



HSPV-671-001
Historic Preservation Law
Instructor: Anne Nelson

Spring 2024
Friday, 1:45 to 4:44 PM
Fisher-Bennett Hall 138

COURSE SYLLABUS + SCHEDULE

Course Summary:

An introduction to the legal mechanisms used to protect historic resources in the built environment, focusing on the legal principles underlying preservation laws, including constitutional issues related to governmental regulation of real property, as well as federal, state, and local historic preservation laws.

Instructor: Anne Nelson, 202-633-5109 (work), 214-734-8952 (cell), nelsonae@si.edu

Office Hours: By appointment Fridays. Accessible by phone, Zoom, email, and text as well.

Course Objectives:

1. To provide students with an understanding of the legal platform on which the preservation network is constructed, including a broad understanding of the relevant legal foundations for historic preservation activities; procedures of federal, state, and local historic preservation efforts; and the legal constraints on these activities and procedures.
2. To provide students with a common vocabulary and understanding of policies and programs in historic preservation at the federal, state, and local levels so they can establish a dialogue with peers and allied professionals within the field.
3. To provide students with an understanding of the legal and advocacy tools, strategies, and responsibilities of public and private organizations in the historic preservation field.
4. To provide sufficient information so students will be able to identify legal issues, know resources for information and assistance on those issues, communicate effectively with attorneys, and be stronger advocates.

Required Course Texts: *Historic Preservation Law* by Sara Bronin and Peter Byrne (Second Edition)
Additional readings will be on Canvas.

Course Requirements & Grading:

- **Class Participation & Attendance (25% of grade)**—Each student should complete assigned readings, weekly assignments (questions & case briefs) and participate actively in class discussions.
- **Mid-Term Examination (25% of grade)**—A short true/false mid-term exam will be administered in class.
- **Final Examination (25% of grade)**—A “take home” final exam will be in essay format.
- **Local Preservation Ordinance Paper (25% of grade)**—Each student will be assigned a preservation ordinance to review and prepare a short paper (approx. 10 pages) that: (a) analyzes the ordinance; and (b) advocates for the commission to take a certain position in a preservation matter.
- **Auditors**—Auditors are expected to do all of the reading, participate in class discussion as well as the Local Preservation Ordinance Paper. Auditors will not be required to take the midterm or final exam.

Academic Integrity:

Please read the University’s [Code of Academic Integrity](#).

SYLLABUS:

Week #1, Friday, January 19, 2024

Introduction to Course

Courts, Cases & How (and Why) to Write a Case Brief

Who's Who in Historic Preservation

Brief Overview of Federal Preservation Laws

- Readings:**
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. Chart of the United States Courts of Appeals (with geographic boundaries)
 3. About the ACHP Fact Sheet
 4. What is a Case Brief?
 5. **Historic Preservation Law in Context**—Bronin + Byrne, pp. 1-16, 18-56 (incl. *US v. Gettysburg Electric Railway Company*)
 6. *A Layperson's Guide to Historic Preservation Law*, pp. 1-7
- Optional:**
7. National Historic Preservation Act, 54 U.S.C. § 300101-307108
 8. Section 106 Regulations, 36 C.F.R. Part 800
 9. Identifying Standards for Review
 10. *U.S. v. Gettysburg* – sample case brief
 11. Explore achp.gov + savingplaces.org

Due: Complete and submit your student profile.

Week #2, Friday, January 26, 2024

Constitutional Law + Historic Preservation: Due Process

- Understanding and Applying Procedural Requirements

The Local Government's Role in Historic Preservation

- Designations (generally)
- Reading an Ordinance

- Readings:**
1. White, Bradford, J. and Paul W. Edmondson. *Procedural Due Process in Plain English: A Guide for Preservation Commissions*. National Trust, 2004
 2. *Society Hill Civic Association v. Philadelphia Board of License*, Commonwealth Court of Pennsylvania, 2006
 3. *Metropolitan Baptist Church v. D.C.*, 718 A.2d 119 (D.C. 1998)
 4. **State + Local Designation**—Bronin + Byrne, pp. 84-111 (incl. *A-S-P Associates v. City of Raleigh*, *Metropolitan Dade County v. P.J. Birds, Inc.*, *Embassy Real Estate Holdings, LLC v. District of Columbia Mayor's Agent for Historic Preservation*)
 5. **Local Regulation of Historic Properties**—Bronin + Byrne, pp. 259-283 (incl. *Gondelman v. District of Columbia Dep't of Consumer & Regulatory Affairs*, *Turchi v. Philadelphia Board of License & Inspection Review*)
 6. *A Layperson's Guide to Historic Preservation Law*, pp. 7-13

Due: Two questions based on reading due by email Thursday before class.
Case brief of *Metropolitan Baptist Church v. D.C.* + *A-S-P Associates v. City of Raleigh* due prior to class.

