IRC §511(a). Petitioner's broad legal interpretation eviscerates the distinction between taxable activities and nontaxable activities. Through Petitioner then, landowners are able to donate their land, receive income tax deductions for their donation, and avoid paying property taxes on the land, all the while continuing to enjoy the privacy that comes with private land ownership. The tax avoidance plan benefits only the donors, a benefit that far exceed any 'nominal' benefit to the public."
7. "Both the Tribunal and the Court of Appeals recognized that the public's inability to freely access the Subject Property was a restriction and resulted in the Property not being a charitable gift to an indefinite number of person. In its

Brief, Petitioner claims that restrictions are reasonable for conservation lands with reliance on *Pierce v Baltimore Twp*, unpublished, COA Docket No. 247422 (November 2, 2004). Brief, at 13-14. While Petitioner is correct that a 'reasonable restriction that is implemented to further a charitable goal . . . is acceptable,' Petitioner has **not** offered any explanation as to how the access restrictions present at the Subject Property and its other preserves furthers Petitioner's charitable goals. Brief, at 13-14 (citing Baruch SLS, Inc v Tittabawassee Twp, 500 Mich 345, 360; 901 NW2d 843, 852 (2017)). **In fact, the restrictions imposed on the public's ability to access both the Subject Property and several of Petitioner's other properties are expressly contrary to Petitioner's stated charitable goals, which, as noted by Petitioner, include 'outdoor recreation by the general public.'** Brief, at 9 (citing Petitioner's Articles of Incorporation). **Restricting public access while allowing unfettered access for donors and neighboring landowners cannot further Petitioner's stated charitable goal of providing outdoor recreation to the general public, nor can such restrictions be construed as rationally related to that goal**. Petitioner makes no attempt to reconcile this dichotomy." [Emphasis added.]

8. ". . . Petitioner's contention that it is accredited by the Land Trust Alliance is **not** relevant to whether Petitioner meets the *Wexford* six-factor test or whether the Subject Property qualifies for the exemption in MCL 211.7o(1) and (5). **The Land Trust Alliance maintains no standards related to public access**." [Emphasis added.]
9. "The tax years at issue in this appeal are 2019 and 2020. The relevant tax dates are December 31, 2018 and December 31, 2019. Whether the Property qualifies for the exemption, therefore, depends on whether the Property was open to the public without restriction as of 12/31/2018 and 12/31/2019. **Petitioner first entered into its Agreement with the Michigan DNR to construct the trail in November[] 2019**, **although the Agreement was back-dated to August, 2019**. **No work even began on constructing the trail until the October or November of 2019**. **In June[] 2020, after the tax dates, the boardwalk through a swampy wetland portion of the trail was not yet constructed and the trail was not cut into the ground or visibly identifiable in several places**. **In June[] 2020, there was no signage within Craig Lake State Park leading to the trail, only temporary signage existed at the trailhead; signage on the trail itself was minimal and difficult to ascertain. This evidence remains undisputed**."[8] [Emphasis added.]

[8] In support of this claim, Respondent also states that:

> "In the 2017 Case, the Court of Appeals explicitly stated that Petitioner's plans to build a trail in the future are irrelevant to its exempt status in previous tax years:
>
> > 'Petitioner notes that there was evidence that it was planning on expanding the public's access to the property. However, as the tax tribunal severed the 2019

