

University of Houston Law Center

**Environmental Issues in Real Estate
Course #7297**

SYLLABUS

**Scott A. Sherman
Adjunct Professor**

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Environmental Issues in Real Estate

Instructor

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Class Time

Wednesday, 5:00 pm – 6:50 pm

Course Description and Objectives

This course will address the legal, business, and financial challenges posed by environmental issues in real estate projects. From brownfield transactions and wetlands impacts to Class B/C office buildings and urban redevelopment projects to green building requirements and sustainable corporate campuses, environmental considerations play a key role in today's real estate marketplace.

These topics, for the purposes of course presentation, will be analyzed in three sections: "Environmental Issues in Building Operations and Property Management", "Environmental Issues in Real Estate Transactions" and "Environmental Issues in Real Estate Development". Each course segment will introduce students to a substantive evaluation of the core environmental issues presented and offer insights into the purchase agreements, financial analyses, and deal structures utilized by real estate professionals to manage these matters.

Completion of the course will position students to identify the environmental issues presented in any given real estate scenario, to evaluate their potential impact on projects, and to manage the challenges presented. Additionally, students should gain an understanding of the impacts of property conditions on human health and natural resources, the response of government regulators and investors to these threats, and the options available to real estate professionals for assessing and managing the environmental conditions affecting their projects.

Required Text and Other Materials

Textbook: Environmental Aspects of Real Estate and Commercial Transactions
(Witkin, ed.), American Bar Association, 2011.

Note: Arrangements have been made with the publisher to offer the textbook at a deeply discounted price for students in this course.

Readings: As noted in Course Outline below and made available online.

Assignments

I. Early- and Mid-Term Assignments

Building Support (or Opposition) for Real Estate Projects through Environmental Issues

Requirement: The early- and mid-term assignments each will take the form of an approximately 3-5 page document designed to be used as advocacy in support of (or opposition to) an environmental issue relating to real estate and a real estate project complicated by environmental conditions. The instructor will work with students in the selection of their topics and format of their documents.

Description: The first document will be an advocacy piece to be submitted as comments on an agency rulemaking or guidance document or as testimony to a legislative committee relating to an environmental policy issue affecting real estate. Students are free to choose any issue.

Examples include: revisions to technical cleanup requirements, creation of tax and financial incentives, enhancement of wetlands and species habitat protections, the movement of cleanup oversight from one government agency to another, privatization of cleanup oversight, adoption of green building requirements, and restrictions on how formerly contaminated properties can be reused.

The second document will be a position paper supporting the approval of a brownfield redevelopment project in face of community opposition. Students are free to choose any issue. Examples include: questions and concerns about the adequacy of the cleanup, the long-term oversight of the reuse of the property, the awarding of tax or financial incentives, fast-tracking permitting and other regulatory approvals, worker and neighborhood safety during the cleanup, gentrification, and continued commercial/industrial use amidst the lack of greenspace.

II. Final Course Assignment

Doing the Deal: Successful Management of Environmental Issues in Real Estate Projects

Requirement: The final course assignment will take the form of an approximately 15 page memorandum analyzing the issues involved in a real estate project complicated by environmental conditions and presenting options for resolving those challenges.

Description: The final course assignment will ask each student to identify, evaluate, and manage environmental issues in a real estate project. Students may choose any real estate scenario and environmental matter in which they are interested and are free to draw from actual deals, hypothetical developments, or open policy issues.

In tackling the environmental issue presented, students should consider - at a minimum - the following: What human health concerns/natural resources impacts are presented? What is the relevant body of law or regulations? What governmental bodies will you have to deal with? What is the market impact of the environmental issue? How will the work of the real estate

professionals involved in the matter be affected? And finally - Is the deal worth doing in spite of the environmental obstacles?

The written report should at a minimum:

- describe the project, its physical conditions, and general market considerations
- discuss the environmental issues presented at the site
- analyze the potential impact of the issues (see the preceding paragraph)
- evaluate how you would deal with the obstacles presented, including costs, timing, market perception, project feasibility, government regulators, investors, etc., and
- state your course of action and reasons for doing so.

Students will have the option of turning in their final assignment on or before the close of the final exam period.

