

SYLLABUS

Draft

Preservation Law: A Practical Tool Kit

CRP 470-003, 3 credits

CRP 570-003, 3 credits

LAW 593-013, 3 credits

University of New Mexico
School of Architecture and Planning, Pearl Hall
Albuquerque, New Mexico

June 25 – 29, 2012

Sponsored by
UNM School of Architecture and Planning
UNM Southwest Summer Institute ®

In cooperation with the
New Mexico Historic Preservation Division
National Trust for Historic Preservation

Faculty:

Jonathan Poston, former Director of SW office of the National Trust for Historic Preservation and currently Senior Director of Historic Properties, the Georgia Trust for Historic Preservation
With appearances by Jan V. Biella, M.A./RPA, Interim State Historic Preservation Officer;
William J. Cook and Elizabeth Merritt, National Trust for Historic Preservation; and New Mexico experts in state, local, and tribal law

Syllabus

Preservation Law: A Practical Tool Kit
CRP 470-003, CRP 570-003.LAW 593-013

Schedule: June 25-29, 2012, 9:00 AM to 6:00 PM with an hour for lunch
Pearl Hall, School of Architecture and Planning, room **P104**
Class will meet at the Cibola National Forest on June 28, 2012

Introduction:

This seminar-style course is designed to introduce the student to the legal foundation and current policy issues for historic preservation at the federal, state and local levels. The course will provide the student with a working knowledge of relevant legal subjects, including federal and state historic preservation statutes, ordinances and key preservation issues shaping preservation law today. The course employs a variety of approaches including readings, guest lectures, class discussions, a field study and out-of-class assignments.

Readings:

The lectures and discussion will draw on the readings provided in the *Course Manual for Historic Preservation Law*. The course manual is available on CD with the materials organized into separate folders by major topic. The CD will be provided to each student on the first day of class. The manual contains readings to be completed in preparation for each day as well as additional reference material that will be used by the student in completing the out-of-class assignments. Materials to be read in preparation for the first day of class, Monday June 25th, are available on UNM's electronic reserves: **eReserves** under LAW 593 and CRP 470/570, Summer 2010.

Course requirements:

Class Attendance and Participation: Class attendance for the full class period each day is required. Failure to attend on any day for this one-week, intensive course will be grounds for disenrollment. Each student is expected to complete the readings listed below for each day prior to class, participate in class discussions, and complete the out-of-class assignments.

Out-of-Class Assignments: Each student taking the course for credit will complete the take-home exam and an analysis of a preservation issue for written and oral class presentation. Both written assignments are **due July 12, 2012**. Assignments that are late will be marked down.

(1) Take-home Exam: Each student will complete a take home exam which will include, among other questions, two hypothetical problems

(2) Preservation Analysis: Each student will prepare a written analysis of a historic preservation issue or a court decision. The student will provide a succinct, not to exceed 5 page, written analysis of the key issues and implications for historic preservation law and the preservation of historic properties. Each student will provide a 10 minute presentation for credit on the last day of class.

Grading Criteria:

Class attendance/participation on the readings (30 points)

Preservation Analysis (30 points)

Take-home final (40 points)

Contact:

If you have any questions about the course or its requirements, please contact Jonathan Poston at jonathanhposton@aol.com or by phone at 843-813-1673. If you have or believe you have a qualifying disability under the Americans with Disabilities Act (ADA), please contact notify us as soon as possible so that appropriate arrangements can be made to give you full access to the course content and experience. All medical information will be treated confidentially.

Monday, June 25–Preservation Law Overview & Federal Law

9:00 Opening Remarks, Introductions, Course Overview, and Course Requirements (Poston)

9:30 Overview and Framework for International, Federal, State and Local Preservation Action (Poston)

1:00 Federal Preservation Law: Antiquities Act, Archeological Resources Protection Act, Section 4f of the Department of Transportation Act, Section 102 of the National Environmental Policy Act (NEPA) ; National Historic Preservation Act (NHPA) with a focus on Sections 106, 110 and 102 and current regulations (36 CFR 800) [National Trust Attorney William J. Cook or Elizabeth Merritt with discussion by instructor & guest speaker}

4:30 Tribal Consultation under NHPA with a focus on the role of THPOs, Indian Pueblos, and other native organizations and effective consultation and related federal acts and executive orders (Allen Downer, Hopi or other invited THPO)

