

# How Stewardship and Enforcement Inform Transactions

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# Learn

The Land Trust Alliance empowers land trusts to do more as their people get more skilled, connected and inspired. We train thousands of people every year. We develop leaders. Catalyze partnerships. Share success stories.

Find the resources you need below to strengthen your land trust's work.

# Ninth Symposium on Advanced Legal Topics in Land Conservation

June 8-9 | Virtual Event



Join us virtually on June 8 and 9 for a discussion of complex legal challenges and emerging issues in land conservation. Registration opens April 5<sup>th</sup> and attorneys can earn up to 8 CLE credits.

Topics include:

- Purchased easement and land transactions with public partners
- Right of privacy in stewardship
- Timber trespass enforcement
- Ethical practice considerations for in house and outside counsel;
- Strategies for climate adaptation and changing circumstances
- Hot topics in recent cases and statutory and regulatory updates



TerraFirma has a claims made and reported policy.  
That keeps premium as low as possible.

The policy requires both of the following to happen in the same policy year:

1. The very first instance of the start of a problem even if trivial or uncertain  
AND
2. The TerraFirma placeholder claim is filed by the annual deadline.

- If you don't meet the deadline each year, you jeopardize your coverage.
- The deadline is April 30 each year for problems that first started that year.
- Problems from previous years are past the deadline.
- File placeholders for problems that first started (the original very first fact even if trivial or uncertain) in the same policy year.

Amending Conservation Easements  
*Evolving Practices and Legal Principles*

 Land Trust Alliance

# What We're Not Talking About Today

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- Amendments
  - See the Land Trust Alliance Amendment Report  
<https://landtrustalliance.org/resources/learn/explore/digital-download-amending-conservation-easements?queryID=58b8a7614bdc6ba00ee648a933711c7a>
- Federal Income Tax Requirements for Deductible Conservation Easements

# Resource Protection Criteria

- Criteria Should
  - Reflect goals of your conservation policy and mission
  - Benefit the public interest
  - Conserve the resources of your organization
  - Consider the Landscape Context

# We Learn From the Past

- Overly vague
- Overly restrictive
- Conflicting language
- Impractical restrictions for ongoing stewardship
- Restrictions that do not further conservation purposes
- Conduct periodic review of easement template
- Land trust approval clauses

CONSERVATION RESTRICTION

I, George T. Prue, of Mansfield, Connecticut hereby grant to Joshua's Tract Conservation and Historic Trust, Inc., a Connecticut charitable corporation having its principal office at South Eagleville Road, Mansfield, Connecticut whose purposes include conservation of land, its heirs and assigns forever, the following restriction on the use of their parcel of land situated on South Eagleville Road in the Town of Mansfield, County of Tolland and State of Connecticut containing eighteen and one-third acres, more or less described in a deed dated July 22, 1946 and recorded in Volume 67, Page 124, Mansfield Land Records:

Said property shall henceforth:

Except for non-commercial agricultural uses and except for such logging as is dictated by good forestry practice, the property, other than the present building site, shall be left in its natural state. The purpose of this restriction is to preserve the existing forestation on the property.

The above restriction shall run with the land and is given pursuant to Secs. 47-42a and 47-42b, CGS.

Signed this 14<sup>TH</sup> day of MAY, 1998.

Witnessed by:

“Recreational Activities” means: exercise, sporting, and recreational activities which are predominantly outdoor in nature including, but not limited to, hunting and fishing, walking, bicycling, hiking, running, cross-country skiing, snowshoeing, horseback riding and similar activities. Recreational activities do not include the use of motorized vehicles including but not limited to all-terrain vehicles or snowmobiles, except for limited private use for personal pleasure of persons residing at the Property. Any Recreational Activities shall be conducted in a manner that is consistent with the purposes of this Grant, and in accordance with all applicable laws and regulations.

# Agricultural Tourism

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- Plain meaning rule
- Ambiguous terms
- Agritourism Wetlands America Trust, Inc. v. White Cloud Nine Ventures, L.P., No. 78462 (20th Jud. Cir. Va. June 19, 2014), aff'd 782 S.E.2d 131 (Va. Feb. 12, 2016)



# Expert testimony in White Cloud case:

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It depends on how you define “agricultural.” If you define agricultural as including a winery, that’s subject to interpretation I think. If you define agricultural as growing grapes, I think that’s probably an easier call. But agricultural, silvicultural, viticultural, equine to me is more crop growing and certainly would include grape growing and that kind of thing, but as to whether it would be a winery would be included, clearly in the last sentence it says no commercial, recreational use should be allowed, which gives you a flavor of what they’re looking at. They’re not interested in having large numbers of people coming. But this, again, on this aspect of it I really encouraged her to talk to the Wetlands America Trust people so it’s not for me to interpret it.<sup>3</sup>

## Conn. Gen. Stat. 1-1q

- Except as otherwise specifically defined, the words “agriculture” and “farming” shall include. . . .handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, or for direct sale any agricultural or horticultural commodity as an incident to ordinary farming operations, or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market or for direct sale. The term “farm” includes farm buildings, and accessory buildings thereto, nurseries, orchards, ranges, greenhouses, hoopouses and other temporary structures or other structures used primarily for the raising and, as an incident to ordinary farming operations, the sale of agricultural or horticultural commodities.