III. Participation

Current Environmental Issues - Roundtable Discussion

Requirement: Lead class one discussion on a current environmental topic. Participate in discussion prompted by classmates' presentations. No written requirement.

Description: Each class will begin with a roundtable discussion of a current environmental issue affecting the real estate industry. The discussion will be student-led, with one student serving as the discussion coordinator. The coordinator will be responsible for picking the roundtable topic, identifying 1 - 2 relevant articles from the popular press, and presenting a short (5 minutes) overview of the issues presented. Following the coordinator's presentation, we will open up the discussion for questions, comments, and debate by the rest of the class.

Among other things, the roundtable discussion will seek to identify and analyze the following: What is the human health or natural resources concern? What has been the regulatory response? What is the impact on the real estate market? What are the positions of the various interest groups? How does any of this impact real estate professionals, e.g., developers, lenders, brokers, design professionals, lawyers?

Through the roundtable discussion, students should gain a more thorough insight into substantive environmental topics; an understanding of the competing interests involved in environmental matters; and additional perspectives on the formulation of government policies and real estate project approvals.

Evaluation and Grading

Final Assignment - 75%

Early- and Mid-Term Assignments - 15%

Roundtable Discussion and Class Participation - 10%

Environmental Issues in Real Estate

Course Schedule

OPENING SESSION

Overview and Introductory Lecture (August 27)

Course Overview
Goals and Objectives
Syllabus Review
Roundtable Discussion
Lecture, "Environmental Issues in Today's Real Estate Environment"

ENVIRONMENTAL ISSUES IN REAL ESTATE DEVELOPMENT

Environmental Protection and the Regulation of Development (September 3)

Text: Chapter 23
Online: US EPA: stormwater discharge, waste management

Topics: Property Rights and Regulatory Takings
National Environmental Policy Act/Environmental Impact Statements
Land Disturbance/Stormwater Discharge
Construction and Demolition/Waste Management

Cases: *Nollan v. California Coastal Commission*
Dolan v. City of Tigard
Kelo v. New London

Wetlands and Endangered Species; Conservation Easements (September 10)

Text: Chapters 24, 25, 27
Online: mitigation banks, land trusts

Topics: Definitions
Federal Regulatory Jurisdiction
Project Approvals
Mitigation
Conservation Easements

ENVIRONMENTAL ISSUES IN REAL ESTATE TRANSACTIONS

Due Diligence and Structuring the Transaction

(September 17, 24)

Text: Chapters 7, 8, 9, 10 (excerpts)

Online: ASTM 1527-13

Topics: Phase I and Phase II Environmental Site Assessments
EPA, "All Appropriate Inquiries"
Structuring Transactions/Environmental Provisions in Deal Documents
Environmental Counsel, Environmental Consultants

Environmental Liability, Site Cleanup

(October 1, 8)

Text: Chapter 1, 4, 11, 12 (excerpts)

Online: Tenants as BFPPs

Topics: CERCLA ("Superfund")
Bona Fide Perspective Purchaser ("BFPP")
Lender Liability
Risk-Based Cleanups
Institutional Controls

Site Redevelopment

(October 15, 22)

Text: Chapters 11, 13, 17 (excerpts)

Online: Certificate of Completion, No Further Action Letter

Topics: Brownfields
State Voluntary Cleanup Programs ("VCP")
Environmental Insurance
Tax and Financial Incentives

Case: *PCS Nitrogen v. Ashley*

*** First 5-page assignment due on or before October 22 class.

ENVIRONMENTAL ISSUES IN BUILDING OPERATIONS AND PROPERTY MGMT

Indoor Air Quality and "Sick Building" Syndrome

(October 29, November 5)

Text: Chapters 19, 20, 21, 22 (excerpts)

Online: US EPA: Lead Renovation, Repair and Painting Rule (RRP Rule)
US EPA" Guidance on Vapor Intrusion

Topics: Asbestos
Lead-Based Paint
Mold
Vapor Intrusion

"Green Building", Sustainable Development, and Marketability

(November 12, 19)

Text: Chapter 29

Online: LEED Programs; Building Performance Standards

Topics: U.S. Green Building Council - LEED Programs
Sustainable Development and Land Use Strategies
"Greenwashing" Claims
Overcoming Stigma

*** Second 5-page assignment due on or before November 19 class.