SEMERN
HISTORIC PRESERVATION LAW
LAW 6936/5318
FALL SEMESTER 2016

Monday, 3:00-4:50 pm, 350 Holland Hall

Professor: Timothy McLendon
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E-mail: mclendon@law.ufl.edu

Office Hours: Mondays, 9:30-10:30am
Wednesdays, 9:30-10:30am
Thursdays, 4.00-5:00pm

Description:
This 2 credit hour seminar will survey the legal structure, philosophy and techniques behind historical and archaeological resources protection in the United States. The first part of seminar will involve lectures, readings and discussions of federal preservation laws, including both specific federal laws (e.g., the National Historic Preservation Act and NEPA), as well as federal programs in support of preservation (e.g., the National Register of Historic Places). The second part of seminar will focus on the state and local historic preservation structure, especially the designation and protection of individual landmarks and historic districts. A final section will consider some of the constitutional issues raised by historic preservation, including takings, due process and first amendment issues. The seminar will draw upon visiting resource people for some sessions who are among the local, state and national authorities in the field of historic preservation.

Readings for the course will include selected laws, cases and articles. The seminar will include an advanced written research paper and oral presentation to the class addressing a particular legal/policy problem or issue in historic or archaeological resources protection. The paper may satisfy the College of Law’s advanced writing requirement.

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The mandatory readings (cases, articles, many statutes and regulations) have been combined in a course pack. [Per UF regulation, the professor is required to state that he has no financial interest in whether students purchase the course pack.] Course materials will be available for purchase at Book iT, 1250 W. University Ave. (N.W. 13th St. & University Ave.-in the Holiday Inn Building), ph.# 352-371-9588. Students are also free to download the materials themselves. Some additional material is available on TWEN and a few items have been placed on reserve in the Law Library.

A current compendium of relevant federal historic preservation statutes is available for free online at: 
https://www.nps.gov/subjects/historicpreservation/laws.htm. Other supplementary materials will be distributed in class or placed on reserve in the Law Library in Bruton-Geer Hall.

**Grades:**

Grades in the seminar will be based on: 1) the quality of the paper submitted (70%); 2) the oral presentation (20%); and 3) attendance and participation in class discussion (10%). A seminar depends upon class attendance, and four or more unexcused absences are grounds for dismissal from the seminar.

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For more details, see this information at

**Seminar Paper Deadlines:**

2. Outline & initial Bibliography - Monday, 3. October
3. Initial Draft - Monday, 7. November
4. Completed Paper - Wednesday, 30. November, 5.00pm
Outline of the Course:¹

Class 1:  Monday, 15. August

Introduction - Why Preserve?


I. Federal Historic Preservation Laws

Overview


* National Register Criteria, 36 CFR § 60.4. In course materials & on reserve.


¹ Readings marked “*” are assigned readings for that week. Other readings are suggested as supplemental material.

* United States v. Diaz, 499 F.2d 113 (9th Cir. 1974). In course materials.

* United States v. Smyer, 596 F.2d 939 (10th Cir. 1979). In course materials.


Class 2: Monday, 22. August - Guest Speaker -

Dee Hendrichs, Federal Emergency Management Agency, former Preservation Planner, City of Gainesville & former planner with Florida Dept. of Transportation - Section 106 Casestudy: Bridge of Lions, St. Augustine

Bridge of Lions, St. Augustine. Rehabilitation project information, available online at: http://heavymovablestructures.org/assets/technical_papers/74.pdf


National Historic Preservation Act (54 U.S.C. § 300101 et seq.)

* Don't Tear It Down, Inc. v. General Services Administration, 401 F. Supp. 1194 (1975). In course materials.


Section 106 Implementing Regulations:
http://www.achp.gov/book/sectionIII.html#III

Court Opinions on Compliance with Section 106 and the Council's Regulations:
http://www.achp.gov/book/sectionIV.html#IV

36 CFR Part 800: "Protection of Historic Properties"

Class 3: Monday, 29. August


Section 110 of the National Historic Preservation Act

Court Opinions on Compliance with Section 110:
http://www.achp.gov/book/sectionV.html#V

NEPA (42 U.S.C. § 4321 et seq.)

* Watch v. Harris, 603 F.2d 310 (2d Cir.), cert. denied, 444 U.S. 995 (1979). In course materials.


Labor Day Holiday: Monday, 5. September  -- No Class
Class 4: Monday, 12. September - Guest Speaker -
Dr. Janet Snyder Matthews, Associate Scholar, UF College of Design, Construction and Planning; former Keeper of the National Register for Historic Places, US Nat'l Park Service & former Florida State Historic Preservation Officer

Transportation Projects and Section 4(f) review


* Benton Franklin River-Front Trailway and Bridge Committee v. Lewis, 701 F.2d 784 (9th Cir. 1983). In course materials.

Americans with Disabilities Act (42 U.S.C. § 12101 et seq.)

