



Fifth Symposium on Advanced Legal Topics in Land Conservation

June 11-12, 2015
Crowne Plaza Hotel
Indianapolis, IN

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2015 Fifth Symposium on Advanced Legal Topics in Land Conservation

June 11 - 12, 2015

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Agenda and Faculty

Convening leading legal experts and practitioners on emerging issues in land conservation

Program Committee

Bill Silberstein	Catherine Howell	Bill Weeks	Leslie Ratley-Beach
Kaplan Kirsch & Rockwell LLP	The Nature Conservancy Conservation Law Center		Land Trust Alliance

Wednesday June 10

6:00 PM – 7:00 PM **Social Hour**

Meet your colleagues and make dinner plans

Location: Illinois Street Ballroom East

Thursday June 11

7:00 AM **Registration and Continental Breakfast**

Location: Illinois Foyer

Location for all Symposium sessions: Illinois Street Ballroom West

8:00 AM **Welcome and Orientation**

Bill Silberstein, Attorney, Kaplan Kirsch & Rockwell LLP (CO)

Cathy Howell, Senior Attorney, The Nature Conservancy (TX)- moderator

Leslie Ratley-Beach, Conservation Defense Director, Land Trust Alliance (VT) – moderator

8:10 AM **Conservation in Court: Lessons Learned**

Rob Levin, Attorney, Law Office of Robert H. Levin (ME)

We will dig into the nuances and implications of three critical conservation cases.

9:15 AM ***Old and in the Way or a Touch of Gray***

Andrew Dana, Attorney, Conservation Law Associates (MT) and Philip Tabas, Vice President and Special Advisor for the North American Conservation Region, The Nature Conservancy (VA)

Dated, vague, ambiguous, conflicting, inconsistent or missing language in conservation easements cause problems in court and on the ground. Using examples, two conservation veterans explore how to help people preserve the conservation purposes of conservation easements when presented with questions of interpretation and when land trusts seek to make comprehensive updates and improvements to their conservation easements.

10:30 AM **Break**

Location: Illinois Foyer

10:45 AM **Water Law Changes and Challenges**

Jack Wittman, Senior Geoscientist and VP Midwest, Intera (IN) and Joseph Dellapenna, Professor of Law, Villanova University School of Law (PA)

Western Land Trust lawyers and staff have long paid attention to water rights, but eastern

conservation easements generally are silent on water issues. In recent years, population shifts, changing precipitation regimes, unprecedented uses and new laws east of the 100th Meridian have begun to make water a legal issue that conservationists and their counsel must consider. We will survey the changing dynamics of water, examine the legislative responses, and consider the drafting implications for conservation transactions.

12:00 PM Lunch with expert-anchored topic tables

Location: Illinois Street Ballroom East

2:15 PM Conservation Easements on Working Farm Land

W. William Weeks, Director, The Conservation Law Center (IN) and Christian Freitag, Executive Director, Sycamore Land Trust (IN)

Changing markets, changing methods, and changing support and regulation by government make conservation easements that include working farmland a drafting and enforcement challenge. We will explore the implications of the issues for drafting, management plans, and enforcement and, for donations and bargain sales, problematic language from the applicable Treasury regulations.

3:30 PM Break

Location: Illinois Foyer

3:45 PM Three Headed Cow: Government Funded Agricultural Easements

Lavonne Paden, Director, West Virginia Agricultural Land Protection Authority and Ginny Moore, Consultant-Upper Midwest Office, The Conservation Fund and immediate past Executive Director, Kansas Land Trust

With the substitution of ACEP for FRPP and other federal programs what does the three-headed approach of federal, state and private conservation mean for agricultural easement drafting particularly on impervious surface limits, structures, rural enterprises, on-farm energy production, and uses inconsistent with the particular land trust mission? What document designates the roles, responsibilities and rights of the easement co-holders and government funders? Who has authority, priority, decision making control? What are the implications for agricultural easement stewardship particularly in condemnation priority and management of potentially conflicting land uses, conservation easement terms and land trust mission?

5:00 PM Welcome Reception

Hosted by The Nature Conservancy and Kaplan Kirsch & Rockwell

Location: Illinois Street Ballroom East

Friday June 12

7:00 AM Continental Breakfast

Location: Illinois Foyer

Location for all Symposium sessions: Illinois Street Ballroom West

8:15 AM Welcome Back and Orientation to the Day

Leslie Ratley-Beach, Conservation Defense Director, Land Trust Alliance (VT) – moderator

Cathy Howell, Senior Attorney, The Nature Conservancy (TX) - moderator

8:30 AM What Does Private Benefit Really Mean Day to Day?

Jonathan Blum, Counsel, Polsinelli (TX)

Excess benefit, impermissible private benefit and private inurement trouble land conservationists every day. What does it really mean in day to day practice? How to distinguish incidental and insubstantial conferment, and how do you document and measure it? We will delve into triage of risks, identify where flexibility exists and illustrate application with a series of case studies. Bring your questions for diagnosis such as service delivery to landowners, transfer of development rights program facilitation fees, conservation easement violations, fundraising and marketing to name a few.

10:00 AM Break

Location: Illinois Foyer

10:15 AM Incorporating the Value of Ecosystem Services in Legal Decision-Making

Molly Peters-Stanley, Director, Forest Trends Ecosystem Marketplace (DC) and Bill Silberstein

Scientists, governments and businesses are gaining a greater understanding of the economic benefits derived from protecting and enhancing natural ecosystems. For the conservation attorney, quantifying the production and value of natural assets can be important leverage when conserved land is under threat of condemnation, faced with conservation easement violations and in other situations. This session will tackle this emerging area and the questions that land trusts should be asking, including: How can conservationists use ecosystem services to influence decision-making and negotiations? What tools are available to land trusts for assessing the economic benefits of conservation, and how credible is the valuation methodology? In conservation easements, how should we address conservation credits, including ownership and tax issues of double-counting credits and benefits?

11:45 PM Lunch with expert-anchored topic tables

Location: Illinois Street Ballroom East

1:45 PM Indicia of Successful Stewardship Litigation

Keith Gerrard, President of the Board, San Juan Preservation Trust (WA) and Of Counsel Perkins Coie LLP and Tim Seifert, Executive Director San Juan Preservation Trust (WA)

Explore how the San Juan Preservation Trust speedily prevailed in this matter, obtained a permanent injunction and \$100,000 in damages. Over three dozen homes border the Geary Preserve in the San Juan Islands of Washington State. While some of the neighbors that fought to establish this preserve in 1992 still remain, many of these homes have changed hands. One of these new neighbors removed substantially all of the trees from a one-quarter acre area of the preserve to enhance water views for the neighboring Inn.

3:15 Adjourn

Symposium Notes:

- Perpetuity and ethics are constant considerations in conservation work.
- This program committee chose depth over breadth in topics based on your comments from the first three Advanced Topics Symposiums.
- The program committee allowed additional time for *vigorous discussion* on every topic. Please participate.
- Please use the evaluation forms to suggest topics for the Sixth Advanced Topics Symposium.



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Andrew Dana, Attorney, Conservation Law Associates (MT) and Philip Tabas, Vice President and Special Advisor for the North American Conservation Region, The Nature Conservancy (VA)

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Jonathan Blum, Counsel, Polsinelli (TX)

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