10. "Even if the trail had been completed as of the tax dates at issue, it still would **not** cure the access restrictions noted by the Tribunal and the Court of Appeals. First, **the trail is not handicapped or ADA-accessible**. Second, **the trail is approximately one and a half miles long**. The Tribunal and Court of Appeals **already found** that the 'East Access' from the Peshekee Grade, which required visitors to walk approximately the same distance to reach the Subject Property did **not** satisfy the requirement that the Property be open to the general public without restriction. **For the same reasons,** requiring visitors to pay to access Craig Lake State Park, drive over five miles to the trailhead, and then hike approximately a mile and a half over rough terrain does **not** result in open access without restriction. **Even with the trail**, the Subject Property is **completely inaccessible** for those that are handicapped**.** The donor and neighboring landowners do **not** need to pay to access the property **and don't** have to hike a mile and a half from Craig Lake State Park. The general public does. These restrictions are **not** rationally related to Petitioner's stated charitable purpose of outdoor recreation by the general public. **They hinder that purpose and exist solely to appease the donor and neighboring landowners**. **Even with the trail**, which was **not** completed as of the tax dates, the Subject Property is still **not** open to the public without restriction and therefore cannot provide its benefit to an indefinite number of persons." [Emphasis added.]

## STANDARD OF REVIEW

As for the Tribunal's review of the instant Motions, there are no specific Tribunal rules governing motions for summary disposition. Thus, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[9]

With respect to the instant Motions, Petitioner moves for summary disposition under MCR 2.116(C)(10), and Respondent moves for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10).

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> tax year from the decision before us to review, we need not consider any potential impact these improvements will have on its ability to claim the tax exemption in the future. Although petitioner's expansion of the property to allow a public road access would help with these issues, it did not resolve them during the 2017 and 2018 tax years.' COA Op., p.7-8.
>
> This same reasoning applies to the facts of the current case. Petitioner's plans to construct a trail from Craig Lake State Park to the Subject Property and its actions after the tax dates at issue are irrelevant to whether the Subject Property is eligible for the exemption for the 2019 and 2020 tax years."

[9] See TTR 215.

A. *Motions for Summary Disposition under MCR 2.116(C)(8)*.

MCR 2.116(C)(8) provides for summary disposition when "the opposing party has failed to state a claim on which relief can be granted."[10] A motion under this rule "tests the legal sufficiency of the complaint" and "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant."[11] Such motions *"*may be granted **only** where the claims alleged are 'so **clearly unenforceable as a matter of law** that **no** factual development could possibly justify recovery."[12] [Emphasis added.] Further, "when deciding a motion brought under this section, a court considers **only** the pleadings."[13] [Emphasis added.]

B. *Motions for Summary Disposition under MCR 2.116(C)(10)*.

With respect to summary disposition under MCR 2.116(C)(10), such motions test the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.[14] Additionally, it has also been held that: (i) a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party,[15] (ii) the moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider and,[16] (iii) the burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists, (iv) where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material

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[10] See *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).
[11] *Id* (citations omitted).
[12] *Id* (citations omitted).
[13] *Id* (citations omitted).
[14] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). See also *Maiden*, *supra* at 120.
[15] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[16] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

fact exists,[17] and (v) if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[18]

## CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's Motion under MCR 2.116(C)(10) and Respondent's Motion under MCR 2.116 (C)(8) and (10) and finds that denying Petitioner's Motion and granting Respondent's Motion under MCR 2.116(C)(10) is, as indicated above, warranted. As for Respondent's Motion under MCR 2.116(C)(8), that Motion must also be denied, as Petitioner did state a claim on which relief could have been granted, if appropriate.

With respect to the Motions under MCR 2.116(C)(10), this is the second case involving the same requested exemption for the same properties. Previously, the Tribunal considered whether the properties were exempt for the 2017 and 2018 tax years and severed the 2019 tax year. In that case, the Tribunal concluded that the property was not, as indicated above, entitled to the requested exemptions for the 2017 and 2018 tax years and that decision was, as also indicated above, affirmed by the Michigan Court of Appeals. As for the instant case, the Tribunal granted Petitioner's Motion to Amend to add the properties' assessment for the 2020 tax year on June 30, 2020, even though that Motion should have been denied as moot, as discussed above.

