SEMINAR
HISTORIC PRESERVATION LAW
LAW 6936, CLASS #27473
FALL SEMESTER 2021

Wednesday, 4:00-6:00 pm, 213 Martin Levin Advocacy Center

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, 2:30-3:30pm

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.
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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Attendance:
Attendance will be taken at each class meeting. Students are allowed 2 absences during the course of 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 will be dropped from the course. Requirements for class attendance, 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.
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: https://disability.ufl.edu/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the Dean Mitchell in Student Affairs when requesting an accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

Academic honesty:
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/drc/.

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. Guidance on how to give feedback in a professional and respectful manner is available at https://gatorevals.aa.ufl.edu/students/. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals or via https://ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students at https://gatorevals.aa.ufl.edu/public-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.

Honor Code:
Collaboration. You are bound strictly by the Honor Code. The written seminar paper must be your own work.

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

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referred to the law school's Honor Committee. It is no defense to a charge of plagiarism to plead ignorance of what constitutes plagiarism or lack of intent to plagiarize.

**In-Class Recordings:**
Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A "class lecture" is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To "publish" means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.
Seminar Paper Deadlines:

1. Choice of Topic - Class 4, Wednesday, 15. September
2. Outline & initial Bibliography - Class 7, Friday, 8. October
3. Initial Draft - Class 10, Wednesday, 27. October
4. Completed Paper - Tuesday, 30. November, 5.00pm

Outline of the Course:

Class 1: Wednesday, 25. August - Guest Speaker -
Linda Stevenson, Ph. D., Principal, Stevenson Architects & Adjunct Professor,
Univ. of Florida College of Design, Construction & Planning

Introduction - Why Preserve?

* W. Brown Morton III, What Do We Preserve and Why?, in The American
  Mosaic: Preserving a Nation’s Heritage (Robert E. Stipe & Antoinette J.

  American Mosaic: Preserving a Nation’s Heritage (Robert E. Stipe &

* Findings of the National Committee on Historic Preservation, from With

  William J. Murtagh, Keeping Time: The History and Theory of
  Preservation in America (Main Street Press, 1988), ch. 2-5. On reserve.

  Joseph L. Sax, Heritage Preservation as a Public Duty: The Abbé Grégoire and

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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.

* 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: Wednesday, 1. September - Guest Speaker - Darlene Henrichs, Historic Preservation Specialist, FEMA, formerly Preservation Officer, City of Gainesville.

Bridge of Lions, St. Augustine. Rehabilitation project information, available online at: http://www.transystems.com/TranSystems/media/TranSystems/PDFDocuments/20-Rehabilitation-of-the-Historic-Bridge-of-Lions.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.


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

**Section 106** (54 U.S.C. § 306108, formerly 16 U.S.C. § 470f)

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%20though%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%20though%202000.pdf

36 CFR Part 800: "Protection of Historic Properties"

**Section 110** (54 U.S.C. § 306101, formerly 16 U.S.C. § 470h-2)


Section 110 of the National Historic Preservation Act

Court Opinions on Compliance with Section 110:
https://www.achp.gov/sites/default/files/2018-10/Section%20106%20Casebook%201966%20though%202000.pdf
**Class 3: Wednesday, 8. September**

**NEPA** (42 U.S.C. § 4321 *et seq.* )


* *Protect Key West v. Cheney*, 795 F. Supp. 1552 (S.D. Fla. 1992). In course materials.


**Class 4: Wednesday, 15. 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.


Class 5: Wednesday, 22. 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.


Wednesday, 29. September - No Class

Class 6: Friday, 1. October - at Florida Museum of Natural History


https://www.nps.gov/subjects/nagpra/index.htm
https://repatriationfoundation.org/
http://www.friendsofpast.org/


* Bonnichsen v. United States, 367 F.3d 864 (9th Cir. 2004). In course materials.
* 43 CFR § 10.11: Disposition of culturally unidentifiable human remains. In course materials

**Wednesday, 6. October - No Class**

**Class 7: Friday, 8. October - Field Trip to Dudley Farm (west of Gainesville on Newberry Road)**

* Dudley Farm National Register Application. On Canvas.

* Dudley Farm State 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: Wednesday, 13. October - meet at Thomas Center downtown with Jason Simmons, 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


Constitutional Issues


Class 9: Wednesday, 20. October

**Takings:**


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


Class 10: Wednesday, 27. October

**Due Process:**


Establishment Clause:


Class 11: Wednesday, 3. 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 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:

* "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

* 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


Class 12/13: Wednesday, 10. November & Wednesday, 17. 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).

ECONOMIC IMPACTS OF HISTORIC PRESERVATION IN FLORIDA (Timothy McLendon & JoAnn Klein, eds., 2002).
Executive Summary, available online at: https://www.law.ufl.edu/_pdf/academics/centers-clinics/centers/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).


