LAND CONSERVATION LAW SYLLABUS

Term Two, Two Week Course, Two Course Credits
Meeting June 17th – June 27th
Wednesday 6/19 No School – Juneteenth Observance
Meeting June 17th – June 27th 8:30am – noon
Final project due by 12:00pm EDT, Saturday, June 29th
Taught By: Jessica E. Jay, Attorney at Law, Conservation Law, P.C., phone: 303-674-3709
email: conservationlaw@msn.com, website: www.conservationlaw.org

Prerequisites: Students will benefit from having taken but not 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, June 29th (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 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 available on CANVAS.

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 12:00-1:30pm EDT, and/or by appointment

Syllabus 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)

Day 1 – Monday, June 17th – Conservation Easements—A Tool to Protect the Environment—What Are They and How Do They Work?

Reading Assignment:
TEXTBOOK, Chapter One, including:
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))

CANVAS: Model Conservation Easement, First Role Play Exercise

Conservation Transaction: Obtain model conservation easement and first role play exercise from CANVAS
to have at class, 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 18th – 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. 21-22, 28-30)
- Review Restatement of the Law (Third) Property (Servitudes) §1.6(2) (p. 34), §4.6 (p. 35)
- Review U.C.E.A. § 1(2) (pp. 42-43)
- Review V.S.A. §§ 821(c), 822, 6301a (pp. 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

**CANVAS:** Second Role Play Exercise
- Skim IRS CCM Surface Extraction 2022

**Guest Speaker:** Christine McShea, Staff Attorney, Vermont Land Trust

**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 in CANVAS for guidance.

**Day 3 – Thursday, June 20th – Conservation Incentives—Federal Income and Estate Taxes, and IRS Scrutiny**

**Reading Assignment:**
- Review § 170(b)(1)(E), (f)(8), (11), (19), § 170(h)(7) (pp. 13-15)
- 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 2017-10, 2023-30; LTA Tax Advisories: Integrity Act, Safe Harbor Act
- Skim Down the Rabbit Hole with the IRS Parts I and II
CANVAS: Third Role Play Exercise  
*Skim* A To Do List for Sustainable, Perpetual Conservation

**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 – Monday, June 24th – Conservation Incentives—State and Local Taxes: Property Taxes, Income Tax Credits, Conservation Investment, and a Landowner’s Story**

**Reading Assignment:**  
*Review* VSA 6306 (p. 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 C.R.S. §39-22-522 and Note Summary

**CANVAS:** Fourth Role Play Exercise  
*Of Interest (not required)* Community Resilience and Biodiversity Protection Act

*Read as Background for Role Play:*  
**CANVAS:** French & Pickering Creeks Conservation Trust v. Natale Article  
**TEXTBOOK,** Chapter Four, Part B, pp.185-89, Lessons from a Long Easement Violation Battle

*Skim as Background for Field Trip:*  
**CANVAS:** Hurricane Flats Conservation Easement and Maps  
**FIELD TRIP!** to CE property purchased 2022, Hurricane Flats Farm and Garden, 975 S Windsor St, South Royalton, VT 05068

**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 – Tuesday, June 25th – Conserving Working Lands—Farms, Ranches, and Forests, and Conservation within Emerging Markets**

**Reading Assignment:**  
*Review* IRS Q&A (p. 20)  
*Review* 26 C.F.R. § 1.170A-14(d)(1)(iii) (p. 22); (d)(4)(i), (iii)(A), (iv)(B), (vi)(A) (pp. 22-25); (e) (p. 27); (f) Examples (2) and (5) (pp. 27-28)
TEXTBOOK, Chapter Five, Background, Part A, including:

Read Background

Read Southbury Land Trust, Inc. v. Andricovich, 757 A.2d 1263 (Conn. App., 2000)

CANVAS: Fifth Role Play Exercise

Skim Government and Conservation

Guest Speaker: Peter Stein, Principal, Lyme Timber Company

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 – Wednesday, June 26th – 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. 21-22, 30)
Review Restatement of the Law (Third) Property (Servitudes) §§7.9, 7.10, 7.11, 7.16 (pp. 35-38)
Review UCEA §2(a), §3(b) (pp. 43-44)
Review V.S.A. §§6308, 6310, 6311 (pp. 49-50)
Review Standards and Practices 11 H & J (p. 70)

TEXTBOOK: Chapter Six, Amendment and Termination (excluding condemnation), including:

Read Background

Read Amendment Principles

Read Strasburg v. Commissioner of Internal Revenue, 79 T.C.M. 1677 (2000) (focus on value / amendment)
Read 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 and note enforcement by 3rd parties: citizen/A.G. enforcement)
Read 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 able to terminate)
Read Maine revised CE enabling act (focus on termination and amendment and note enforcement by 3rd parties: A.G. enforcement)
Skim Private Inurement, Conflict of Interest, and Restatement/Changed Conditions subsections

CANVAS: Sixth Role Play Exercise

Skim Jessica Jay, When Perpetual is Not Forever, 36 Harvard Env. Law Rev. 1 (2012);
Skim Jessica Jay, Understanding When Perpetual is Not Forever, 37 Harvard Env. Law Rev. 247 (2013)

Guest Speaker: Ailla Wasstrom-Evans, Conservation Defense Fund & Education Manager, Land Trust Alliance

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 if negotiating IRS audit. Review amendment, termination, and changed condition section of easement; revise accordingly.


Reading Assignment:
Review 26 USC §170(h)(5)(A) (p. 16)
Review 26 C.F.R. §1.170A-14(c)(1), (g)(5)(ii) (pp. 21, 30)
Review Restatement of the Law (Third) Property (Servitudes) §§ 8.1, 8.3, 8.5 (pp. 38-40)
Review U.C.E.A. §§1(3), 3(a)(4), plus comments (pp. 42-44)
Review V.S.A. §§ 823, 6307 (pp. 47, 49)

TEXTBOOK, Chapter Seven, Background, Part A & Chapter Eight, Part B
SKIM Background, Enforcement by 3rd Parties and Enforcement against 3rd Parties (Part A)
Skim Rhode Island Legislation for Attorney General Enforcement (enforcement by 3rd parties: A.G.)
Read Litigation and Shining Mountain Ranch Case Study (Part B)
Skim Litigated Enforcement and Defense Cases: Judicial Themes and Approaches
Read ***BONUS ROLE PLAY***

CANVAS: Mediation Role Play Exercise (BONUS depending on time, or for group EXTRA CREDIT)


Read as Essential for FINAL REQUIRED Role Play:
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)
CANVAS: Final Role Play Exercise REQUIRED

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.