More importantly, Petitioner claims that the subject property is tax-exempt under MCL 211.7o(1) and (5). A taxpayer must, however, satisfy three elements to be entitled to a charitable institution exemption under MCL 211.7o(1):

> (1) The real estate must be **owned and occupied** by the exemption claimant;
> (2) the exemption claimant must be a **nonprofit charitable institution**; and
> (3) the exemption exists **only when** the buildings and other property thereon are occupied by the claimant **solely for the purposes for which it was incorporated**.[19] [Emphasis added.]

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[17] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[18] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).
[19] See *Wexford Med Group v City of Cadillac*, 474 Mich 192, 203; 713 NW2d 734 (2006).

With respect to the first element, there is no dispute that Petitioner owns the subject properties. As for the second element, the requirement that the claimant be a charitable institution overlaps with the requirements of MCL 211.7o(5), which provides:

> (5) Real property owned by a qualified conservation organization that is **held for conservation purposes and** that is **open to all residents of this state for educational or recreational use**, including, but not limited to, low-impact, nondestructive activities such as hiking, bird watching, cross-country skiing, or snowshoeing is exempt from the collection of taxes under this act. As used in this subsection, "qualified conservation organization" means a **nonprofit charitable institution** or a charitable trust **that meets all of the following conditions**:
> (a) Is organized or established, as reflected in its articles of incorporation or trust documents, for the purpose of acquiring, maintaining, and protecting nature sanctuaries, nature preserves, and natural areas in this state, that predominantly contain natural habitat for fish, wildlife, and plants.
> (b) Is required under its articles of incorporation, bylaws, or trust documents to hold in perpetuity property acquired for the purposes described in subdivision (a) unless both of the following conditions are satisfied:
> (i) That property is no longer suitable for the purposes described in subdivision (a).
> (ii) The sale of the property is approved by a majority vote of the members or trustees.
> (c) Its articles of incorporation, bylaws, or trust documents prohibit any officer, shareholder, board member, employee, or trustee or the family member of an officer, shareholder, board member, employee, or trustee from benefiting from the sale of property acquired for the purposes described in subdivision (a). [Emphasis added.]

Because Petitioner must qualify as a nonprofit charitable institution to receive either exemption, the Tribunal begins its analysis with that discussion. Although a taxpayer may qualify for tax exempt status under federal law (i.e., Section 501(c)(3) of the Internal Revenue Code), said qualification creates no presumption in favor of an exemption from property taxes.[20] Rather, the Michigan Supreme Court has set forth six

[20] See *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753 n 1; 298 NW2d 422 (1980) and *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 606; 163 NW2d 508 (1968), which provides, in pertinent part, that "[t]he Institute's exemption from Michigan ad valorem tax is **not** determinable by its qualification as an organization exempt from income tax under section 501(c)(3) of the internal revenue

factors to consider when determining whether an entity is a nonprofit charitable institution:

> (1) A "charitable institution" must be a nonprofit institution.
> (2) A "charitable institution" is one that is organized chiefly, if not solely, for charity.
> (3) A "charitable institution" does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a "charitable institution" serves any person who needs the particular type of charity being offered.
> (4) A "charitable institution" brings people's minds or hearts under the influence of education or religion; relieves people's bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
> (5) A "charitable institution" can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
> (6) A "charitable institution" need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a "charitable institution" regardless of how much money it devotes to charitable activities in a particular year.[21]

Here, there is no dispute that Petitioner is a nonprofit institution. The parties do, however, dispute whether Petitioner is a charitable institution. In that regard, the Supreme Court established the following definition of "charity":

> "[C]harity * * * [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 for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government."[22] [Emphasis added.]

In *Michigan Baptist Homes and Dev Co v Ann Arbor*,[23] the Supreme Court stated that "exempt status requires more than a mere showing that services are provided by a

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code of 1954, **but by the much more strict provisions of the Michigan general property tax act**." [Emphasis added.]

[21] See *Wexford Med Group*, *supra* at 215.

[22] See *Retirement Homes of the Detroit Annual Conference of the United Methodist Church, Inc v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982).

