



**University of Maryland
Historic Preservation Program**

Historic Preservation Law, Advocacy and Public Policy, HISP 640 (Spring 2007)

Thursday 7:00-9:40, School of Architecture, Room 1127

Instructor: National Trust for Historic Preservation Department of Law and Public Policy
(Julia H. Miller, Special Counsel and Legal Education Coordinator, and
Thompson M. Mayes, Deputy General Counsel)

Course Text:

“Course Materials for Historic Preservation Law, Advocacy and Public Policy” (National Trust for Historic Preservation 2007)

Additional materials may be assigned and distributed in class.

Introduction:

This course is designed to introduce students to legal, advocacy and public policy issues in the field of historic preservation. Student activities will be designed to teach basic working knowledge of relevant legal subjects, including historic preservation ordinances, state and federal preservation statutes and important constitutional issues.

The primary goal of this course is to provide sufficient information so that students will be able to identify legal issues, know resources to obtain information and assistance on those issues, and communicate effectively with attorneys.

Course Requirements:

Class Participation. This course will operate primarily as a seminar. Therefore, attendance, completion of the readings, submission of discussion questions and participation in class is required. **Each student should prepare two questions (in writing) based on each week's set of readings. The questions will be submitted at the beginning of each class.** Each student should participate actively in class discussions.

Out-of-Class Assignments

1. Architectural Review Boards. Students are **required** to attend a minimum of **two** meetings of Architectural Review Boards, including the District of Columbia

Historic Preservation Review Board meeting on Thursday, February 22, 2007 at 10:00 a.m. and the Montgomery County Historic Preservation Commission meeting on Wednesday, February 28, 2007 at 7:30 p.m. The purpose of attending the meetings is to observe and assess the **legal** components of the meetings, such as references to the establishing authority, use of criteria, compliance with procedures and issues relating to takings. Please complete the readings for Local Law Part One prior to attending the review board meetings.

2. Case Summary and Analysis. Each student will prepare a written analysis of a court decision on historic preservation. The decision will be distributed in class. This assignment is due at the beginning of class on March 1, 2007. Assignments that are late will be marked down a grade.
3. Local Preservation Analysis. Each student will select a local historic preservation ordinance, obtain a copy of the ordinance and relevant standards and guidelines, and prepare: (a) a written summary and analysis of the local law; and (b) an evaluation of the likely effectiveness of the ordinance in light of other laws and policies with a bearing on preservation in the jurisdiction. This assignment is due April 12, 2007. Assignments that are late will be marked down a grade.

Examination. May 10, 2007: 7:00-10:00 p.m.

Grading Criteria:

Class attendance and participation:	20%
Submission and quality of questions	20%
Written Assignments (2):	
Case Analysis	20%
Ordinance Analysis	20%
Exam	<u>20%</u>
	100%

Contact Information and Appointments:

Please feel free to contact us by e-mail or telephone during regular business hours at the National Trust. Tom: (202) 588-6182; tom_mayes@nthp.org. Julia: (202) 588-6180; Julia_miller@nthp.org. **All students are encouraged to contact us with any questions or concerns that they may have.** E-mail is preferred. If you telephone and reach a message machine, please leave a detailed message indicating why you have called and a telephone number where we can reach you, so that we can be prepared to answer your question when we call back. We are also available to meet with individual students by appointment. Simply contact us and we will arrange a time to meet (most usually immediately prior to class).

Adverse weather: In the event of adverse weather that prevents the instructor from attending class **on a day that the University of Maryland does not cancel classes**, a notice will be posted on the classroom door.

Course Schedule and Reading Materials:

1. January 25

Introduction and Overview

The purpose of the course, the importance of legal tools in historic preservation, slide show and overview of historic preservation law

Required Reading from Course Materials:

1. United States Constitution
Note especially Article I, clause 7-8; Article II clause 1; Article III clauses 1-2; and the First, Fifth and Fourteenth Amendments.
2. "A Layperson's Guide to Historic Preservation Law," (NTHP 2004)
Distributed Separately
3. "Analytical Framework for Historic Preservation Law," (NTHP 2005)
4. Thompson Mayes, "Preservation Law and Policy: Balancing Priorities and Public Policy," *A Richer Heritage* (Univ. N.C. Press 2003)

2. February 1

Protecting Historic Resources from Government Actions

Federal Law: Part I

Antiquities Act, Historic Sites Act, National Historic Preservation Act

Required Reading from Course Materials:

1. "An Overview of Federal Historic Preservation Law 1966-1996," Advisory Council on Historic Preservation (1996), pp. 1-39
Distributed Separately
2. Antiquities Act, 16 U.S.C. §§ 431-433

3. Historic Sites Act, 16 U.S.C. §§ 461-467
4. National Historic Preservation Act, 16 U.S.C. §§ 470, *et seq.*
5. Ferris v. U.S. Department of Transportation, No. 89-C-779-C (W.D. Wis. July 31, 1990)
6. Advisory Council on Historic Preservation, “Section 106 Regulations Flow Chart and Explanatory Material” www.achp.gov/regsflow.html (Sept. 5, 2001)

