Law for Preservationists will examine the federal, state, and local laws concerning historic preservation, including tax laws and real estate opportunities (and easements for structures, open areas and historic monuments, locations, and other nationally recognized properties). Additionally reviewed are current developments in historic preservation law litigation, recent decisions in the “takings” area and other constitutional developments relating to landmarking of properties.

By the conclusion of the course, students will be able answer the following questions all preservationists need to know about the law:

1. Where does government get the authority to regulate private property for preservation purposes?
2. What are the appropriate limits to government regulation of private property?
3. From a legal perspective, what are historic resources?
4. What regulatory tools exist to protect historic resources from private actions?
5. What regulatory tools exist to protect historic resources from government actions?
6. What are special legal considerations regarding the protection of religiously owned properties?
7. What laws address the protection of other specific historic resources?
8. What legal tools encourage the voluntary protection of historic resources?
9. What other legal strategies can be employed to save historic resources?
10. What are the latest trends and developments in preservation law?

In the process of learning the answers to these questions students will develop an understanding of preservation law and a working knowledge of the legal system, as well as understand the interface between preservationists and lawyers.

Texts:

You will also receive supplementary materials, which I will distribute electronically as needed.

Assignments:

- Completion of assigned reading
- Active participation in class discussions
- Monitor breaking preservation legal issues in popular press
- Take-home final exam

**Final Grade:** Your grade will consist of a take-home final examination (80%) and 20% for class participation (includes all assignments).

**Class 1**

Course introduction, administrative matters, and planning


Topics covered during lecture:

- How to read and analyze legal cases: briefing techniques
- How to read and interpret statutes: the “plain meaning rule”
- Legal principles: jurisdiction, ripeness, standing, *stare decisis*
- Standards of review: abuse of discretion *v. de novo*
- Concepts of takings and the police power
- Federalism
- Court system overview
- Legal terms: *amicus curiae* brief, procedural *v. substantive due process*, injunctions, rational basis, substantial evidence
- Facial *v. “as applied”* challenges

**Class 2**
An examination of the underlying purposes of historic preservation as a policy of national, state, and local government. What are the legal bases upon which the policy rests? Does it matter? Is it evolving? Is it inherently a good, or just another form of land use regulation? How does it compare to zoning? Does preservation have any negative consequences, or raise serious class, racial, education, or geographic distinctions?

- Stipe, Richer Heritage: Introduction (America’s Preservation Ethos: A Tribute to Enduring Ideals); Ch. 1 (Preservation Fundamentals)

Class 3


- Stipe, Richer Heritage: Ch. 2 (The Federal Preservation Program) & Ch. 3 (The Players)
- Explore websites: Advisory Council on Historic Preservation (www.achp.org (Links to an external site.)) and National Trust for Historic Preservation (www.preservationnation.org (Links to an external site.))

Class 4

IN-CLASS EXERCISE: Applying Section 106 | Current Litigation

- Historic Charleston & Cruise Ships
- Mt. Taylor, NM & Uranium Mining
- Cape Wind, Nantucket Sound

Class 5
Stipe, Richer Heritage: Ch. 3 (The States: The Backbone of Preservation)
Stipe, Richer Heritage: Ch. 4 (Local Government Programs: Preservation Where It Counts)

SUPPLEMENTAL READING

- Thompson M. Mayes, A Menu of Historic Preservation Laws and Policies at the State Level (2007)
- Constance Beaumont, State Laws to Consider Historic Resources (from Smart States, Better Communities (National Trust for Historic Preservation, 1996))

IN-CLASS GROUP EXERCISE: Complete an abbreviated (2-page) National Register application for a non-listed historic site of your choice, using the preliminary nomination form provided by me from the South Carolina State Historic Preservation Office. This will help you learn how to apply the National Park Service’s criteria for listing properties in the National Register of Historic Places.

Class 6

- Lecture and Powerpoint presentation will cover local preservation law, how to research it, and an in-class exercise will demonstrate common differences between local laws and how such differences dictate preservation outcomes. Please have your laptop available. For background, please see Stipe, Richer Heritage: Ch. 4 (Local Government Programs: Preservation Where It Counts).

Class 7

- Lecture will focus on the topic of “regulatory takings” and the Penn Central decision. We will also discuss historic preservation regulation and the free exercise clause.

- Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978)
- St. Bartholomew’s Church v. City of New York, 914 F.2d 348 (2d Cir. 1990), cert. denied (1991)
Class 8

Lecture and Powerpoint presentation will focus on traditional cultural properties.

Stipe, Richer Heritage: Ch. 5 (Preservation Law & Public Policy)
Stipe, Richer Heritage: Ch. 6 (Preserving Important Landscapes)
Stipe, Richer Heritage: Ch. 14 (Folklife, Intangible Heritage, and the Promise and Perils of Cultural Cooperation); Ch. 15 (Where Do We Go From Here?)

IN-CLASS DISCUSSION: How do you define a “traditional cultural property? What guidance does the federal government provide on this topic? Is it sufficient? What changes would you propose to strengthen the protection of traditional cultural properties?

Class 9

Real Estate Development & Historic Preservation

Financial incentives for historic preservation: easement donations & historic rehabilitation tax credits

SUPPLEMENTAL READING (posted on CourseWorks)

Class 10

- Historic Preservation Law in New York City | Evolution & the Next 50 Years: Panel Discussion

SUPPLEMENTAL READING: (posted on CourseWorks)

Class 11

International Cultural Heritage Law | Comparison of Legal Schemes

SUPPLEMENTAL READING (posted on CourseWorks)
Class 12

- Semester Review