[23] See *Mich Baptist Homes and Dev Co v Ann Arbor*, 396 Mich 660, 670; 242 NW2d 749 (1976).

nonprofit corporation." The Supreme Court also stated that to qualify for a charitable or benevolent exemption, the use of the property must "benefit the general public without restriction."[24] As for the *Wexford* factors, 2, 3, and 4 overlap and, as such, the Tribunal must consider them together.[25] In the prior appeal, the Court of Appeals explained that:

> [T]he record demonstrates that the subject property was not truly open to the public **given the surrounding private property's locked gates blocking road access, the lack of vehicle access, and the lack of ADA accommodations**. UPLC's members **compromise a majority of the attendees** at events hosted on the subject property**,** and UPLC **only hosted three truly public events during the relevant period**, unlike the many educational events hosted by the organization in *Moorland*.[26] Moreover, the record demonstrates that **a majority of the benefit in the subject property was for Murphy**, who had unrestricted access, **unlike members of the general public who had to request access or walk a great distance to enter it**. Unlike the members of the organization in *Moorland*, who were interested in conservation efforts but worked towards the benefit of the general public, there was **no** indication that the general public gained any real benefit from the subject property due to the lack of programming. **There was also a lack of evidence**, aside from the statements from UPLC's representatives, **that UPLC had engaged in extensive conservation efforts like those described in *Moorland***.[27] [Emphasis added.]

As indicated above, the "record" in the prior case related to Petitioner's activities relative to the property at issue and not Petitioner's activities "as a whole" because Petitioner failed to present any evidence to permit either the Tribunal or the Court of Appeals to consider Petitioner's activities "as a whole."[28] Nevertheless, evidence as to Petitioner's activities "as a whole" have been presented in this case and the Tribunal is, despite Respondent's contention that Petitioner's activities at other properties are irrelevant, required to consider that evidence in determining whether Petitioner's is a

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[24] *Id* at 671.
[25] In the previous case, the Court of Appeals stated that the Tribunal correctly concluded that these factors overlap. See *Upper Peninsula Land Conservancy*, *unpub op* at 7.
[26] See *Moorland Twp v Ravenna Conservation Club, Inc*, 183 Mich App 451; 455 NW2d 331 (1990).
[27] See *Upper Peninsula Land Conservancy*, *unpub op* at 8-9.
[28] See *Upper Peninsula Land Conservancy*, *unpub op* at 4.

charitable institution.[29] In that regard, Petitioner's Restated Articles of Incorporation provide, in pertinent part:

> To acquire, preserve, maintain, improve, and protect significant natural, agricultural, and scenic land areas for conservation, outdoor recreation by the general public, scientific study, preservation of biodiversity and historical sites, the education of the general public, and to advance land stewardship in Michigan's Upper Peninsula now and for future generations. Acquisition of land and the establishment of conservation easements shall be made by gift, donation or otherwise. All property, tangible and intangible, of every sort and description, shall be used in such a manner as the directors of the Corporation shall deem appropriate to carry out the purposes herein.[30]

Further, Petitioner's Executive Director, Andrea Denham, stated during her deposition that: (i) Petitioner has approximately 30 properties and owns and protects approximately 6,264 acres of land, which include Betcher's Plat, Chocolay Bayou, Ford Eagle Preserve, Tory's Woods Conservation Preserve, the Gamber-Brisky Preserve, Sievers Preserve, the Debelak Reserve, and the Vielmetti-Peters Reserve,[31] (ii) Petitioner preserves and provides services at its properties without discrimination, and the public's access is only restricted for the nesting seasons of certain protected birds,[32] (iii) there is public parking at the Ford Eagle Preserve, the Gamber-Brisky Preserve, the Sievers Preserve, Tory's Woods Preserve, and the Debelak Reserve,[33] (iv) there was signage at the entrance to Betcher's Plat, the Gamber-Brisky Preserve, and the Tory's Woods Preserve,[34] (v) Petitioner hosts public birding events at Chocolay Bayou,[35] (vi) Petitioner partnered with a student at Northern Michigan University to map trails in the fall of 2020,[36] and (vii) the Northern Michigan University Conservation Crew partnered with Petitioner at Tory's Woods Conservation Preserve and the Vielmetti-