Week #3, Friday, February 2, 2024

The Local Government's Role in Historic Preservation (cont.)

- Designations (including objects + interiors)
- Effects of Local Designations & Applying the Ordinance

- Economic Hardship
- Conservation Districts + Other Tools

Midterm Discussion

- Readings:**
1. **Economic Hardship/Demolition by Neglect**—Bronin + Byrne, pp. 286-317 (incl. *Zaruba v. Village of Oak Park*, *900 G Street Associates v. Dep't of Housing & Community Development*)
 2. **Affirmative Maintenance/Demolition Delay**—Bronin + Byrne, pp. 317-324 (incl. *Pansini Custom Design Associates, LLC v. City of Ocean City*)
 3. **New Construction**—Bronin + Byrne, pp. 324-332 (incl. *Sanchez v. Town of Beaufort*)
 4. Preservation Law Reporter Relief in the Regulation of Historic Properties, 15 PLR 1129 (1996)
 5. **Designation as an Object**—*Merriam v. Philadelphia Historical Commission* (Dream Garden) (Commonwealth Court, 2001)
 6. **Designation of Interior Spaces**—*United Artists' Theatre Circuit Inc. v. City of Philadelphia*, 595 A.2d 6 (Pa. 1991), rev'd on reh'g, 635 A. 2d 612 (Pa. 1993)
 7. **Conservation Districts**—Bronin + Byrne, pp. 344-345
- Optional:**
8. National Trust's Brief of *Amici Curiae* in Support of the City of Chicago (March 5, 2013)
 9. *Amicus* Brief for *Powell v. City of Houston* (Aug. 6, 2020)
 10. *Zaruba* Case Materials
 11. Neighborhood Conservation Districts: Planning and Administrative Practices prepared for the City of Detroit (Dec. 7, 2018)

Due: Two questions based on reading due by email Thursday before class.
Case brief of *Sanchez v. Town of Beaufort* + *Zaruba v. Village of Oak Park* due prior to class.

Week #4, Friday, February 9, 2024

The Federal Government's Role in Historic Preservation (Advocate Perspective)

- Section 106 & 110 of the National Historic Preservation Act
- Section 4(f)
- National Environmental Policy Act
- Common Legal Challenges under Federal Preservation Laws

Guest Speaker: Elizabeth Merritt, Deputy General Counsel, National Trust

- Readings:**
1. **National Register Designation**—Bronin + Byrne, pp. 65-84
 2. **Section 106/110**—Bronin + Byrne, pp. 113-162, 162-171 (skim) (incl. *National Mining Association v. Fowler*, *National Trust for Historic Preservation v. Blanck*)
 3. **Section 4(f)**—Bronin + Byrne, pp. 209-228, 240-255 (incl. *Citizens to Preserve Overton Park, Inc. v. Volpe*, *Merritt Parkway Conservancy v. Mineta*)
 4. Protecting Historic Properties: A Citizen's Guide to Section 106 Review
 5. **NEPA**—Bronin + Byrne, pp. 173-188 (incl. *Recent Past Preservation Network v. Latchar* (Cyclorama))
 6. Section 106 Regulations, 36 C.F.R. Part 800 (particularly Sections 800.1, 800.5, 800.6) (skim)
- Optional:**
7. Federal Preservation Laws – Comparison Chart

Due: Two questions based on reading due by email Thursday before class.
Case briefs of *National Trust v. Blanck* + *Citizens to Preserve Overton Park v. Volpe* due prior to class.

Week #5, Friday, February 16, 2024

Constitutional Law + Historic Preservation: Takings & Eminent Domain

- Fifth Amendment of the Constitution
- Regulatory Takings (*Penn Central*)
- Evolution of the Penn Central test (*Lucas*)

- Eminent Domain (*Kelo*)

Guest Speaker: Paul Edmondson, Former President/CEO & Chief Legal Officer, National Trust

- Readings:**
1. U.S. Constitution: Fifth Amendment (and 14th Amendment)
 2. Miller, Julia, *A Layperson's Guide to Historic Preservation Law*, pp. 18-21, 23
 3. **Takings**—Bronin + Byrne, pp. 347-380 (incl. *Penn Central Transportation Company v. City of New York + District Intown Properties Limited Partnership v. District of Columbia* (Cathedral Mansions))
 4. *United Artist's Theatre Circuit Inc. v. City of Philadelphia*, 595 A.2d 6 (Pa. 1991), rev'd on reh'g, 635 A.2d 612 (Pa. 1993)
 5. *Kelo v. City of New London*, 545 U.S. 469 (2005)
 6. Duerksen, Christopher and Richard Roddewig, *Takings in Plain English* (skim)
- Optional:**
7. *Amicus Brief in Stahl York Avenue Co., LLC vs. City of New York et al.* (Jan. 26, 2015) (skim)
 8. [*Murr v. Wisconsin*](#), 582 U.S. ____ (2017)

Due: Two questions based on reading due by email Thursday before class.
Case briefs of *Penn Central Transportation Co. v. City of New York + District Intown Properties LP v. DC* due prior to class.

