SEMINAR
HISTORIC PRESERVATION LAW
LAW 6936/5318
FALL SEMESTER 2017

Monday, 5:00-6:40 pm, 355A Holland Hall

Professor: Timothy McLendon
Office: 230 Bruton-Geer Hall (Levin College of Law)
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Office Hours: Mondays, 10:30-11:30am
Wednesdays, 9:30-10:30am
Thursdays, 4:00-5:00pm

Course 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.
Course Materials:
The mandatory readings (cases, articles, many statutes and regulations) have been combined in a course pack. [Per UF regulation, this 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](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.

Course Goals & Objectives:
The goal of this seminar is to introduce students to the legal structures which support historic and cultural resource preservation, including the major federal procedural laws, the laws which protect archaeological and Native American artifacts, local historic ordinances and the constitutional issues raised by them, and some of the tax and other incentive policies which promote historic preservation.

By the end of this course, students should be able to:
- Appreciate the history and development of the field of historic preservation, and the policies which define what is considered historic;
- Recognize the different federal procedural statutes relevant to historic and cultural resource preservation, including the National Historic Preservation Act, the National Environmental Policy Act and Section 4 of the Department of Transportation Act;
- Apply basic administrative law principles to challenges under these statutes, including plaintiff standing, relevant standard of review and available remedies;
- Explain the federal laws protecting archaeological and Native American resources, and the applicability of these laws to private behavior;
• Describe how historic preservation functions at the local level;
• Evaluate how relevant constitutional provisions may apply to the operation of these local ordinances; and
• Examine various federal, state and local incentives that promote preservation by private parties, including the federal rehabilitation tax credit and local ad valorem tax exemptions, as well as other incentive programs.

**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.

**Grade Values for Conversion**

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The law school grading policy is available at: [http://www.law.ufl.edu/students/policies.shtml#9](http://www.law.ufl.edu/students/policies.shtml#9). Requirements for class attendance, and make-up exams, assignments, and other work in this course are consistent with University of Florida policies that can be found at: [https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx](https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx).

**Statement related to accommodations for students with disabilities:**
Students requesting classroom accommodation must first register with the Disability Resource Center (tel: 352-392-8565, or online at: [http://www.dso.ufl.edu/drc/](http://www.dso.ufl.edu/drc/)) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the Dean Inman in Student Affairs when requesting an accommodation. Students with disabilities should follow this procedure as early as possible in the semester.
**Academic misconduct:**
Academic honesty and integrity are fundamental values of the University community. Students should ensure that they understand the UF Student Honor Code, available online at: [http://www.dso.ufl.edu/students.php](http://www.dso.ufl.edu/students.php).

**Evaluations:**
Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at: [https://evaluations.ufl.edu](https://evaluations.ufl.edu). Evaluations are typically open during the last two or three weeks of the semester, but students will be informed when they are open. Summary results of these assessments are available to students at: [https://evaluations.ufl.edu/results/](https://evaluations.ufl.edu/results/).

**Class Preparation/Academic Workload:**
This course complies with ABA Standard 310. The required readings for this course, posted below, require about 120 minutes of reading and preparation for each class session.

**Seminar Paper Deadlines:**

2. Outline & initial Bibliography - Friday, 6. October
3. Initial Draft - Monday, 6. November
4. Completed Paper - Wednesday, 29. November, 5.00pm

**Outline of the Course:**

1. **Class 1: Monday, 14. August**

   **Introduction - Why Preserve?**


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


I. **Federal Historic Preservation Laws**

**Overview**

* Editor Note: *An Overview of Federal Historic Preservation Law & Related Legislation*, PRESERVATION L. REP. (June 1994). In course materials & on reserve.

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


**American Antiquities Act of 1906** (54 U.S.C. §§ 320301-320303)

* *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.

**Historic Sites Act of 1935** (54 U.S.C. §§ 102303-102304, 320101-320106)

**Class 2: Monday, 21. August**

Bridge of Lions, St. Augustine. Rehabilitation project information, available online at: [http://heavymovablestructures.org/assets/technical_papers/74.pdf](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** (54 U.S.C. § 306108, formerly 16 U.S.C. § 470f)


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, 28. August - Guest Speaker -**

**Linda Stevenson,** Ph. D., Principal, Stevenson Architects & Adjunct Professor, Univ. of Florida College of Design, Construction & Planning


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, 4. September -- No Class

Monday, 11. September -- No Class

Class 4: Monday, 18. 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).


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


Class 5:  Monday, 25. 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.


Class 6: **Friday, 29. September** - Field Trip to Dudley Farm (west of Gainesville on Newberry Road)

* Dudley Farm National Register Application. On TWEN.

* Dudley Farm State Park website: [http://www.floridastateparks.org/DudleyFarm/](http://www.floridastateparks.org/DudleyFarm/)

II. **The Role of State Government**


* FLA. STAT. ch. 267. In course materials.

Florida Department of State, Division of Historical Resources, [http://www.flheritage.com/](http://www.flheritage.com/)

Class 7: **Monday, 2. October** - meet at Thomas Center downtown with Jason Simmons & Cleary Larkin, City of Gainesville planning staff, with short walking tour to follow.

II. **Local Historic Preservation Laws**


Constitutional Issues


Class 8:  Friday, 6. October - 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.

Monday, 9. October - No class

Class 9:  Monday, 16. October - Guest Professor - Prof. Emeritus E.L. Roy Hunt

Takings:


* FLA. STAT. ch. 70, Bert J. Harris Private Property Rights Protection Act. In course materials.

Class 10: Monday, 23. October

Due Process:


Establishment Clause:


Class 11: Monday, 30. 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


**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](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](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](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).

ECONOMIC IMPACTS OF HISTORIC PRESERVATION IN FLORIDA (Timothy McLendon & JoAnn Klein, eds., 2002).
Executive Summary, available online at: http://www.law.ufl.edu/cgr/pdf/historic_report.pdf

ECONOMIC IMPACTS OF HISTORIC PRESERVATION IN FLORIDA, UPDATE 2010 (Timothy McLendon & JoAnn Klein, eds., 2010).


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


**PRESERVATION LAW REPORTER** (Washington, D.C., Nat’l Trust for Hist. Preservation).