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[29] See *Mich United Conservation Clubs v Lansing Twp*, 423 Mich 661, 673; 378 NW2d 737 (1985).
[30] See Restated Articles of Incorporation attached to Petitioner's Motion as Exhibit 1 dated January 8, 2021, ¶ A.
[31] See the Deposition of Andrea Dehham (Denham Dep), attached to Petitioner's Motion as Exhibit 2 at 14, 24, 28, 30, 36-37, 64-65, and 142.
[32] See Denham Dep at 143-144.
[33] See Denham Dep at 28, 31, 36, 38, and 65.
[34] See Denham Dep at 21, 31, and 39.
[35] See Denham Dep at 27.
[36] See the Affidavit of Leo Lopez attached to Petitioner's Response as Exhibit 21 dated January 29, 2021, ¶ 1 at 1.

Peters Conservation Reserve.[37] Peter Bosma, a Northern Michigan University instructor, also stated that he has used the Vielmetti-Peters Conservation Reserve for courses to teach "the local ecology, the benefits of green spaces to a community, as an example of local land management practices . . . ."[38] The Chair of Petitioner's Board, Marc LaBeau, additionally stated that: (i) Petitioner hosts at least 12 educational events on its various preserves each year, which are advertised to the public through the Mining Journal, e-mails, and social media,[39] and (ii) Petitioner planned a virtual event during 2020 in cooperation with Michigan State University Extension because it was unable to hold in-person events.[40] Finally, Petitioner provided other evidence concerning general conservation efforts, engagement with educational institutions, and outreach to the public.

Respondent counters Petitioner's evidence of charitable activities with Petitioner's Management Reports and Monitoring Report (the "Reports"), which show that: (i) some of Petitioner's properties still have no signage indicating that the properties are held for public recreation,[41] and (ii) some of Petitioner's properties may not be accessible to the public for various reasons.[42] However, none of the evidence relates to the Ford Eagle Preserve, the Gamber-Brisky Preserve, the Sievers Preserve, Tory's Woods Preserve, or the Debelak Reserve, all of which have public parking. In other words, Respondent has failed to raise a genuine issue of material fact concerning

[37] See the Affidavit of Lynnae Branham attached to Petitioner's Response as Exhibit 22, ¶ 3 at 1.
[38] See the Affidavit of Peter Bosma attached to Petitioner's Response as Exhibit 23, ¶ 4 at 1.
[39] See the Affidavit of Marc LaBeau attached to Petitioner's Response as Exhibit 25, ¶¶ 3, 7 at 1- 2.
[40] See Denham Dep at 147-148.
[41] See the Reserve 09 Monitoring Report attached to Respondent's Response as Exhibit 1 and dated January 29, 2021 at 3; Reserve 22 Monitoring Report attached to Respondent's Response as Exhibit 2 at 4; Reserve 01 Monitoring Report attached to Respondent's Response as Exhibit 3 at 4; Reserve 02 Monitoring Report attached to Respondent's Response as Exhibit 4 at 4; Reserve 03 Monitoring Report attached to Respondent's Response as Exhibit 5 at 4; Reserve 05 Monitoring Report attached to Respondent's Response as Exhibit 6 at 4; Reserve 08 Monitoring Report attached to Respondent's Response as Exhibit 7 at 3; Reserve 10 Monitoring Report attached to Respondent's Response as Exhibit 8 at 3; Reserve 14 Monitoring Report attached to Respondent's Response as Exhibit 9 at 3; Reserve 16 Monitoring Report attached as Respondent's Response as Exhibit 10 at 3; Reserve 17 Monitoring Report attached to Respondent's Response as Exhibit 11 at 3; and Reserve 20 Monitoring Report attached to Respondent's Response as Exhibit 12 at 3.
[42] See Reserve 02 Monitoring Report at 3 (describing access to the property and stating "[w]ith permission use the haul road that heads east past the end of Kantola Road").

access to those properties. The Tribunal therefore concludes that there is public access to other properties owned by Petitioner.

