

LAW OF CRITICAL ENVIRONMENTAL AREAS

UAP 4344
 Professor Richardson

CRN 96158
 Fall 2006

M,W 2:30-3:45 p.m.
 McBryde 126

Office: 207 Architecture Annex
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***Office Hours:**
 Tuesdays
 9:00 am to 10:30 am
 or by appointment

Readings:

Coursepack (hereinafter "CP") is available at University Bookstore and Tech Bookstore . Most readings not in the coursepack will be on Blackboard ("BB").

***Course Schedule and Readings**

Date	Topic	Reading
Mon., Aug. 21	Orientation	
Wed., Aug. 23	Introduction to the Law	Sections I. – VII. of Geyer and Richardson (CP, pp. 1-20); Virginia Courts in Brief
Mon. Aug. 28	Introduction the Law, Continued.	Sections VIII – XII. of Geyer and Richardson (CP, pp. 20-29); United States Constitution < http://www.house.gov/Constitution/Constitution.html > < http://www.house.gov/Constitution/Amend.html > Va. Constitution, Article XI < http://legis.state.va.us/vaonline/li1k.htm >.
Wed., Aug. 30	Intro. to Environmental Law; Intro to Critical Areas Law; Intro to Administrative Law	CP, pp. 29-40; pp. 56-63 (<i>Chevron, U.S.A., Inc. v. NRDC</i> , 467 U.S. 837 (1984). Brief of Chevron Due.
Mon., Sept. 4	Introduction to wetlands; Wetlands & Administrative law.	1987 Corps. Of Engineers Wetlands Delineation Manual: Part I (Introduction), Part II (Technical Guidelines), and Part III (Characteristics and Indicators of Hydrophytic Vegetation, Hydric Soils and Wetland Hydrology)(BB); CP, pp. 64- 74 (<i>Avoyelles Sportsmen's League, Inc. v. Marsh</i> , 715 F.2d 897 (5 th Cir. 1983).
Wed., Sept. 6	History of Federal Wetlands Regulation	CP, pp. 40-55 ("Commerce to Conservation: The Call for a National Water Policy and the Evolution of Federal Jurisdiction Over Wetlands").

Mon., Sept. 11	What is a [jurisdictional] Wetland under Section 404 of the Clean Water Act?	CP pp. 74- 85 (33 U.S.C. section 1344, 33 CFR sections 328.2-328.5); CP pp. 85-93 (<i>United States v. Riverside Bayview Homes, Inc.</i> , 474 U.S. 121 (1985)); CP pp. 93-104 (<i>Hoffman Homes, Inc. v. EPA</i> , 961 F.3d 1310 (7 th Cir. 1992) (Hoffman I)); <i>Rapanos v. U.S.</i> , 126 S.Ct. 2208 (2006); CP pp. 104 - 105 (<i>Hoffman Homes, Inc. v. EPA</i> , 975 F.2d 1554 (7 th Cir. 1992) (Hoffman II)); CP pp. 105-112 (<i>Hoffman Homes, Inc. v. EPA</i> , 999 F.2d 256 (7 th Cir. 1993) (Hoffman III)).
Wed., Sept. 13	What is a [jurisdictional] Wetland under Section 404 of the Clean Water Act? (continued)	CP pp. 112-116 (<i>Cargill v. U.S.</i> , 516 U.S. 955 (1995)); CP pp. 117-126 (<i>United States v. Wilson</i> , 133 F.3d 251 (4 th Cir. 1997); CP pp. 126-140 (<i>SWANCC v. USACE</i> , United States Supreme Court (2001)).
Mon., Sept. 18	Regulated Activities under Section 404	CP pp. 74-84 (33 U.S.C. A. Sect. 1344, 33 C.F.R. Sect. 328.1-328.5); CP pp. 141-145 (<i>Avoyelles Sportsmen's League, Inc. v. Marsh</i>); CP pp. 146-154 (<i>United States v. Wilson</i> , 133 F.3d 251 (4 th Cir. 1997)).
Wed., Sept. 20	Regulated activities (Cont'd) The Tulloch Rule	CP pp. 154-163 (<i>Save Our Community v. E.P.A.</i> , 971 F.2d 1155 (5 th Cir. 1992); CP pp. 162-168 (The Tulloch Rule (Federal Register)); CP pp. 169-177 (<i>American Mining Congress v. USACE</i> , 962 F.Supp. 2 (D. D.C. 1997)); CP pp. 178-188 (<i>National Mining Assoc. v. USACE</i> , 145 F.3d 1399 (D.C. Cir. 1998)). Response: The NEW Tulloch Rule: CP, pp. 188 (33 CFR Sec. 323.2).
Mon., Sept. 25	Exemptions from Section 404	CP pp. 74-76 (33 U.S.C.A. Sect. 1344(f)); CP pp. 188-192 (33 C.F.R. Sect. 323.4); CP pp.193-201 (<i>United States v. Huebner</i> , 752 F.2d 1235 (7 th Cir. 1985)); CP pp. 200-214 (REQUIRED: Memorandum to the Field: Application of Best Management Practices to Mechanical Silvicultural Site Preparation for Establishment of Pine Plantations in the Southeast; OPTIONAL: Guidance on the Application of Best Management Practices to Silvicultural Site Preparation Activities for the Establishment of Pine Plantations in the Southeast).
Wed. Sept. 27	Nationwide and General Permits Under Section 404	33 U.S.C. Sect. 1344(e); CP pp. 214-228 (33 C.F.R. Sections 330 to 330.6); CP pp. 228-235 (<i>United States v. Cumberland Farms</i> , 826 F.2d 1151 (1st Cir. 1987)).