Week #6, Friday, February 23, 2024

Constitutional Law + Historic Preservation: RLUIPA & Funding of Religious Properties

Guest Speaker: Tad Heuer, Partner, Foley Hoag LLP (via Zoom)

- Readings:**
1. **Religious Liberty**—Bronin + Byrne, pp. 381-414 (incl. *St. Bartholomew's Church v. City of New York + Episcopal Student Foundation v. City of Ann Arbor*)
 2. U.S. Department of Justice, *Report on the Twentieth Anniversary of RLUIPA*. Washington, DC: US DOJ, 2020
 3. *A Layperson's Guide to Historic Preservation Law*, pp. 24-28
 4. Brief of *Amicus Curiae*, National Trust for Historic Preservation, *Caplan et al. v. Town of Acton*, Commonwealth of Massachusetts Supreme Judicial Court
 5. *Morris County Board of Chosen Freeholders v. Freedom from Religion Foundation*, Statement of Kavanaugh, J. (Mar. 4, 2019)
 6. Brief of *Amicus Curiae* National Trust for Historic Preservation in Support of Petitioners, *Morris County* (Oct. 22, 2018)
- Optional:**
7. *American Legion v. American Humanist Association*, 588 U.S. ____ (June 20, 2019)

Due: Two questions based on reading due by email Thursday before class.
Case brief of *St. Bartholomew's Church v. City of New York* due prior to class.

Week #7, Friday, March 1, 2024

Midterm Exam

Week #8, Friday, March 8, 2024

No Class

Spring Break

Week #9, Friday, March 15, 2024

The Federal Government's Role in Historic Preservation (Government Perspective)

- Roles and Responsibilities of Federal Agencies in Administering the NHPA
- Section 106 Program Alternatives
- Overview of GSA's Historic Preservation Program (including disposal process)
- Case Studies: Chet Holifield Federal Building (Laguna Niguel, CA) + Hawthorne Federal Building (Hawthorne, CA)

Guest Speaker: Joan Brierton, Senior Historic Preservation Specialist, Office of Architecture & Engineering, GSA
Raina Regan, Program Analyst/NPS Liaison for Grants Program, ACHP

- Readings:**
1. [Chet Holifield Federal Building Introductory Video](#) (watch)
 2. Community Design Charrette of the Chet Holifield Federal Building Final Report (Jan. 21, 2022) (skim)
 3. Chet Holifield Federal Building Memorandum of Agreement (Nov. 14, 2023)
 4. Hawthorne Federal Building Determination of Eligibility (skim)
 5. Quitclaim Deed from USA to 15000 Aviation Ventures, LLC (Nov. 18, 2019) (skim)
 6. Hawthorne Federal Building Deed of Historic Preservation and Conservation Easement and Exhibit A (Nov. 20, 2019) (read Sections A to F, skim remainder)
 7. ACHP Program Alternatives Chart (36 C.F.R. § 800.14)
 8. 36 C.F.R. § 800.14 (Program Alternatives)
 9. Programmatic Agreement Among the NPS, ACHP and NCSHPO for Compliance with Section 106 of NHPA (Nov. 14, 2008) (skim)
 10. Executive Order 13175 Consultation and Coordination with Indian Tribal Government (Nov. 9, 2000)
- Optional:**
11. Explore [GSA Historic Preservation Program website](#)
 12. Modern Era Determination of Eligibility Assessment Tool, GSA (2023)
 13. Exemption from Historic Preservation Review for GSA Routine Operations and Maintenance (Jan. 13, 2023)
 14. Explore www.achp.gov

Due: Two questions based on reading due by email Thursday before class.