Given the undisputed facts in this case, the Tribunal concludes that Petitioner has shown that it is a nonprofit charitable institution. As the Court of Appeals stated in *Moorland*, "[t]he conservation and promotion of our natural resources and wildlife is an important objective in this state."[43] The Court of Appeals further explained that protection of Michigan's natural resources, creation of facilities for outdoor recreation, prevention of pollution, and protection of game and fish are purposes meant to benefit the general public and Petitioner's purposes, as stated in its Restated Articles of Incorporation, are consistent with these charitable objectives.[44] As explained above, the undisputed facts show that Petitioner offers unrestricted access to the general public at several of its properties. Although it is arguable that some of Petitioner's properties are not accessible to the public, it is not required that each of Petitioner's properties be open to the public. Rather, it is sufficient for purposes of analyzing whether Petitioner is a charitable institution that Petitioner's generally offers charity to the public. Combined with evidence of its conservation efforts and educational engagement, the Tribunal concludes that Petitioner satisfies *Wexford* factors 2, 3, and 4 because its conservation efforts benefit the general public. In addition, Petitioner does not charge anyone for its charity and its purposes are also directed toward conservation efforts.[45] Thus, Petitioner's activities "as a whole" are charitable in nature. Accordingly, the Tribunal concludes that Petitioner is a charitable institution.

That conclusion does not, however, mean that the properties at issue are, as correctly claimed by Respondent, entitled to the requested exemptions. More specifically, Petitioner must, in order to be eligible for an exemption under MCL 211.7o(1), have occupied the properties for the purposes for which it was incorporated. As recognized by the Court in the prior case, "passive use" may qualify because "[i]n terms of contemporary environmentalism, the best 'occupancy' may be visual,

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[43] See *Moorland Twp*, *supra* at 460. See also Const 1963, art 4, § 52.
[44] *Id* at 461.
[45] See Denham Dep at 143. See also *Moorland Twp*, *supra* at 461.

educational, or other demonstrative type occupancy."[46] Thus, Petitioner must show that it provided charity at the subject by allowing an indefinite number of persons to enjoy and benefit from the property.[47] Similarly, an exemption under MCL 211.7o(5) requires that the property be "open to all residents of this state for educational or recreational use, including, but not limited to, low-impact, nondestructive activities such as hiking, bird watching, cross-country skiing, or snowshoeing . . . ." As such, an analysis of the property's public's access is required to determine whether Petitioner's occupancy or use of the property satisfies the requirement as of the relevant tax day for each tax year at issue (i.e., December 31, 2018, for the 2019 tax year and December 31, 2019, for the 2020 tax year)."[48] More specifically, the general public had to have unrestricted access to the property on those tax days.

Unfortunately, the documentary evidence provided shows that the new trail did not exist in any form on December 31, 2018. In that regard, there is no dispute that Petitioner and the Michigan Department of Natural Resources (DNR) entered into a "back-dated" agreement on November 6, 2019, allowing Petitioner to construct a trailhead into Craig Lake State Park, which included an attachment stating that "[t]he trail shall be operated to complement and coordinate with local, regional, and state recreational goals and open space facilities both public and privately owned . . . ."[49] The affidavit of Brock Robinson also indicates that work on the trail did not begin until November 2019, as such, would not have provided any additional access to the properties beyond the access contemplated by the Tribunal and the Court of Appeals in the prior case, which the Tribunal and the Court of Appeals determined was insufficient.[50] Even if the trail had been completed by December 31, 2018, it is unlikely that the trail would have satisfied the required unrestricted access to the properties, as

