



CONSERVATION LAW
Conserving Working Landscapes and the Environment

VERMONT LAW SCHOOL

LAND CONSERVATION LAW

Professor(s)

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About This Class

Increasingly important in our efforts to preserve ecological diversity, historic places, working lands, scenic viewsheds, open space, and public access are conservation tools and processes such as donation of conservation easements, purchase of sensitive lands, and private/public partnerships for land conservation. Students will research and review the swiftly developing body of law and legal issues accompanying the use of perpetual conservation easements, and will gain a practical understanding of both the legal and non-legal dimensions of land conservation transactions involving conservation easements. In addition, students will actively engage in the progression of a conservation easement transaction, beginning with early negotiations, drafting, and financial analysis, and proceeding along a spectrum to donation, amendment, violation, and enforcement. Each student will be responsible for engaging in role playing exercises throughout the conservation transaction process to assess various financial and tax scenarios, identify and resolve disputes related to the conservation transaction, and negotiate, draft, and defend a conservation easement.

RESOURCES

Environmental Law Institute

A Changing Landscape: The Conservation Easement Reader

West Academic is pleased to announce the publication of the Environmental Law Institute's new title, *A Changing Landscape: The Conservation Easement Reader*

by Laurie Ristino and Jessica E. Jay. For a copy of the book, please [click this link](#).

Featuring excerpts of leading articles and reports in law and in the natural and social sciences, *The Conservation Reader* illuminates various aspects of conservation easements. The book opens with background concepts in real property law, a history of the legal development and use of conservation easements, and examples of how these tools are used to achieve various environmental, conservation, and business goals. *The Conservation Reader* also examines the limitations and critiques of conservation easements, their tax treatment, and how they can be used in strategic resources planning and protection. The

book closes with a forward-looking discussion of the evolving use of conservation easements in other countries, touching upon the promise and challenge of adapting this instrument internationally. Throughout, *The Conservation Reader* arms readers with the information they need in determining when and how the use of conservation easements is appropriate to achieve their strategic conservation goals.

UCLA Journal of Environmental Law & Policy

Enforcing Perpetual Conservation Easements Against Third-Party Violators

Among the most daunting challenges the holder of a perpetual conservation easement faces is the enforcement of the easements it holds, for all time, and against all violators. National organizations estimate that at least forty million acres of land in the United States are protected with perpetual conservation easements. Each of these conservation easements is held by an entity, either a government agency or a tax-exempt, non-profit land trust, charged with the responsibility of enforcing easement violations against any and all violators. Holders must contend with violations caused by landowners and third parties. In the latter instance, someone who is not the owner of the easement-protected property enters the land by trespass without the knowledge or permission of the landowner or the easement holder, and violates the conservation easement. A Land Trust Alliance (Alliance) survey, specifically designed to gather information on conservation easement violations, reveals that behind successor-generation landowners, third parties are the most frequent class of easement violators. The findings of this survey track those of an earlier Alliance survey and are consistent with violation reporting in the most recent Alliance census. Further, anecdotal reporting of conservation easement violations indicates that many violations are caused by third parties—possibly as much as forty percent.

Harvard Environmental Law Review

Understanding When Perpetual Is Not Forever: An Update to the Challenge of Changing Conditions, Amendment, and Termination of Perpetual Conservation Easements

Rarely in the legal discourse is an author afforded the opportunity to revisit and update a recently published law review article and correct misunderstandings of a response thereto. In the first instance of the Harvard Environmental Law Journal publishing two law review articles by the same author in back to back volumes, Jessica Jay in 2012 authors **When Perpetual Is Not Forever: The Challenge of Changing Conditions, Amendment, and Termination of Perpetual Conservation Easements**, which explores the area of law surrounding the amendment and termination of perpetual conservation easements, with specific focus on the existing legal framework, legal regimes, emerging statutory and common law, and states' approaches to self-guidance. Now, Jay authors **Understanding When Perpetual Is Not Forever: An Update to the Challenge of Changing Conditions, Amendment, and Termination of Perpetual Conservation Easements** [The Challenge], which identifies next steps and options for perpetual easement modification and termination guidance, including revisions of the Treasury Regulations § 1.170A-14. The Challenge posits that providing clear, consistent guidance through existing or new legal frameworks ensures that perpetual conservation easements

and the purposes they protect will endure over time. This Article informs about developments since the publication of *The Challenge* and corrects misunderstandings asserted in Ann Taylor Schwing's article in the same issue of the Harvard Environmental Law Review.