Week #10, Friday, March 22, 2024

Public Lands Issues, Archaeology + NAGPRA

- Antiquities Act of 1906
- Wilderness Act of 1964
- Archaeological Resources Protection Act
- Native American Graves Protection and Repatriation Act

- Readings:**
1. *Presidential Proclamations and Orders*: Proclamation 9558, 82 Fed. Reg. 1139 (Jan. 5, 2017); Executive Order 13792, 82 Fed. Reg. 20429 (May 1, 2017); Proclamation 9681, 82 Fed. Reg. 58081 (Dec. 4, 2017); Executive Order (Jan. 20, 2021) (*see* Sec. 3)
 2. Wilderness Act of 1964 (selected portions)
 3. *Wilderness Watch*, Building New History in Wilderness, blog (July 27, 2011)
 4. *Wilderness Watch v. Iwamoto*, 853 F. Supp. 2d 1063 (W.D. Wa. 2012)
 5. *Wilderness Watch v. Creachbaum*, 225 F. Supp. 3d 1192 (W.D. Wa. 2016)
 6. **Antiquities Act** —Bronin + Byrne, pp. 431-448 (incl. *U.S. v. Smyer, Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, Tulare County v. Bush*)
 7. **Archeological Resources Protection Act**—Bronin + Byrne, pp. 459-478 (incl. *U.S. v. Gerber*)
 8. **Native American Graves Protection and Repatriation Act**—Bronin + Byrne, pp. 479-511 (incl. *U.S. v. Corrow + Bonnichsen v. United States*)
 9. Interior Department Announces Final Rule for Implementation of NAGPRA (Dec. 6, 2023)
 10. *U.S. v. Diaz*, 499 F.2d 113 (9th Cir. 1974)
- Optional:**
11. U.S. Congressional Research Service. Antiquities Act: Scope of Authority for Modification of National Monuments (R44687; Nov. 14, 2016), by Alexandra Wyatt
 12. NAGPRA, ARPA + NHPA Comparison Chart
 13. Williamson, Sharee, *Olympic National Park: Preserving History in Wilderness Areas*, Preservation Leadership Forum (June 2017)

Due: Two questions based on reading due by email Thursday before class.
Case brief of *U.S. v. Diaz* due prior to class.

Week #11, Friday, March 29, 2024

Preservation Easements + Other Preservation Real Estate Tools

- Preservation Easements
- Life Estates
- Syndication of Easements
- Heirs Rights

Guest Speaker: Ross Bradford, Deputy General Counsel

- Readings:**
1. **Preservation Restrictions**—Bronin + Byrne, pp. 539-555; 577-602 (incl. *Herman v. Commissioner*)
 2. “Easements that Protect the Built Environment” (excerpt from The Conservation Easement Handbook)
 3. Fisher-Kahn House Deed of Preservation and Conservation Easement
 4. *Mitchell, Thomas W.*, Historic Partition Law Reform: A Game Changer for Heirs’ Property Owners, Texas A&M University School of Law (June 2019)

Due: Two questions based on reading due by email Thursday before class.
Case brief of *Herman v. Commissioner* due prior to class.

Week #12, Friday, April 5, 2024

The State Government’s Role in Historic Preservation

- SEPA’s
- State 4(f)s
- State Historic Registers
- State Enabling Legislation
- Review of Pennsylvania State Laws (PA Constitution, PA Historic Districts Act, PA History Code)

Federal + State Tax Incentives

- Intro to Federal Historic Tax Credit
- Legal Structures for Syndication of Credit
- Tax Reform Changes to HTC/Saving the Tax Credit
- State Tax Credits, including the Pennsylvania credit

- Readings:**
1. **State Laws**—Bronin + Byrne, pp. 192-208 (incl. *Architectural Heritage Association v. County of Monterey*); pp. 258
 2. “State Preservation Laws: Best Practices” by Julia Miller
 3. *Reiter v. The City of Beloit*, 947 P.2d 425 (Kan. 1997)
 4. Pennsylvania Constitution, Article 1, Section 27.5 (skim)
 5. Pennsylvania Historic Districts Act, P.L. 282, No 167, as amended, 53 P.S. § 8001, et. seq. (June 1961) (skim)
 6. Pennsylvania History Code, Title 37 (skim)
 7. PHMC Policy for Determining Historical Significance of Local Historic Districts and Boundary Justification Pursuant to PA Historic Districts Act & Checklist to Establish a Historic District
 8. *A Layperson’s Guide to Historic Preservation Law*, pp. 30-32
 9. **Tax Incentives**—Bronin + Byrne, pp. 603-632
 10. NPS Statistical Report and Analysis for Fiscal Year 2016
 11. NPS Annual Report for Fiscal Year 2021
 12. One-pager on the Secretary’s Standards for Rehabilitation
 13. Explore [IRS Rehabilitation Credit \(Historic Preservation\) FAQs](#)
- Optional:**
14. *Amici Curiae* Memorandum of National Trust et al. for *State of Connecticut, Department of Economic and Community Development v. WMC Realty, LLC*
 15. *Historic Boardwalk Hall v. IRS* (Aug. 27, 2012) (skim)
 16. Explore [NPS Historic Preservation Tax Incentives website](#)

Due: Two questions based on reading due by email Thursday before class.
Case briefs of *Architectural Heritage Association v. County of Monterey* + *Reiter v. The City of Beloit* due prior to class.