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[46] See *Upper Peninsula Land Conservancy*, *unpub op* at 8, quoting *Kalamazoo Nature Ctr v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981) (alteration in original).
[47] See *Wexford Med Group*, *supra* at 203. See also *Upper Peninsula Land Conservancy*, *unpub op* at 8 (explaining that Petitioner was required to provide charity through benefits and enjoyment of the property with unrestricted access.).
[48] See MCL 211.2(2).
[49] See the Operating Agreement attached to Respondent's Motion as Exhibit K dated January 8, 2021. See also Attachment B to the Operating Agreement.
[50] See the Affidavit of Brock Robinson, Petitioner's Response, Exhibit 26, ¶ 8 at 3.

requiring visitors to pay to access to the trail from Craig Lake State Park, drive over five miles to the trailhead, and then hike with limited, if any signage, approximately a mile and a half over rough terrain that is not handicap accessible, does not, as correctly indicated by Respondent, result in open access without restriction particularly when the donor and neighboring landowners do not need to pay for such access and do not, as also correctly indicated by Respondent, have to hike a mile and a half over such terrain from Craig Lake State Park like the general public.[51] Nevertheless, the record clearly demonstrates that the public did not have unrestricted access to the subject on December 31, 2018.

With respect to the December 31, 2019, or the 2020 tax year, the Robinson affidavit indicates that the boardwalk was not complete until the fall of 2020.[52] The Solomon affidavit also indicated that, in June 2020, the trail had several fallen trees across it, there was no clear path to follow in some places, and that there was no

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[51] See *Upper Peninsula Land Conservancy*, *unpub op* at 5, which provides, in pertinent part:

> Although the property was **nominally and legally open** to the general public, **the record demonstrates that the general public had restrictions on visiting the property that others, particularly the adjacent property owners, did not**. The evidence from UPLC's representatives strongly indicate that visiting the property without prior authorization was **restricted and difficult**. As the tax assessor's repeated attempts to visit demonstrated, the ability to access the property by vehicle was restricted by locked gates, no trespassing signs, and private roads. **The only manner that the general public could visit without prior approval was to walk**. **However, the general public would have to ignore signs that indicated the property was private and, therefore, not for public use, in addition to undertaking a one-and-a-half-mile hike**. In fact, there were **no** signs to indicate that UPLC even owned the subject property. **Additionally, as petitioner recognizes, the property was extremely remote, making walking access more difficult**. **Likewise, hiking on the property was difficult because the interactive map could not be used without cell phone service, which was unavailable**. While some of these restrictions, particularly on activities allowed, are due to the remoteness of the property and the need to conserve the land, **UPLC could have remedied this issue by hosting additional educational programs and further interacting with other local organizations**. Yet, it had **not** done so, and it provided no adequate reason for not doing so beyond noting that it had only recently acquired the property. And, while there was some evidence that UPLC allowed the Forest Service to conduct research, there was little other evidence of the specific conservation efforts that UPLC had undertaken, such as with the Department of Natural Resources (DNR), outside of the restrictions it had placed on activity on the subject property. [Emphasis added.]

In that regard, there is also question as to whether there is adequate signage notifying the general public as to the trailhead located in Craig Lake State Park.

[52] See the Affidavit of Brock Robinson, ¶¶ 11 and 12 at 3.

boardwalk.[53] According to Solomon affidavit, at a certain point the trail into the subject property became inaccessible.[54] Although Petitioner, in reliance on the affidavits of Robinson and Steven Waller, contends that the trail was cleared, flagged and hikeable in the late fall of 2019, Robinson's affidavit actually indicated that the trail was cleared in November 2019 and that "preliminary signage was posted,"[55] While Waller's affidavit speaks to the existence of the trail in July 2020, which is after the relevant tax dates.[56] Although the affidavits show that some of the trail may have been accessible, there is no dispute that the boardwalk necessary to complete the trail was not finished as of December 31, 2019. Although the Tribunal has, as indicated above, reservations as to whether the existence of that trail would be sufficient to provide the general public with unrestricted access to the properties, the clearing of the trail prior to December 31, 2019, without the completion of the necessary boardwalk to connect the trail from Craig Lake State Park to the properties by December 31, 2019, would have prevented the general public from accessing the property without restriction as of that relevant tax day.[57]