5:30 Discussion and questions with briefing on trip to Cibola National Forest

Social Gathering, TBA

Required readings to be completed prior to Monday's class (6/25/12):

- Julia H. Miller, National Trust for Historic Preservation, *A Layperson's Guide to Historic Preservation Law* (2008) [on **eReserves** and to be distributed in class]
- Thompson M. Mayes, National Trust for Historic Preservation, *An Analytical Framework for Historic Preservation Law* (2008) [on **eReserves**]
- National Trust for Historic Preservation, *Federal Historic Preservation Laws at a Glance* [on **eReserves**]
- Section 102 of the National Environmental Policy Act, 42 U.S.C. 4332 [<http://www.nps.gov/history/local-law/fhpl.htm>]
- Section 4(f) of the Department of Transportation Act, 49 U.S.C. 103, as amended by Public Law 109-59 (Aug. 10, 2005) [<http://www.nps.gov/history/local-law/fhpl.htm>]
- National Historic Preservation Act of 1966 (as amended through 2001), 16 U.S.C. §§ 470-470x-64 [<http://www.nps.gov/history/local-law/fhpl.htm>]

- Advisory Council on Historic Preservation, *Protecting Historic Properties: A Citizen's Guide to Section 106 Review* (2002), *Section 106 Regulations Flow Chart and Explanatory Material* (2001) [on **eReserves**]
- Tulare County v. Bush, 306 F.3d 1138 (D.C. Cir. 2002) (Antiquities Act) [on **eReserves**]
- Robertson v. Methow Valley, 490 U.S. 332 (NEPA) [on **eReserves**]
- Pueblo of Sandia v. USFS, 50 F.3d 856 (10th Cir. 1995) (NHPA) [on **eReserves**]
- Archeological Resources Protection Act, 16 U.S.C. § 470aa, *et seq.*
[<http://www.nps.gov/history/local-law/fhpl.htm>]

Tuesday, June 26 –Federal Law II/State, Local and Private Preservation

Overview/Constitutional Issues

- 9:00 Recap on tribal panel and discussion
- 9:30 Overview of State and Local Preservation Law (Jonathan Poston)
- 11:00 State Preservation Law: New Mexico Cultural Properties Act, Prehistoric and Historic Sites Preservation Act, and Cultural Properties Protection Act (Jan Biella, HPD, or Zachary Shandler, AAG)
- 1:00 Constitutional Issues: First, Fifth and Fourteenth Amendments; Procedural Due Process; Regulatory Takings & Eminent Domain; Religious Properties & Religious Land Use and Institutionalized Persons Act (Cook or Merritt, NTHP)
- 4:00 Private Preservation Protections—Easements, Land Trusts & Planning (Jonathan Poston)
- 5:00 Discussion and recap

Required readings to be completed prior to Tuesday class:

- Bradford J. White, Paul W. Edmonson and Julia H. Miller, *Procedural Due Process* [**distributed separately**]
- Christopher J. Duerkson & Richard J. Roddewig, *Takings Law in Plain English* [**distributed separately**]
- U.S. Constitution First Amendment Fifth and Fourteenth Amendments
- National Trust for Historic Preservation, *Federal Historic Preservation Laws at a Glance*
- National Park Service, CLG Questions & Answers
- U.S. Const. Amends. V & XIV
- Merritt, Demolition by Neglect
- Thompson M. Mayes, *A Menu of Historic Preservation Laws and Policies at the State Level* (2007)
- National Trust Summary of Changes Relating to Preservation Easements
- Answers to Common Questions about Easements
- N.M. Cultural Properties Act, N.M. Stat. §§ 18-6-1 through 27 with particular attention to §§ 18-6-1, 18-6-5, 18-6-7, 18-6-11.2 and 18-6-12
- N.M. Prehistoric and Historic Sites Preservation Act, N.M. Stat. Ann. §§ 18-8-1 through 8 with particular attention to § 18-8-7
- N.M. Cultural Properties Protection Act, N.M. Stat. Ann. §§ 18-6A-1 through 5
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Wednesday, June 27— Field trip to Cibola National Forest

NOTE: The complete Mt. Taylor TCP state register nomination is available at <http://www.nmhistoricpreservation.org>; the Cibola NF Mt. Taylor National Register eligibility statement is in the course manual]

Meet at National Forest Service Visitor Center

9:30 Panel on Tribal Participation and Consultation under Federal and State Law: Cynthia Benedict, NFS: Theresa Pasqual (Pueblo of Acoma), Mark Mitchell (Pueblo of Tesuque); June Lorenzo, Leigh Kuwanwisiwma (Hopi Tribe), Sam Cata (Ohkay Owingeh) and others. Topics include: Native American Graves and Repatriation Act (NAGPRA); Archaeological Resources Protection Act (ARPA); Mt. Taylor Traditional Cultural Property (TCP); and consultation under NM state laws and executive orders.