Section 12204 of the ADA and Section 4.1.7 of the Accessibility Guidelines promulgated by the U.S. Architectural & Transportation Barriers Compliance Board specifically govern historic properties. See 42 U.S.C. § 12204; 36 C.F.R. 1191.2 (1997).

* Thomas Jester & Sharon Park, Making Historic Properties Accessible, PRESERVATION BRIEF No. 32 (Washington, D.C., NPS, 1993), available online at: https://www.nps.gov/tps/how-to-preserve/briefs/32-accessibility.htm

* Gathright-Dietrich v. Atlanta Landmarks, Inc., 452 F.3d 1269 (11th Cir. 2006). In course materials.


Class 5: Monday, 19. September


* Northeast Research LLC v. One Shipwrecked Vessel, 729 F.3d 197 (2d Cir. 2013). In course materials.


* Sea Hunt v. Unidentified Shipwrecked Vessel, 221 F.3d 634 (4th Cir. 2000). In course materials.

* Christopher R. Bryant, The Archaeological Duty of Care: The Legal, Professional, and Cultural Struggle over Salvaging Historic Shipwrecks, 65 ALB. L. REV. 97 (2001). On TWEN.


Class 6: Monday, 26. September - at Florida Museum of Natural History


http://www.cr.nps.gov/nagpra/
http://www.repatriationfoundation.org/
http://www.friendsofpast.org/


* Bonnichsen v. United States, 367 F.3d 864 (9th Cir. 2004). In course materials.

Class 7: Monday, 3. October - possible meeting downtown for class & walking tour

II. Local Historic Preservation Laws


Constitutional Issues


Class 8: Friday, 7. October - Field Trip to Dudley Farm (west of Gainesville on Newberry Road)
II. The Role of State Government


Florida Department of State, Division of Historical Resources, http://www.flheritage.com/

**Monday, 10. October** - **No class**

**Class 9: Monday, 17. October** - **Guest Professor - Prof. Emeritus E.L. Roy Hunt**

**Takings:**


**Class 10: Monday, 24. October**

*Due Process:*


**Establishment Clause:**


**Class 11: Monday, 31. October**

**IV. Tax Incentives**


* Nalle v. Comm’r of Internal Revenue, 990 F.2d 1134 (5th Cir. 1993). In course materials.


36 CFR, Part 67, Historic Preservation Certifications Pursuant to Sec. 48(g) and Sec. 170(h) of the Internal Revenue Code of 1989, and 36 CFR Part 68, The Secretary of the Interior's Standards for Historic Preservation Projects


Section 170(h), Internal Revenue Code of 1986: Qualified Conservation Contributions, 26 U.S.C. 170(h)

26 CFR Part 1.170A-14: Qualified Conservation Contributions

Ad Valorem Tax Incentive for Historic Preservation in Florida

* Fla. Const. art. VII, §§ 3(e) & 4(d); art. XII, § 22
  Fla. Stat. §§ 193.503, 193.505
  In course materials.


V. Development Strategies

Transferable Development Rights
Preservation Easements and Covenants


Timothy McLendon, Summary of Florida Historic Preservation Law (Sections IV (B) & (C)), in ENVIRON. & LAND USE LAW TREATISE (Florida Bar 2000, 2012). On TWEN & on reserve.


VI. International and Comparative Preservation Law

International Council of Monuments and Sites. ICOMOS Charters and other instruments, available online at: http://www.international.icomos.org/e_charte.htm

* "International Charter for the Conservation and Restoration of Monuments and Sites" (The Venice Charter of 1964), in course materials & available online at: http://www.international.icomos.org/charters/venice_e.htm

* UNESCO, Convention for the Protection of the World Cultural and Natural Heritage (1972). In course materials


* R.M.S. Titanic v. Wrecked & Abandoned Vessel, 435 F.3d 521 (4th Cir. 2006). In course materials.

U.S. State Department International Cultural Property Protection: http://eca.state.gov/cultural-heritage-center/cultural-property-protection


Student Presentations
Other Reference & Supplementary Materials - on reserve:


CONTRIBUTIONS OF HISTORIC PRESERVATION TO THE QUALITY OF LIFE IN FLORIDA (Timothy McLendon & JoAnn Klein, eds., 2006).
Executive Summary, available online at: 
Technical Document, available online at: 

ECONOMIC IMPACTS OF HISTORIC PRESERVATION IN FLORIDA (Timothy McLendon & JoAnn Klein, eds., 2002).
Executive Summary, available online at: 
Technical Document, available online at: 
http://www.law.ufl.edu/cgr/technical-report.shtml

ECONOMIC IMPACTS OF HISTORIC PRESERVATION IN FLORIDA, UPDATE 2010 (Timothy McLendon & JoAnn Klein, eds., 2010).
Executive Summary, available online at: 
Technical Document, available online at: 


HISTORIC PRESERVATION IN FLORIDA (E.L. Roy Hunt et al., eds., 1988).