As for the activities on the properties for the 2019 tax year, occupancy logs showed the events at the subject in 2019. Of the eight events at the subject in 2019, the occupancy log did not indicate any kind of publicity for five and identified a total of 15 non-staff members that attended the events including, but not limited to the donor, Mark Murphy, who attended two events, Debra Gill from the DNR, and five to six staff members of the Cooperative Invasive Species Management Area or CISMA.[58] Although the occupancy logs also indicated that several of the events identify education, only one, Adventure Day on August 31, 2019, was purely educational and publicly advertised. As for the two other publicly advertised events, those events were

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[53] See the Affidavit of Jacqueline Solomon attached to Respondent's Motion as Exhibit J, ¶¶ 16 and 17 at 3.
[54] See Exhibit 4 to the Affidavit of Jacquelin Solomon.
[55] See Petitioner's Response at 18. See also the Affidavit of Brock Robinson, ¶ 8 at 3.
[56] See the Affidavit of Steve Waller, Petitioner's Response, Exhibit 31, ¶ 4 at 2.
[57] In reaching this conclusion, the Tribunal finds persuasive the Court of Appeals' statements in *Upper Peninsula Land Conservancy*, *unpub op* at 5 and 8, particularly with respect to the lack of ADA accommodations.
[58] See Denham Dep at 94-95 and the Indian Lake Conservation Preserve Occupancy Log attached to Respondent's Motion as Exhibit F.

volunteer days. Although several of the events indicated by the occupancy log demonstrated conservation efforts at the properties, including the Annual Monitoring & Boundary Work event on July 15, 2019, the limited number of publicized events did not "remedy" the access issue, as recognized by the Court of Appeals in the prior case (i.e., "UPLC could have remedied this issue by hosting additional educational programs and further interacting with other local organizations" and "there was no indication that the general public gained any real benefit from the subject property due to the lack of programming").

Give the above, Petitioner, although a charitable institution, is not entitled to a charitable exemption under MCL 211.7o(1) because the properties were not, given the lack of unrestricted access, used, or offered for the benefit of the general public or an indefinite number of persons. As for MCL 211.7o(5), the evidence does, as indicated herein, demonstrate that Petitioner is a qualified conservation organization.[59] Nevertheless, the properties are also, unfortunately, not entitled to an exemption under that subsection, as the properties are not, as clearly indicated above, "open to all residents of this state for educational or recreational use." Rather, the use of property is only open without restriction to Mr. Murphy and the owners of the surrounding properties.

## PROPOSED JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(8) is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is GRANTED under MCR 2.116(C)(10).

IT IS FURTHER ORDERED that the properties' taxable values for the 2019 and 2020 tax years are AFFIRMED.

## EXCEPTIONS

[59] See MCL 211.7o(5)(a)-(c). See also Amended Articles of Incorporation attached to Petitioner's Motion as Exhibit 9, ¶ A and Upper Peninsula Land Conservancy Bylaws, Petitioner's Motion, Exhibit 9, ¶ 9 at 16

This is a Proposed Opinion and Judgment (POJ) and not a Final Opinion and Judgment (FOJ).[60] As such, the parties have 20 days from the below "Date Entered by Tribunal" to notify the Tribunal and the opposing party in writing, by mail or by electronic filing, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions.

The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.

A copy of a party's written exceptions or response must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the exceptions or response were served on the opposing party.

Exceptions and responses filed by *facsimile* will not be considered.

Entered: June 23, 2021 By Peter M. Koglin

PMK/wmm

[60] See MCL 205.726.