Harvard Environmental Law Review

When Perpetual Is Not Forever: The Challenge of Changing Conditions, Amendment, and Termination of Perpetual Conservation Easements

As the use of perpetual conservation easements to protect private property for the public's benefit grows in popularity, so grow the challenges associated with these perpetually binding promises. Today's conservation community faces significant challenges to amending and terminating perpetual conservation easements in the face of changing conditions, landscapes, climate, and public interests. Because of variations among different legal regimes' guidance for perpetual conservation easements, much remains unsettled regarding perpetual conservation easement amendment and termination. This Article examines inconsistencies in the legal regimes and explores current and emerging common law, legislation, and policies addressing perpetual easement amendment and termination. This Article posits that the conservation community can protect the integrity of perpetual conservation easements by providing clear, consistent guidance through existing or new legal frameworks for state legislatures, courts, landowners, and easement holders, and suggests the means to achieve or craft such guidance.

Links to Other Scholarly Publications

- **[ELR: Down the Rabbit Hole with the IRS' Challenge to Perpetual Conservation Easements](#)**
- **[UCLA Journal of Environmental Law & Policy: Enforcing Perpetual Conservation Easements Against Third-Party Violators](#)**
- **[Harvard Environmental Law Review: Understanding When Perpetual Is Not Forever: An Update to the Challenge of Changing Conditions, Amendment, and Termination of Perpetual Conservation Easements](#)**
- **[Harvard Environmental Law Review: When Perpetual is Not Forever: The Challenge of Changing Conditions, Amendment, and Termination of Perpetual Conservation Easements](#)**
- **[Conservation Easements and Tax Benefits Outline](#)**
- **[Conservation Easement Enforcement Policy and Template](#)**
- **[Land Trust Risk Management: Conservation Easement Defense and Enforcement Options](#)**
- **[Conservation Easement Defense and Enforcement Case Law](#)**
- **[Enforcement of Conservation Easements by Third Parties](#)**
- **[Third Party Enforcement of Conservation Easements](#)**
- **[Colorado Conservation Easement Tax Credits](#)**
- **[Perpetual Conservation Easements, the Restatement of Law, and Changed Conditions](#)**
- **[Private Benefit and Inurement in Conservation Transactions](#)**
- **[Conflict of Interest in Conservation Transactions](#)**
- **[The Malling of Vermont, Can Growth Center Designations Save It?](#)**

Books and Documents

- **Conservation Easements in the West**

This user-friendly guide analyzes conservation easements under both state and federal law. It includes descriptions of the authorizing legislation in most of the Rocky Mountain states, a discussion of the federal and state income tax benefits available to donors of conservation easements, and some of the practical issues in preparing conservation easements that comply with those requirements.

- **Managing Conservation Easements in Perpetuity**

Learn how to manage change more effectively so your conservation easements will still be here tomorrow. You will learn to distinguish between easement defense and enforcement, develop a system to educate landowners and take the first steps in drafting an enforcement policy to safeguard what you have worked so hard to protect.

- **Mineral Development and Land Conservation: A Handbook for Conservation Professionals**

The best way to reduce conflicts between land conservation and mineral development is to make sure everyone operates, from the beginning, with the best possible information. The impressive team of experts who contributed to this handbook did exactly that--they compiled a state-of-the-art guide that will be a well-used resource for every land conservation professional in Colorado and beyond.