3. February 8

Federal Law: Part II

National Environmental Policy Act, 42 U.S.C. §§ 4321-4347
 Department of Transportation Act (Section 4(f)), 49 U.S.C. § 303

Guest Lecturer:

Elizabeth S. Merritt, Deputy General Counsel
 National Trust for Historic Preservation

Required Reading from Course Materials:

1. Section 102 of the National Environmental Policy Act, 42 U.S.C. § 4321-4327 (excerpts)
2. Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303
3. Memorandum of Agreement (Spring/Sandusky Interchange, Columbus, Ohio)
4. “Legislative and Regulatory Developments Affecting Historic Properties,” *PLR Educational Materials* (2005)
5. "An Overview of Federal Historic Preservation Law 1966-1996," Advisory Council on Historic Preservation (1996), pp. 39-61
5. “Federal Historic Preservation Laws at a Glance” (NTHP 2005)
6. Druid Hills Civic Association, Inc. v. Federal Highway Administration; National Trust for Historic Preservation v. Federal Highway Administration, 772 F.2d 700 (11th Cir. 1985)
7. Map of Druid Hills

4. February 15

State Law: Comprehensive Approaches to State Preservation Policy

State Registers
 State “Little 106” Laws

State Environmental Policy Acts (SEPAs)

Required Reading from Course Materials:

1. “State Laws to Consider Historic Resources,” *Smart States, Better Communities* (NTHP 1996)(excerpts)
2. Maryland Historical and Cultural Programs, Md. Code §§ 5A-301—359
3. New York Environmental Quality Review Act, NY CLS §§ 8-0101 *et seq.*
4. Town of Bedford v. White, 587 N.Y.S.2d 72 (1993)
5. Mayes, Thompson M., “A Menu of Historic Preservation Laws & Policies at the State Level” (2005)

Protecting Historic Resources from Private Action

NOTE HISTORIC PRESERVATION REVIEW BOARD MEETINGS:

Wednesday, February 28, 2007, 7:30 p.m.
Montgomery County Historic Preservation Commission Meeting

Thursday, February 22, 2007, 10:00 a.m.
District of Columbia Historic Preservation Review Board Meeting

Attendance at these meetings is in lieu of the class that would otherwise meet on February 22.

Please also look at the websites for these two historic preservation commissions at:

<http://www.mc-mncppc.org/historic/index.shtml>; and
<http://planning.dc.gov/planning/site/default.asp>.

5. March 1

Case Analyses are due at the beginning of class.

Local Law: Part I

Review of Historic Preservation Commission Meetings
Enabling Statutes and Local Ordinances
Components of a Preservation Ordinance
Designation

Required Reading from Course Materials: UPDATE

1. "Local Governments in Maryland"
2. Maryland Enabling Statute; Md. Code, Art. 66B §§ 8.01-8.17
3. Faulkner v. Town of Chestertown, 428 A.2d 879 (Md. 1981)
4. "The Historic Preservation Ordinance," *PLR Educational Materials* (2006)
5. "Frequently Asked Questions about Local Preservation Laws," *PLR Educational Materials* (2005)
6. "A Resident's Guide to Historic Preservation in Montgomery County," Md. Nat'l Capital Park & Planning Comm'n (2006)
7. Montgomery County, Maryland, Historic Preservation Ordinance
8. Montgomery County Regulations (COMCOR) § 24A.04.01 Rules, Guidelines, and Procedures
9. Designation of Chevy Chase Village Historic District (Phase One, excerpt)
10. Billy Graham Evangelistic Ass'n v. Minneapolis, 667 N.W.2d 117 (Minn. 2003)
11. Harmon Place Historic District Map

6. March 8

Local Law Part II

Review of Applications for Certificates of Appropriateness
Demolition by Neglect
Economic Hardship

Required Reading from Course Materials:

1. In re Gelman Appeal, Case No. A-5937 (Montg. Cty. Bd. of App. Dec. 8, 2004)
2. Miller, Julia H., "Providing for Economic Hardship Relief in the Regulation of Historic Properties," 15 PLR 1129 (1996)
3. Miller, Julia H., "Assessing Economic Hardship Claims Under Historic Preservation Ordinances," *PLR Educational Materials* (2005)
4. "Demolition by Neglect," *PLR Educational Materials* (2005)
5. Oak Park Village Code on Historic Preservation (Oak Park, Ill.)
6. Rules of Procedure for the Historic Preservation Commission (Oak Park, Ill.)
7. Materials Relating to Application of John Zaruba for Demolition Permit under Oak Park, Illinois Ordinance
8. Zaruba v. Village of Oak Park, 645 N.E. 2d 510 (Ill. Ct. App. 1998)

7. March 15:

Sprawl, Planning, Zoning and the Relationship to Historic Preservation

Required Reading from Course Materials:

1. Davidson Planning Ordinance Map
2. Planning Ordinance, Town of Davidson, N.C. (excerpts)
3. District of Columbia Comprehensive Plan, Chapter 8: Preservation and Historic Features Element
4. Gondelman v. D.C. Dept. of Consumer and Regulatory Affairs, (D.C. Ct. App. 2002)

