SEMINAR
HISTORIC PRESERVATION LAW
LAW 6936, CLASS #23874/CLASS #29269
FALL SEMESTER 2023

Thursday, 10:00am-12:00pm, 285A Holland Hall

Professor: Timothy McLendon
Office: 320 Holland Hall (Levin College of Law)
Telephone: (352) 273-0835
E-mail: mclendon@law.ufl.edu

Office Hours: Mondays, 10:30-11:30am
Wednesdays, 9:30-10:30am
Thursdays, 1:30-2:30pm

Course Description:
This 2 credit hour seminar surveys the legal structure, philosophy and techniques behind the protection of historical and archaeological resources 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 state and local historic preservation, especially the designation and protection of individual landmarks and historic districts. A final section will consider constitutional issues raised by historic preservation, including takings, due process and first amendment issues. The seminar will draw upon visiting experts for some sessions who are among the local, state and national authorities in the field of historic preservation and will include site visits to highlight relevant aspects of preservation law.

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 UF Levin 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, website: https://bookit.com.bz/. Students are also free to download the materials themselves. Some additional material is available on Canvas 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 may be distributed in class or placed on Canvas.

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.

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>A</th>
<th>A-</th>
<th>B+</th>
<th>B</th>
<th>B-</th>
<th>C+</th>
<th>C</th>
<th>C-</th>
<th>D+</th>
<th>D</th>
<th>D-</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grade Points</td>
<td>4.0</td>
<td>3.67</td>
<td>3.33</td>
<td>3.0</td>
<td>2.67</td>
<td>2.33</td>
<td>2.0</td>
<td>1.67</td>
<td>1.33</td>
<td>1.0</td>
<td>.67</td>
<td>0</td>
</tr>
</tbody>
</table>

The law school grading policy is available [here](#).

**Attendance:**
Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed 2 absences during the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement may be dropped from the course. The law school’s policy on attendance can be found [here](#).
Statement related to accommodations for students with disabilities:
Students requesting accommodations for disabilities must first register with the Disability Resource Center (https://disability.ufl.edu/). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester. Students may access information about various resources on the UF Law Student Resources Canvas page, available at https://ufl.instructure.com/courses/427635.

The law school policy on exam delays and accommodations can be found here.

Evaluations:
Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click here for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via https://ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students here.

Observance of religious holidays:
UF Law respects students’ observance of religious holidays.

- Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith.
- Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence.
- Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances.
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. Students are expected to complete all readings prior to class. Your readings are outlined in the syllabus. Additional readings may be assigned during the semester and posted to the Canvas site.

Honor Code:
Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Law Honor Code located here. The UF Law Honor Code also prohibits use of artificial intelligence, including, but not limited to, ChatGPT and Harvey, to assist in completing quizzes, exams, papers, or other assessments unless expressly authorized by the professor to do so.

Plagiarism. Representing another's work as your own constitutes plagiarism. Further, paraphrasing or quoting from a case, law review article, or any other source without properly acknowledging the source or without including quotation marks where such marks are appropriate constitutes plagiarism. Any paper evidencing plagiarism will receive a failing grade and will be referred to the law school's Honor Committee. Ignorance or lack of intent are no defense to a charge of plagiarism.

In-Class Recordings:
All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will work with faculty to determine when students may have access to these recordings, and the recordings will be password protected. It is the student’s responsibility to contact the Office of Student Affairs as soon as possible after an absence.
Seminar Paper Deadlines:

2. Outline & initial Bibliography - Class 7, Friday, 7. October
3. Initial Draft - Class 10, Wednesday, 26. October
4. Completed Paper - Tuesday, 28. November, 5.00pm

Outline of the Course:¹

Class 1: Thursday, 24. August

Introduction - Why Preserve?


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.

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


* 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: Thursday, 31. August - Guest Speaker -

Cleary Larkin, Ph.D., Director, Historic Preservation Program & Assistant Professor, Dept. of Urban & Regional Planning, UF College of Design, Construction & Planning.

