LAND CONSERVATION LAW SYLLABUS

Term Two, Two Week Course, Meeting June 21st – July 1st, 9:00am-12:00pm EDT, REMOTE (Monday - Thursday)
Two Course Credits; Final project due by 12:00pm EDT, Saturday, July 3rd
Taught By: Jessica E. Jay, Attorney at Law, Conservation Law, P.C., phone: 303-674-3709
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Prerequisites: Students will benefit from having taken but be required to have taken an introductory-level property law, real property transactions, or tax law course, or from practical experience in land conservation or real property transactions, though none of these are a prerequisite.

Evaluation: Students will be evaluated based on preparedness for class, class participation in discussions and role-playing exercises, and final conservation easement deed. Your group’s final conservation easement deed will serve as the final exam/graded project and will be due to ME at email: conservationlaw@msn.com by no later than 12pm, July 3rd (don’t forget to put your names and Role Play grades on the front of the conservation easement). Graded and commented-upon final easements will be returned to students.

Course Materials: The eTextbook is for sale on the Land Trust Alliance’s (LTA’s) Learning Center website at https://tlc.lta.org/ to which website students will be given password access for three months. All other course materials including this syllabus, role-play exercises, and model conservation easement will be available at the Teams site at https://teams.microsoft.com/l/team/19%3a4c094cd4cc5a46a6bf1817c0eec4f0f2%40thread.tacv2/conversations?groupId=606615b4-1ce9-4eb5-a50b-84fe07e1c124d&tenantId=8676127a-f6d4-4747-a46c-356f1b6e1610

Updates: Any updates to this syllabus or materials will be made electronically, so be sure to have the most up-to-date syllabus and documents! Students will prepare role-play exercises and deed of conservation easement for class discussions.

Office Hours: After class 12:00-1:00pm EDT, and/or by appointment

Syllabus Cues/Key:
1. Review means refresh your memory on something you’ve already read
2. Read means prepare to discuss in class, and look to see if areas of focus have been provided
3. Skim means review for the high points and take aways

(Background Materials means additional resources for research, not required for class)

Class Time Rules: Class time will follow these “Rules” for our virtual engagement:
1. I will take attendance at the start of the class time based on who is in the Teams meeting area with cameras on
2. Everyone will have their cameras turned on for the entire class
3. Everyone will have their mics muted throughout class, except when presenting/speaking or asking questions
4. Everyone will shut off their notifications for/of chat
5. We will use the hand raise symbol for asking questions or making observations during discussions and guest lectures, and not in chat
6. We will use the screen share tool to present findings or collaborations at the end of role play exercises
7. Role play exercises have both private and public channels to meet and work within each exercise. The private channels named Group 1/2/3 will be used (1) to accomplish tasks within your specific role play group, and (2) to store your role play group’s own ongoing work on and in support of your group’s final conservation easement deed. The public channels named A/B/C/D will be used for individual group members to meet and accomplish tasks in the role play exercises. I will direct you ahead of time to whichever channel is appropriate for each portion of each role play exercise. For example: “From 11-11:30 Role Play Group 1 meet in your private channel named Group 1, Role Play Group 2 meet in your private channel named Group 2, and Role Play Group 3 meet in your private channel named Group 3, to work through your role play exercise tasks together. At 11:30, everyone return to the General Channel to present your Group’s findings/results to the class and nominate one person from each group to present using share screen.” Or “At 11:00, all role play role Number 1’s meet in channel A, Number 2’s meet in channel B, Number 3’s meet in channel C, and Number 4’s meet in channel D for 45 minutes to work through your exercise tasks together. At 11:45 everyone return to the General Channel and choose someone of your Number to report results to the class using share screen.”
8. I will record every class (from beginning to end) and post recording after class.
Day 1 – Monday, June 21st – Conservation Easements—A Tool to Protect the Environment—What Are They and How Do They Work?