Week #13, Friday, April 12, 2024

Preservation Practice—Taking Direct Action to Save Historic Places

- Direct Action Case Studies—National Mall Tidal Basin (Washington, DC), Emmett Till and Mamie Till-Mobley National Monument (Sumner and Glendora, MS/Chicago, IL), and Arlington Cemetery (Arlington, VA)
- Community Outreach + Effective Advocacy

Guest Speaker: Rob Nieweg, Senior Vice President, Preservation Services & Outreach & Attorney, National Trust

- Readings:**
1. Explore [National Impact Agenda](#) (7 goals)
 2. [Tidal Basin Ideas Lab](#) (watch video + explore)
 3. Tidal Basin Ideas Lab Public Feedback (Feb. 2021)
 4. Tidal Basin Ideas Lab Key Themes
 5. Letter from Paul Edmondson and Brent Leggs to President Biden (Nov. 4, 2022)
 6. Proclamation on Establishment of the Emmett Till and Mamie Till-Mobley National Monument (July 25, 2023)
 7. [“They’re strangers with a painful shared bond: Robert E. Lee enslaved their ancestors”](#) by Debbie Elliott, NPS (read and listen)
 8. Letter from K. Durham-Aguilera, US Dept of Army to Consulting Parties re: NEPA EIS and NHPA Section 106 for the Removal of the Bronze Elements of the Arlington National Cemetery Confederate Memorial, Arlington, Virginia (Aug. 4, 2023)
 9. “What to do with Arlington Cemetery’s Confederate Memorial” by Hope Hodge Seck (Jan. 2, 2023)
 10. “For true national unity, the Confederate Memorial at Arlington must go” by Charles Lane (Aug. 23, 2023)
 11. Letter from R. Nieweg to K. Durham-Aguilera (Sept. 1, 2023)
 12. Explore [Preservation Priorities Task Force](#)
 13. Issue Brief: Diversity, Inclusion and Racial Justice
 14. Issue Brief: Sustainability and Climate Action
- Optional:**
15. Explore [Emmett Till Interpretive Center](#) + [Emmett Till and Mamie Till-Mobley National Monument](#)
 16. Explore [The Robert E. Lee Memorial](#) + [Arlington National Cemetery Removal of Confederate Memorial](#)

Due: Two questions based on reading due by email Thursday before class.

Week #14, Friday, April 19, 2024

Historic House Museums: Issues and Legal Considerations

- Restrictions on historic sites
- Co-stewardship and Shared Use Agreements
- Legal considerations for reimagining and reuse of historic sites (art installations, artist-in-residence programs, event rentals, filming, etc.)

Final Exam Discussion + Review

- Readings:**
1. **ADA + IP**—Bronin + Byrne, pp. 633-658, 661-681
 2. *A Layperson’s Guide to Historic Preservation Law*, pp. 29, 33-37
 3. Nelson, Anne, *Co-Stewardship at Historic Sites and the Path to Local Governance*, Preservation Leadership Forum Blog (Feb. 13, 2015)
 4. Artist Agreement Template (skim)

5. Nelson, Anne and Carrie Villar, *Getting It in Writing: Negotiating Agreements with Artists at Historic Sites*, Preservation Leadership Forum Blog (May 25, 2016)
6. Mayes, Tom, *The 25th Anniversary of the Americans with Disabilities Act*, Preservation Leadership Forum Blog (Dec. 2, 2015)
7. Malone-France, Katherine, *When Buildings and Landscapes are the Collection*, Forum Journal (Summer 2014)
- Optional:** 8. Sample Co-Stewardship Agreements
9. Sample Shared Use Agreements
10. Explore Smithsonian Institution's [Shared Stewardship and Ethical Returns | National Collections Program \(si.edu\)](https://www.si.edu/nationalcollectionsprogram)

Due: Two questions based on reading due by email Thursday before class.

Week #15, Friday, April 26, 2024

Discussion of Local Preservation Ordinance Papers

Historic Preservation Law Tour of Philadelphia

Due: Local Preservation Ordinance Papers

Friday, May 3, 2024

No Class

Reading Day

Friday, May 10, 2024

No Class

Final Exams Due via Canvas by 5:00 PM EST