

Ninth Symposium on Advanced Legal Topics in Land Conservation

June 8-9 | Virtual Event



Agenda

Thursday, June 8, 2023 1-5:50 p.m. ET

Welcome

1:05 p.m. to 2:35 p.m. ET

Hot Cases in State and Federal Courts (90 Minutes)

Robert H. Levin, Conservation Attorney (ME)

This session will kick off Day One of the Symposium by delving deeply into a few leading cases with breaking developments in land conservation law. The session will provide up-to-date insight on the recent state cases and federal income tax cases. It will also address practitioner pointers, drafting considerations and stewardship implications of the cases dissected.

Break – 10 Minutes

2:45 p.m. to 3:45 p.m. ET

Right of Privacy Issues in Land Conservation Stewardship (60 Minutes)

Melinda Ching, Senior Attorney, Global Legal Team, The Nature Conservancy (HI)

Tom Kay, Executive Director, Alachua Land Trust (FL)

Remote still and video cameras are becoming common tools on conservation lands, used for a variety of purposes. Cameras mounted on land trust properties can monitor animal movement and presence, capture bird sounds, and identify weaknesses in perimeter security that may allow incursions by invasive species, livestock or humans. Captured imagery on preserves is also increasingly being used by land trusts for marketing and promotional purposes. While camera technology can supplement stewardship practices for staff, provide important data for research purposes, and increase outreach and awareness, land trusts must appropriately ensure that its practices adhere to state and federal privacy laws regarding capture and use of images of humans. This session will summarize the various ways in which remote camera technology is used for conservation, the legal issues that arise when using such technology and best practices to comply with the law and mitigate risks associated with capture of images and audio.

Break – 10 Minutes

(continued to next page)

3:55 p.m. to 5:25 p.m. ET

Collaborative Conservation with Public Funders (90 Minutes)

Bob Owen, General Counsel, Western Reserve Land Conservancy, (OH)

Clint Miller, Regional Director, Central Midwest, The Conservation Fund (MN)

Ginny Moore, Kansas State Director, The Conservation Fund (KS)

Federal, state and local land conservation funding programs are growing. Community conservation is shifting land trust practices toward deeper collaborations with public partners. Yet, agencies and local governments sometimes impose unique requirements on land trusts to qualify for public conservation funds, leaving land trusts to puzzle over adapting both their conservation land and easement acquisition practices and their long-term stewardship of conservation properties to meet public partner expectations. At times, for example, public funder requirements may be difficult or impossible to reconcile with federal requirements for tax deductible conservation easements in conservation transactions involving bargain-sales. How much leeway is there to alter templates compliant with federal tax laws to meet public funding requirements? This session addresses multiple challenges associated with melding traditional private land conservation with diverse public conservation land and easement purchase programs. The goals of this session are to encourage land conservation practitioners, first, to recognize that land trusts may need to change their traditional practices and governance to adapt to new opportunities and new public partnerships and second, to encourage deliberate and strategic engagement in any such adaptation to ensure successful and durable collaborative conservation with public funders.

Break – 5 Minutes

5:30 to 5:50 pm ET

Optional Discussion (Not eligible for CLE credits)

Friday, June 9, 2023 12:30-5:50 p.m. ET

Welcome

12:35 to 2:05 ET

Changing Circumstances: Legal Risk Analysis, Stewardship Administration and Enforcement (90 Minutes)

Misti Schmidt, Conservation Attorney, Conservation Partners LLP (CA)

David Ray, Managing Director of Conservation, Low Country Land Trust (SC)

Sydney Cook, General Counsel, Low Country Land Trust (SC)

Land trusts across the country are grappling with changing circumstances that may not be contemplated in existing conservation easements or are being demanded now by landowners in new conservation easements. This session will discuss legal risk factors for evaluating requests and challenges as well as addressing increased demands on stewardship personnel. The presenters will discuss considerations when faced with an unexpected situation and how traditional stewardship tools—policies, interpretations, discretionary approvals, amendments, monitoring, management and community engagement—can be used and applied as our planet and communities that we serve continue to rapidly change.

Break – 10 Minutes

2:15 to 3:45 ET

Neighbors don't always respect property lines, but don't bet against a land trust (90 Minutes)

Ellen Kazary, Executive Director, Great Land Trust (AK)

Jonathon Katcher, Conservation Attorney, Pope and Katcher (AK)

Land trusts usually win when litigating severe violations of a conservation easement but obtaining necessary damages to fund restoration and pay all costs and fees, is more challenging. Timber trespass cases are especially challenging both to prove the case and obtain damages as they are difficult and expensive to document sufficiently to convince insurance companies to settle or if necessary to prevail at trial. Staff and boards are often tempted to settle instead of enduring years of litigation preparation, multiple motions, mediation, trial and appeal. But what is good enough for a land trust to settle a serious arboricide and land damage case? What are the tradeoffs in a major violation resolution? What can a land trust do proactively on to document evidence sufficient to prove timber trespass in your state? Does your land trust have good stewardship procedures and sound records? Is your board and staff ready to take an all-hands-on-deck approach to dispute resolution and the associated communication challenges? This session will evaluate litigation preparation and strategy issues in the context of a major arboricide and land damage case from Alaska.

Break – 10 Minutes

3:55 to 4:55 ET

Lawyers – Inside and Out: Different Roles Mean Different Responsibilities (60 Minutes)

Alice Jones, Land Trust Attorney Weinberg & Hromadka, PLLC (MT & WA)

Ross Baxter, Land Projects Director, Iowa Natural Heritage Foundation (IA)

Attorneys occupy many different roles in and for a land trust. As in-house counsel. As outside, retained counsel. As in-house counsel who work closely with outside counsel. As board members. As executive directors or other staff in non-legal positions. But both the lawyer and the land trust need to understand that their relationship can vary with each scenario. This session will address the professional, ethical, and practical considerations for the distinct roles an attorney may assume for the organization and explore answers to some frequently interrelated questions: Is there an attorney-client relationship? Who is the client? Who isn't? Are communications legal advice? Are communications privileged and protected? What insurance applies, if any? What are the pros and cons – for lawyers and staff – of different models for providing legal services? Attendees will learn how to manage expectations while navigating these ethical boundaries in order to best protect the land trust's interests.

Break – 5 Minutes

5:00 to 5:30 pm ET

Optional Discussion (Not eligible for CLE credits)

*CLE credits are pending approval and may vary by state, the Alliance cannot guarantee approval.