2. Definitions. "Farming Activities" means: the cultivation, raising, harvesting, or processing of any agricultural or horticultural commodity, including but not limited to the harvesting of maple syrup or maple sugar or any agricultural commodity as an incident to ordinary farming activities, and including but not limited to the planting, the cultivation of the soil, the raising, caring for, training and management of livestock, including but not limited to horses, cows, sheep and goats; the grazing of livestock upon, or the mowing of the existing field areas of the Protected Property; fish farming and other aquacultural activities; the construction or maintenance of roads, paths, fences, weather protection structures, and unobtrusive signs necessary or incidental to conduct Farming Activities.

"Recreational Activities" means: exercise, sporting, and recreational activities which are predominantly outdoor in nature, including but not necessarily limited to hunting and fishing, walking, bicycling, hiking, running, cross-country skiing, snowshoeing, horseback riding, and similar activities. Recreational activities do not include the use of recreational motorized vehicles such as motorcycles or snowmobiles. Any Recreational Activities shall be conducted in a manner which is consistent with the conservation purposes of this Grant, and in accordance with all applicable laws and regulations.

# Conservation Easement Example (cont.)

- Prohibited Uses
  - Any commercial uses
- Allowed uses under the easement
  - Horseback riding
  - The right to construct outbuildings such as barns, sheds or similar structures, fences and other structures attendant to Recreational Activities



## **Challenges to Prohibitions on Division**

B. Subject to any applicable governmental approvals, the right to divide, subdivide or resubdivide from the property, but only for the limited purpose of:

1. Three single house lots each no greater than five acres in area. Said lots shall be located consistent with the purposes of this Grant as agreed upon by Grantor and Grantee. The access way may cross an existing water way providing that there is minimal change in the course of the water way and the crossing is consistent with town and state regulations. Once subdivided these lots will no longer be subject to the provisions of these restrictions.

3. Prohibited Uses. To carry out the purposes of this Grant, the Grantors agree for themselves, their successor and assigns, that any activity on or use of the Protected Property that is inconsistent with the purpose of this Grant is prohibited. Without limiting the generality of the foregoing, and generally consistent with the Reserved Rights described in Paragraph 4 below, the following activities and uses are expressly prohibited on the Protected Property:

(A) The legal or de facto division, subdivision, or resubdivision of the Protected Property for any purpose, except as provided in Paragraph 4 of this Grant;

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# Unlawful Practice of Land Surveying





## *Location Map Elements*

-  HCA Region in Connecticut
-  Housatonic River Watershed

The map is created from a subset of data from the State of Connecticut & the Housatonic Valley Association (HVA) GIS databases. HVA makes no claims, no representations, and no warranties, express or implied, concerning the validity (express or implied), the reliability or the accuracy of the GIS data and GIS data products furnished by HVA, including the implied validity of any uses of such data. Data sources are listed in the footer of this map.



## Recreational Structures & Siting Renewables

- Definition
- Structures vs. improvements
- Temporary vs. permanent
- Square footage limitation
- Residential vs. recreational
- Commercial vs. non-commercial



# Timber Trespass Enforcement Against Third Parties

## EKLUTNA RIVER ESTUARY VIOLATION



BEFORE VIOLATION - Satellite Imagery taken May 3, 2015 - Environmental Systems Research Institute (ESRI)



AFTER VIOLATION - UAV acquired orthomosaic imagery acquired October 12, 2017 - Klutna Inc.



Data Sources:  
MOA (parcels, roads)  
ESRI (imagery 5/3/2015)  
Klutna Inc. (UAV Orthomosaic: 10/12/2017)  
Projected Coordinate System:  
NAD 1983 State Plane Alaska 4 FIPS 5004 Feet

0 62.5 125 250 375 500 Feet



This map was produced using the best available data, but should not be used in place of plat and survey maps.  
GLT 300250



## Additional Considerations

purposes of this Grant, and in accordance with all applicable laws and regulations.

“Farming Activities” means: the cultivation, raising, harvesting, or processing of any agricultural or horticultural commodity, includes, the raising, caring for, training and management of livestock including, but not limited to, horses, cows, sheep and goats; the grazing of livestock upon, or the mowing of the existing field areas of the Property. Farming activities also include construction or maintenance of paths, fences, weather protection structures, unobtrusive signs necessary or incidental to conduct Farming Activities and repairs of existing roads.

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