Lunch break

1:30 Visit to permit site for uranium mines

Required readings to be completed prior to Wednesday class:

- Native American Graves and Repatriation Act, 25 U.S.C. 3001 [<http://www.nps.gov/history/local-law/fhpl.htm>]
- Protecting Native American Historic Places under Federal Law
- Excerpts from Mt. Taylor TCP State Register of Cultural Properties State Register nomination [on **eReserves**]
- Final Order listing Mt. Taylor TCP on State Register, CPRC [on **eReserves**]
- Consultation packages for La Jara Mesa and Roca Honda mines

Thursday, June 28 –Local Government Preservation Law/Tax Credits

- 9:00 Laws Available to Local Governments for Preservation (Jan Biela, HPD): NM Historic District and Landmark Act; New Mexico Subdivision Act (47-6-1 to 47-6-27 NMSA 1978); Planning and Platting (3-19-1 to 3-19-12 NMSA 1978); Historic and Archaeological Ordinances (Santa Fe, ABQ & Pima County AZ); Local Preservation Law and Community-based Preservation; Comprehensive Plans, Zoning, Conditional Uses; Conservation Easements; Historic Overlays Zones; Conservation Districts
- 10:30 Preservation and Local Government Action: Albuquerque (Ed Boles, Albuquerque City Planning Dept.; City of Santa Fe (David Rasch; Marissa Barrett, Santa Fe Planning Dept.); Santa Fe County and Use Planning Process & Questa ordinance (Arnold Valdez, Senior Planner, Santa Fe County)
- 1:30 Financial Help for Preservation within the State, Federal and State Income Tax Credit programs (Harvey Kaplan, HPD)
- 3:00 Site Visit, Downtown Albuquerque (Memorial Hospital/Hotel Parq Central, Hotel Andaluz and other sites)

Required readings to be completed prior to Thursday class:

- pages 9-18 in *Grassroots Historic Preservation* [**distributed separately**]
- N.M. Historic District and Landmark Act of 1965, N.M. Stat. Ann. §§ 3-22-1 through 5

- N.M. Zoning Regulations Act of 1965, N.M. Stat. Ann. §§ 3-21-1 through 14
- N.M. Special Zoning District Act of 1965, N.M. Stat. Ann. §§ 3-21-15 through 26.
- National Park Service & National Conference of State Historic Preservation Officers, Preserving Your Community's Heritage through the Certified Local Government Program
- Albuquerque Historic Preservation ordinance, Ch. 14, Art 12 §§14-12-1 et seq.
- NTHP Frequently Asked Questions about Local Preservation Laws
- White and Roddewig, Appendix A: Growth Management Laws, Comprehensive Planning and Historic Preservation Planning
- N.M. State Income Tax Credit, N.M. Stat. Ann. §§ 7-2-18.2 and 7-2A-8.6.
- N.M. Historic Preservation Loan Act of 1987, N.M. Stat. Ann. §§ 18-6-18 through 23
- N.M. Main Street, Stat. Ann. §§ 3-60C-1 through 6
- Excerpts relating to Memorial Hospital from Huning Highlands Historic District nomination

Friday, June 29 – Preservation in Action

- 9:00 New Mexico SiteWatch: Site Stewardship and Preservation (Norm Nelson or Jan Biella, HPD)
- 10:00 The Archaeological Conservancy: Working with the NM Conservation, Easements and Private Preservation Initiatives (Jim Walker, Archaeological Conservancy)
- 11:00 National Historic Roads and Visual Effects (Old Spanish Trail) (Sarah Schlanger, BLM?)
- 1:00 National Historic Landmarks: Identification and Protection (Poston)
- 3:30 Restoration through Traditional Building Practices (Jake Barrow, Cornerstones Community Partnerships)
- 3:45 Class reports and wrap-up (Poston)

Social Hour following

Readings to be completed for Friday class:

- National Trust Summary of Changes Relating to Preservation Easements
- Answers to Common Questions about Easements