SPRING BREAK

8. March 29

Constitutional Issues: Protecting the Individual from the State

Constitutional Issues I

Framework
Takings Issue
Procedural Due Process

Guest Lecturer:

Paul Edmondson, Vice President and General Counsel
National Trust for Historic Preservation

Required Reading from Course Materials:

1. U.S. Constitution: Fifth and Fourteenth Amendments
2. Maher v. City of New Orleans, 516 F.2d 1051 (5th Cir. 1975)
3. Penn Central Transportation Co. v. New York City, 438 U.S. 104, 98 S. Ct. 9646 (1978)
4. District Intown Properties Ltd. Partnership v. District of Columbia, 198 F.3d 874 (D.C. Cir. 1999) *cert. denied*, 531 U.S. 812 (2000)
5. Kelo v. City of New London, 545 U.S. 469 (2005)
6. “Some Thoughts about the Kelo Decision for the Preservation Community . . .,” Paul E. Edmondson (August 2, 2005)
7. “Supreme Court Takings Cases at a Glance” *PLR Educational*

- Materials* (2007)
8. Duerkson, Christopher J. and Roddewig, Richard J. *Takings Law in Plain English* (2004)
Distributed Separately
 9. Metropolitan Baptist Church v. District of Columbia, 718 A.2d 119 (D.C. 1998)
 10. White, Bradford J. and Edmondson, Paul E., *Procedural Due Process in Plain English* (NTHP 2003)
Distributed Separately

9. April 5

Constitutional Issues II

First Amendment
RLUIPA

Guest Lecturer:

Ross Bradford, Assistant General Counsel
National Trust for Historic Preservation

Required Reading from Course materials:

1. U.S. Constitution: First Amendment
2. Rector, Wardens and Members of the Vestry of St. Bartholomew's Church v. City of New York, 728 F. Supp. 958 (S.D.N.Y. 1989), *aff'd*, 914 F.2d 348 (2d Cir. 1990), *cert. denied*, 499 U.S. 905 (1991)
3. Md. Attorney General Opinion, 79 Op. Gen. 56 (1994), Op. No. 94-037 (July 21, 1994)
4. Keeler v. Mayor & City Council of Cumberland, MD, 940 F. Supp. 879 (D. Md. 1996)
5. "U.S. Supreme Court Declares Religious Freedom Restoration Act Unconstitutional in Texas Landmarking Case," 16 PLR. 1051 (Apr.-June 1997)
6. Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc and Legislative History
7. "Regulating Historic Properties under RLUIPA," PLR Educational Materials (2005)
8. Episcopal Student Foundation v. City of Ann Arbor, 341 F. Supp. 2d 691 (E. D. Mich. 2004)
9. Johnny Vegas, Inc. v. City of Alton, Illinois, 2005 WL 578966 (S. D. Ill. Mar. 10, 2005).

10. April 12 Local Ordinance Presentations

Analysis of local ordinance due at the beginning of class.

No reading assignment.

11. April 19 **Protecting Historic Resources from Private Action with Private Action**

Private Preservation Techniques
Preservation and Conservation Easements

Required Reading from Course Materials:

1. Thompson M. Mayes and Julia H. Miller, "Easements That Protect the Built Environment," *The Conservation Easement Handbook* (2005)
2. Internal Revenue Code Section 170(h), as amended by the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006)
3. "Summary of Changes Relating to Preservation Easements in the Pension Protection Act of 2006," (NTHP 2006)
4. Internal Revenue Service Regulations, Section 1.170A-14
5. "Rich with History: Preservation Creates Tax Windfall" Series *The Washington Post* (Dec. 12, 2004)
6. Easement on Hodgson House (NTHP 2005)
7. Maryland Statute on Conservation Easements, Md. Code § 2-118

12. April 26 **Archeological Protections**

Archeological Resources Protection Act, Native American Graves Protection and Repatriation Act, Underwater Archeology, Surface Mining Control and Reclamation Act (SMCRA)

Required readings from course materials:

1. "Legal Background of Archeological Resources Protection Act," (NPS 1991)
2. Archeological Resources Protection Act, 16 U.S.C. §§ 470aa-470ll
3. U.S. v. Diaz, 499 F.2d 113 (9th Cir. 1974)
4. U.S. v. Smyer, 596 F.2d 939 (10th Cir. 1979)
5. U.S. v. Gerber, 999 F.2d 1112 (7th Cir. 1993), *cert. denied*, 114 S. Ct. 878 (1994)

6. Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013
 7. U.S. v. Corrow, 119 F. 3d 796 (10th Cir. 1997)
 8. Bonnischsen v. United States, 357 F.3d 962 (9th. Cir. 2004)
 9. Comparison of NAGPRA, ARPA, and NHPA Section 106 (NPS 2007)
 10. Abandoned Shipwreck Act of 1987, 43 U.S.C. §§ 2102-2106 (1988), PLR 10,083 (Ref.)
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13. May 3 Overview of Class with Power Point Presentation and Questions
 14. May 10 **EXAM** 7:00-10:00 p.m.