Reading Assignment:
TEXTBOOK, Chapter One, including:
Read Origins and Background
Read 26 U.S.C. § 170 Charitable Contributions and Gifts (focus on 170(h))
Skim 26 U.S.C. § 2032A, Pension Protection Act and Extension, IRS Guidance Notice 2007-50, IRS Q&A
Read 26 C.F.R. § 1.170A-14 Qualified Conservation Contributions (focus on 1.170A-14(a), (b), (d), (e), (f)(1)
Read Restatement of the Law (Third) Property (Servitudes) (focus on §§ 1.6, 4.3)
Read Uniform Conservation Easement Act and Commentary AMENDED 2007 (focus on §§1(1), 2(a)&(c), 4)
Read Vermont Statutes Annotated (focus on §§821, 822, 823, 6301, 6303(5), 6308(b))

COURSE WEBSITE:  Model Conservation Easement, First Role Play Exercise

Conservation Transaction: Download from course website at https://tlc.lta.org/vlsconslaw to have at class the model conservation easement and first role play exercise, as a hardcopy or electronically. After role play exercise, determine family’s needs, land’s conservation value(s), and land trust mission. Determine whether land trust is a good fit with land owner. Review model conservation easement and its conservation value sample language and begin drafting conservation values section of conservation easement.

Day 2 – Tuesday, June 22nd – Qualified Organizations, Perpetual Stewardship and Enforcement Responsibilities, Standards and Practices, and Due Diligence for Conservation Transactions

Reading Assignment:
Review § 170(h)(1), (3), (5), (6) (pp. 15-16)
Review § 1.170A-14(a), (c), (g) (pp. 19-20, 26-28)
Review Restatement of the Law (Third) Property (Servitudes) §1.6(2) (p. 32), §4.6 (p. 33)
Review U.C.E.A. § 1(2) (pp. 40-41)
Review V.S.A. §§ 821(c), 822, 6301a (pp. 46-47)
TEXTBOOK, Chapter Two, Parts A and B, including:
Read Background (skim land trust risk management section)
Read 26 U.S.C. § 501(c)(3) and 26 C.F.R. § 1.501(c)(3)-1
Skim Land Trust Standards and Practices: (focus on 9: Sound Transactions and 11: Stewardship of Conservation Easements)
Skim Part B Due Diligence
COURSE WEBSITE:  Second Role Play Exercise

Conservation Transaction: PREPARE YOUR ROLE BEFORE CLASS. Examine Land Trust’s mission, identify conservation values on the subject property, revise/draft conservation easement to meet conservation values and mission, review minerals, and other requirements. Examine subject property title insurance policy for ownership, minerals, and other title issues. Determine responsibilities regarding subject property conservation value protection, documentation, minerals, and monitoring. Draft easement to address responsibilities and to incorporate new facts; use drafting sections from Appendix of Textbook for guidance.

Day 3 – Wednesday, June 23rd – Conservation Incentives—Federal Income and Estate Taxes, and IRS Scrutiny

Reading Assignment:
Review § 170(b)(1)(E), (f)(8), (11) (pp. 13-14)
Review § 1.170A-14(e), (h), (i) (pp. 25, 28-31)
Review Land Trust Standards and Practices, Practice 10 (pp. 68)
TEXTBOOK, Chapter Three, Background, Parts A and B, including:

Read Background
Read 26 U.S.C. § 2051 and 26 C.F.R. § 20.2051
Read 26 U.S.C. § 2055 and 26 C.F.R. § 20.2055
Read 16 U.S.C. § 2031(c)
Skim IRS Notices 2004-41, 2017-10; LTA Tax Advisory

COURSE WEBSITE: Third Role Play Exercise

Conservation Transaction: PREPARE YOUR ROLE BEFORE CLASS. Examine income tax incentives for landowners, crunch numbers for deductions to offset taxable income, establish value of conservation easement donation, determine net benefit to family for income tax purposes. Examine consequences of bargain sale for income tax purposes and/or estate tax benefits. Revise relevant conservation easement sections.