Mon. Oct. 2	Individual Permits	CP pp. 235-241 (33 C.F.R. 320.4; 40 C.F.R. 230.1; 40 C.F.R. 230.10); CP pp. 241-247 (<i>James City County v. E.P.A.</i> , 955 F.2d 254 (4 th Cir. 1992)).
Wed., Oct. 4	Civil Enforcement Criminal Enforcement	CP pp. 248-251 (<i>United States v. Pozsgai</i> , 1990 WL 1432 (E.D.Pa.) (<i>Pozsgai I</i>)); CP pp. 251-262 (<i>United States v. Pozsgai</i> (<i>Pozsgai III</i>)); CP pp. 263-265 (<i>Hoffman Group, Inc. v. Environmental Protection Agency</i> , 902 F.2d 567 (7 th Cir. 1990)). CP pp. 265-267 (<i>United States v. Pozsgai</i> , 757 F.Supp. 21 (E.D. Pa. 1991) (<i>Pozsgai II</i>)); CP pp. 267-274 (<i>United States v. Ellen</i> , 961 F.2d 462 (4 th Cir. 1992)).
Mon., Oct. 9	No class	Fall Break
Wed., Oct. 11	State Wetlands Regulation	Chapter 4 (State Wetlands Regulation), <i>Wetlands, Mitigating and Regulating Development Impacts</i> , 2 nd Ed., Urban Land Institute, by David Salvesen (BB); CP pp. 274-308 (Virginia Wetlands Law and Regulations).
Mon., Oct. 16	Wetlands Mitigation Mitigation Banking	CP pp. 309-314 (Memorandum of Agreement Between the Department of Army and the Environmental Protection Agency Concerning The Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines); CP pp. 314-317 (Virginia Mitigation Regulations).
Wed., Oct. 18	Property Rights and Takings Takings and Wetlands	CP pp. 317-332 (<i>Lucas v. South Carolina Coastal Council</i> , 112 S.Ct. 2886 (1992)); CP pp. 332-347 (<i>Florida Rock Industries v. U.S.</i> , No. 266-82-L, United States Court of Federal Claims (Aug. 31, 1999)); CP pp. 348-356 (<i>Pallazolo v. Rhode Island.</i> , United States Supreme Court (June 28, 2001)).
Mon., Oct. 23	Coastal Zone Management Act	CP pp. 356-368 ("Coastal Zone Management and the Search For Integration" by Ronald Rychlak); CP pp. 368-379 ("Coastal Zone Management on the Atlantic Seaboard: Two Different Approaches taken by the Carolinas" by Angela Beckner).

Wed., Oct. 25	Floodplain Protection The Coastal Barrier Resources Act	CP pp. 380-396 ("Rising Waters: The National Flood Insurance Program and Louisiana"); CP pp. 396-398 (Virginia Floodplain Legislation). CP pp. 399-425 ("The Coastal Barrier Resources Act: A Common Cents Approach to Coastal Protection" by Elise Jones)
Mon., Oct. 30	The Public Trust Doctrine More on Public Trust (kind of): Recreational Fishing Rights in Virginia	CP pp. 425-437 ("The Public Trust Doctrine: A Tragedy of the Common Law" by James R. Rasband (A book review of "Oyster Wars and the Public Trust: Property, Law, and Ecology in New Jersey")). "Inland Recreational Fishing Rights in Virginia: Implications of the Virginia Supreme Court Case <i>Kraft v. Burr</i> " by Murphy and Stephenson (BB).
Wed., Nov. 1	Karst, Forestry and Groundwater	Karst Resource Protection and Forest Management by Terri Brown (BB); CP pp. 479-484 (Legal Impediments to Utilizing Groundwater as a Municipal Water Supply Source in Karst Terrain in Virginia by Richardson) CP pp. 484-490 (<i>Costello v. Frederick County Sanitation Authority</i>).
Mon., Nov. 6	Protection of Farmland, Forestland and Open Space	CP pp. 445-462 (Fact Sheets: Farmland Protection Policy Act, Farmland Protection Program, Agricultural Economic Development, Conservation Easements, Agricultural Protection Zoning, Cost of Community Services).
Wed., Nov. 8	Protection of Farmland, Forestland and Open Space (Cont'd)	CP pp. 462-479 (Fact Sheets: Differential Assessment and Circuit Breakers, Agricultural District Programs, Right-to-Farm Laws, Transfer of Development Rights, Purchase of Agricultural Conservation Easements (PACE), PACE: Sources of Funding, Status of State PACE Programs, Status of Local PACE programs, Farm Transfer and Estate Planning).
Mon., Nov. 13	Introduction to the Endangered Species Act	CP pp. 509-529 (ESA Sections 7 & 9; ESA Section 11); CP pp. 571-579 (The Endangered Species Act: Does Endangered Refer to the Species, Private Property Rights, The Act Itself, or all of the Above? By Kirchheim); <i>Tennessee Valley Authority v. Hill</i> (BB).
Wed., Nov. 15	Habitat Protection; ESA and the Commerce Clause	CP pp. 543-571 (<i>Babbitt v. Sweet Home</i>); CP pp. 529-543 (<i>Gibbs v. Babbitt</i> , 214 F.3 rd 483 (4 th Cir. 2000)).
Mon., Nov. 20- Friday Nov. 24	THANKSGIVING BREAK NO CLASS	