Bridge of Lions, St. Augustine. Rehabilitation project information, available online at:

* Advisory Council on Historic Preservation, “106 Success Story: Bridge of Lions Illustrates Early Community Involvement Key in Maintaining Historic Character in a Contemporary Bridge”, available online at:
https://www.achp.gov/success-stories/bridge-lions


Bridge of Lions, Final Environmental Impact Statement, available online at:

–7–
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.


Federal Historic Preservation Case Law, 1966-2000, Section 2: NHPA:
https://www.achp.gov/sites/default/files/2018-10/Section%20106%20Casebook%201966%20through%202000.pdf


Advisory Council on Historic Preservation, Section 106 Users Guide,


Section 106 Implementing Regulations:
https://www.achp.gov/sites/default/files/2018-10/Section%20106%20Casebook%201966%20through%202000.pdf

Court Opinions on Compliance with Section 106 and the Council's Regulations:
https://www.achp.gov/sites/default/files/2018-10/Section%20106%20Casebook%201966%20through%202000.pdf
36 CFR Part 800: "Protection of Historic Properties"


Court Opinions on Compliance with Section 110:
https://www.achp.gov/sites/default/files/2018-10/Section%20106%20Casebook%201966%20through%202000.pdf

—8—
Class 3: Thursday, 7. September

**NEPA** (42 U.S.C. § 4321 *et seq.*)


Class 4: Thursday, 14. September

**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.


U.S. Dept. of Justice, Civil Rights Div., Disability Rights Section, ADA, Title III Technical Assistance Manual Covering Public Accommodations & Commercial
Class 5: Thursday, 21. 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.


https://www.nps.gov/subjects/nagpra/index.htm
https://repatriationfoundation.org/
http://www.friendsofpast.org/
Thursday, 5. October - No Class

Class 7:  Friday, 6. October - Field Trip to Dudley Farm (west of Gainesville on Newberry Road)

* Dudley Farm National Register Application.  On Canvas.

* Dudley Farm State Historic Park website: https://www.floridastateparks.org/parks-and-trails/dudley-farm-historic-state-park

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/
Class 8: Thursday, 12. October - meet at Thomas Center downtown with Kathleen Kauffman, City of Gainesville planning staff, with short walking tour to follow.

II. Local Historic Preservation Laws


* George B. Abney, *Florida’s Local Historic Preservation Ordinances: Maintaining Flexibility While Avoiding Vagueness Claims*, 25 F.S.U. L. Rev. 1017 (Summer 1998). On Canvas & available online at: [https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1422&context=lr](https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1422&context=lr)


Constitutional Issues


Class 9: Thursday, 19. October

Takings:


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


* Cascar, LLC v. City of Coral Gables, 274 So. 3d 1231 (Fla. 3d DCA 2019). In course materials.

Class 10: Thursday, 26. October

Due Process:


**Establishment Clause:**


**Class 11: Thursday, 2. November**

**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 Incentives 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. Transferable Development Rights & Preservation Easements


VI. **International and Comparative Preservation Law**


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

* 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)

**Class 12/13: Thursday, 9. November & Thursday, 16. November**

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: https://www.coralgables.com/sites/default/files/mediaexport/Historical%20Resou rces/UFPreport.pdf

ECONOMIC IMPACTS OF HISTORIC PRESERVATION IN FLORIDA (Timothy McLendon & JoAnn Klein, eds., 2002).
Executive Summary, available online at: https://www.coralgables.com/sites/default/files/mediaexport/Historical%20Reso urces/52091.pdf

ECONOMIC IMPACTS OF HISTORIC PRESERVATION IN FLORIDA, UPDATE 2010 (Timothy McLendon & JoAnn Klein, eds., 2010).
Executive Summary, available online at: https://dos.myflorida.com/historical/publications/economic-impacts-of-historic-p reservation/


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


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