Day 4 – Thursday, June 24th – Conservation Incentives—State and Local Taxes: Property Taxes, Income Tax Credits, and a Landowner’s Story

Reading Assignment:
Review VSA 6306, 6309, 6311 (p. 48-49)
TEXTBOOK, Chapter Four, including:
Read Background
Skim Vermont Use Value Act
Read Parkinson v. Board of Assessors of Medfield, 481 N.E.2d 491 (Mass., 1985); Parkinson v. Board of Assessors of Medfield, 495 N.E.2d 294 (Mass., 1986)
Read Colorado Conservation Easement Tax Credit Act [FYI Summary], C.R.S. §39-22-522
COURSE WEBSITE: Fourth Role Play Exercise
Read as Background for Role Play:
TEXTBOOK, Chapter Four, Part B, pp.158-61, Lessons from a Long Easement Violation Battle
Skim as Background for Field Trip:
COURSE WEBSITE: Hurricane Flats CE and Maps, visit Hurricane Flats’ website for photos at: http://www.hurricaneflats.com/photo-gallery.html

Guest Speaker: VIRTUAL FIELD TRIP! Upper Valley Land Trust, Alison Marchione, and CE donor, Geo Honingford.

Conservation Transaction: PREPARE YOUR ROLE BEFORE CLASS. Apply credit option to family’s income scenario, determine how much of a benefit family could receive and/or how much of a credit they could sell under program mimicking Colorado’s credit program. Examine property tax changes and agricultural preservation options within Vermont conservation statutes. Determine net benefit to family from property tax reductions, income tax offsets, and conservation tax credits. Consider family’s private property rights arguments. Revise conservation easement to incorporate new facts.

Day 5 – Monday, June 28th – Conserving Working Lands—Farms, Ranches, and Forests, and a Land Trust’s Perspective on Conservation within Emerging Markets

Reading Assignment:
Review 26 U.S.C. § 2032A (p. 16)
Review 26 C.F.R. § 1.170A-14(d)(1)(iii) (p. 20); (d)(4)(i), (iii)(A), (iv)(B), (vi)(A) (pp. 20-23); (e) (p. 25); (f) Examples (2) and (5) (pp. 25-26)
TEXTBOOK, Chapter Five, Background, Part A, pp. 163-79, including:
Read Background
Read Southbury Land Trust, Inc. v. Andricovich, 757 A.2d 1263 (Conn. App., 2000)
Read Bennett v. Commissioner of Food and Agriculture, 576 N.E.2d 1365 (Mass., 1991)
COURSE WEBSITE: Fifth Role Play Exercise

Guest Speaker: Nick Richardson, President and CEO, Vermont Land Trust. Moving beyond Easements: The expanding role for land trusts in ecosystems markets and other emerging land management strategies.

Conservation Transaction: PREPARE YOUR ROLE BEFORE CLASS. Consider discussion points for working forests and working ranch and farmland. Contemplate case study example, discuss past, present, future possibilities. Continue revising and drafting conservation easement: revise and negotiate recitals and permitted/prohibited use and resource management sections of conservation easement.

Day 6 – Tuesday, June 29th – The Challenge of Perpetuity: Changed Conditions, Amendment, and Termination of Conservation Easements

Reading Assignment:
Review 26 U.S.C. § 170(h)(2)(C), (5)(A) (pp. 15-16)
Review 26 C.F.R. § 1.170A-14(c)(2), (g)(6) (pp. 19-20, 28)
Review Restatement of the Law (Third) Property (Servitudes) §§7.9, 7.10, 7.11, 7.16 (pp. 33-36)
Review UCEA §2(a), §3(b) (pp. 41-43)
Review V.S.A. §§6308, 6310, 6311 (pp. 48-49)
Review Standards and Practices 11 H & J (p. 70)