Mon., Nov. 27	Habitat Conservation Planning	ESA Section 10 (Incidental Takes) (CP, pp. 519-525); <i>Friends of Endangered Species v. Jantzen</i> , 760 F.2d 976 (1985) (ER); CP pp. 579-597 (Habitat Conservation Planning: Addressing the Achilles Heel of the Endangered Species Act by Sheldon).
Wed., Nov. 29	Landowner Incentive Program, Private Stewardship Grants, Candidate Conservation Agreements Safe Harbor Agreements Conservation Banking	http://endangered.fws.gov/grants/private_stewardship/psgp.pdf http://endangered.fws.gov/listing/cca.pdf http://endangered.fws.gov/recovery/harborgra.pdf http://endangered.fws.gov/policies/conservation-banking.pdf
Mon., Dec. 4	Wrap up and Conclusions	Final Examination Distributed
Wed., Dec. 6	NO CLASS	Work on Final Exam
Mon., Dec. 11 at 12:05 P.M.	FINAL EXAMINATION DUE	

*Grading (Undergraduate Credit):

Class participation/Assignments	25%
Midterm Exam #1	25%
Midterm Exam #2	25%
Final Exam	25%

*Grading (Graduate Credit):

Class participation/Assignments	20%
Midterm Exam #1	20%
Midterm Exam #2	20%
Research Paper or Presentation	20%
Final Exam	20%

CLASS LISTSERVE AND BLACKBOARD: I will establish a class listserve early in the semester. I use the listserve to communicate announcements, give detail on assignment, answer questions on assignments and examinations, and similar issues. My policy is to delete any identifying information from individual questions, then post the question and my answer on the listserve. I also encourage the use of the class listserve for class discussions. Therefore, you are expected to check your email regularly. I also will establish a class Blackboard page, on which much information will be posted.

OVERHEADS: I prepare overheads that I use in class lectures and discussions. These overheads are basically outlines of the class material and are posted on Blackboard as far in advance of class as possible. I recommend that you print the overheads prior to class to minimize note-taking.

EXAMS: Both midterm examinations and the final examination will be take-home. You may NOT work together on examinations. The only person you may consult with respect to the examinations is the instructor. TENTATIVE DATES: Midterm 1: Distributed September 25, due October 2. Midterm 2: Distributed October 30, due Nov. 6.

HONOR SYSTEM: I abide by the University Honor System and expect all students in my class to do so also, by adhering to the requirements themselves and reporting any violations by others. I WILL REPORT ALL VIOLATIONS THAT I SUSPECT OR BECOME AWARE OF! On any in-class exams or work, take-home exams or homework, you are not to work with anyone else unless explicitly instructed or allowed to do so. Your work should be your own.

CELL PHONES, PDAs and other ELECTRONIC DEVICES, and CLASS DISTURBANCES: All cell phones, PDAs, and other electronic devices SHALL be turned off AND STOWED **before entering the classroom** and shall remain off and stowed until class is dismissed. Checking cell phone, IM or email messages during class is unprofessional and rude, and I will NOT tolerate such behavior. Obviously, IMing and similar behavior is even more inexcusable. Talking amongst yourself or otherwise disrupting or disturbing the class falls within the same category.

You should consider class as a professional meeting. I treat you like a professional, and I expect you to act like a professional. If one would check messages during a professional meeting in a job setting, they would very likely find themselves unemployed. Therefore, one violation of this policy shall result in a one letter grade reduction in the violator's final grade. Two violations will result in the violator receiving an "F" as a final grade in this course.

IF you have an EMERGENCY and need to monitor your voice or electronic messages, advise me BEFORE class begins. You may not use emergency or any other excuse after-the-fact.

DISABILITIES/ACCOMODATION: If anyone has a disability which requires accommodation, please let me know and I will work with you.

* I reserve the right to make changes to this syllabus, including, but not limited to, the grading, class schedule and readings, and office hours, in my sole and absolute discretion. I further reserve the right to give pop quizzes on the readings for any particular class.