TEXTBOOK, Chapter Six, Amendment and Termination, pp. 215-69 only, including:
Read Background
Skim Amendment Principles
Skim Strasburg v. Commissioner of Internal Revenue, 79 T.C.M. 1677 (2000) (focus on value/amendment)
Bjork Note, Illinois Conservation Easement Enabling Act (focus on termination and amendment issues)
Skim Hicks v. Dowd, P.3d 914, 2007 WY 74 (2007); NPR Shifting Ground Piece; Salzburg v. Dowd, Stipulated Judgment (focus on termination and amendment issues)
Skim Walter and Otero County Land Trust (05-CV-96, Order (Otero Cty. Dist. Ct., June 21, 2005), Walter Note, Colorado Enabling Act Termination provision (focus on termination, why legal to terminate)
Skim Maine revised CE enabling act (focus on termination and amendment)
Skim Private Inurement, Conflict of Interest, and Restatement/Changed Conditions subsections
COURSE WEBSITE:
Skim Jessica Jay, When Perpetual is Not Forever, 36 Harvard Env. Law Rev. 1 (2012);
Skim Understanding When Perpetual is Not Forever, 37 Harvard Env. Law Rev. (2013)
Sixth Role Play Exercise

Conservation Transaction: PREPARE YOUR ROLE BEFORE CLASS. Contemplate potential liability for land trust to amend easement: who stands to lose, who stands to gain; contemplate consequences of IRS audit. Determine if private inurement, private benefit, or conflict of interest exists. Review Notices Regarding Improper Deductions for Conservation Easement Donations and IRS Notice 2004-41, 2004-86, 2017-10 and 990 Instructions if negotiating IRS audit. Review amendment, termination, and changed condition section of
easement; revise accordingly.


**Reading Assignment:**
- Review 26 C.F.R. §1.170A-14(c)(1), (g)(5)(ii) (pp. 19, 28)
- Review Restatement of the Law (Third) Property (Servitudes) §§ 8.1, 8.3, 8.5 (pp. 36-38)
- Review U.C.E.A. §§1(3), 3(a)(4), plus comments, (pp. 41-42)
- Review V.S.A. §6307 (p. 48)
- Review Bjork v. Draper, 381 Ill.App.3d 528, 886 N.E.2d 563, 319 Ill. Dec. 800 (Ill. App. 2 Dist., 2008);
- Illinois Conservation Easement Enabling Act (*focus on enforcement by 3d parties: neighbors*) (pp.222-32)
- Review Maine revised CE enabling act (*focus on by third parties: A.G. enforcement*) (pp.263-64)
- TEXTBOOK, Chapter Seven, Background, Part A, pp. 270-313, including:
  - Read Background, Enforcement by Third Parties, and Enforcement against Third Parties (throughout Part A)
  - Skim Rhode Island Legislation for Attorney General Enforcement (*By third parties: A.G. Enforcement*)
  - Read Enforcement Against Third Parties

**COURSE WEBSITE:** Read materials packet from Leslie Ratley-Beach
Seventh Role Play Exercise

**Guest Speaker:** Leslie Ratley-Beach, Conservation Defense Director, Land Trust Alliance

**Conservation Transaction:** PREPARE YOUR ROLE BEFORE CLASS. Mediate third party violation. Review and revise third party and landowner liability, ADR, enforcement provisions of conservation easement after.


**Reading Assignment:**
- Review 26 C.F.R. § 1.170A-14(c)(1), (g)(5)(ii) (pp. 19, 28)
- Review Restatement of the Law (Third) Property (Servitudes) § 8.5 (pp. 37-38)
- Review U.C.E.A. § 1(3), 3(a)(4) (pp. 41, 42-43)
- Review V.S.A. §6307 (p. 48)
- TEXTBOOK, Chapter Eight, Part B, pp. 317-81 (*excluding* pp. 331-37), including:
  - Read Survey of Cases
  - Read Madden v. The Nature Conservancy, 823 F. Supp. 815 (D. Mont. 1992) and Madden Materials (Warranty Deed, Answer/Counterclaim, Opinion/Order, Madden and TNC Depositions)

**COURSE WEBSITE:** Eighth Role Play Exercise

**Conservation Transaction:** PREPARE YOUR ROLE BEFORE CLASS. Conduct mock trial direct examination and cross examination of land trust and landowner witnesses. Examine easement drafting and real-time opportunities for negotiation, mediation, and litigation to resolve potential violation; review and revise ADR and enforcement provisions for conservation easement as necessary. Make final revisions to conservation easement.