

# Course Syllabus

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## HP 602: Historic Preservation Law

Spring 2018

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**Course Description** Although studying the law can be challenging, there is a sense of accomplishment in putting together the pieces of a legal puzzle, even if it requires some effort. More importantly, knowing that you can competently participate in legal discussions at your job is very satisfying. If your chosen profession has anything to do with historic preservation it is inevitable that you will be faced with matters of law as saving buildings, landscapes, and culturally significant objects is a highly regulated and specialized undertaking. Preservation law encompasses a number practice areas including, but not limited to land use and zoning, real property, local government, constitutional, administrative, and environmental law as well as the conservation of archaeological resources. The goal of this course is to assist non-lawyers in understanding laws, policies, and procedures and how they impact your professional practice as preservationists, planners, archaeologists, and other conservation-related fields. This will not only enhance your ability to serve as an advocate for preservation projects but will also enable you to identify potential legal issues before they become problems requiring crisis management. This basic understanding of the subject matter will also facilitate interactions with government agencies and attorneys by providing a background and basic vocabulary to enable you to ask the right questions.

### Learning Objectives

- (1) Recognize legal issues arising out of preservation problems;
- (2) Identify and apply the appropriate laws and policies implicated in these problems, explain how and why these laws apply, and recognize their limitations;
- (3) Synthesize various federal, state, and local statutes, regulations, policies, and guidelines to protect specific heritage resources (e.g., Native American Sacred sites, archaeological resources, sites in the path of transportation projects, etc.);
- (4) Critique laws and policies and consider alternative methods for the protection of heritage resources;
- (5) Gain an understanding of how to identify and locate relevant laws, policies, government organizations, and stakeholders impacted by the application (or misapplication) of laws; and

(6) Construct persuasive arguments utilizing various legal resources.

## Instructor

You are encouraged to be in regular contact with the instructor. You may contact me via email at [emily.bergeron@u](mailto:emily.bergeron@u) (<mailto:emilybergeron@mac.com>)\_ky.edu or [emilybergeron@mac.com](mailto:emilybergeron@mac.com). I will respond via email within 24 hours with an answer to your question or to schedule a time that works for you to talk on the phone or by video conference. Please include "HP Law" in the Subject line of your emails. There will be no scheduled office hours for this course; however, if you have questions or concerns regarding class procedures, assignments, or course materials, please email me to set up an appointment to chat. We can talk on the phone, video conference, or meet in person if you are taking the class in Lexington. I welcome your feedback and am happy to discuss your questions or concerns.

## Course Procedures

All course materials are available on the course Canvas site. Occasionally information will be emailed to you directly. Each Module must be completed before you can move on to the next Module. Please be aware of the due dates for discussions and assignments.

## Course Requirements

Section Participation and Discussions (5 points per section) --150 points

Assignment 1: Pulling together NHPA, NEPA, and 4(f) -- 25 points

-Assignment 2: Arizona Snowbowl Effect - 25 points

Assignment 3: Attend a local planning or preservation meeting -- 25 points

Final Exam (cumulative)-- 75 points

Course Total 300 points

**Section Participation** (60% of grade): You must complete all of the readings, quizzes, short assignments, and discussions for every Section of the course. Your completion of this aspect of the course will be monitored throughout the semester. If you do not complete any aspect of a Section (e.g. you do not participate in a class discussion) you will lose points.

**Special Assignments** (15% of grade): You will be asked to complete three special assignments during the semester. The first involves analyzing a case study using federal law, the second involves watching a film on a Native American case study and commenting on the film, the third is attending a local preservation meeting. You may attend a local planning meeting if you are unable to attend a preservation commission meeting. This assignment will require you to take a photograph and provide an assessment of the experience. Because of the nature of the final assignment, you may wish to attend a meeting earlier on in the semester.

**Exam** (20% of grade): The final exam will be distributed 2 weeks prior to the scheduled exam date. A copy will be made available on the Canvas site and by email. This exam will be cumulative. It will be due on the University scheduled date for the final exam. Electronic submissions of exams must be in pdf format, and must be submitted via email no later than the end time of the scheduled exam. After this time, all submissions will be considered late. Late papers will be penalized one letter grade for each day beyond the

due date. Papers may always be submitted early. Your exam will receive a point total, a numerical grade, and written comments. If you have additional questions or concerns regarding your grade or any answers on the exam, please don't hesitate to contact the me.

Grades shall be understood to translate as follows:

- A (100 – 90%)
- B (89.9 – 80%)
- C (79.9 – 70%)
- F (69.9% and below)

Letter grades shall be understood to represent:

A – Assigned to work completed substantially above the final expectation for the studio level. Work represents exceptional integration of design issues in relation to the design problem. Work relies upon both consideration of relevant analysis and original design ideas to jointly support design decisions. (U.S.R. 5.1.1: “Represents an exceptionally high achievement as a result of aptitude, effort and intellectual initiative.”)

B – Assigned to work completed above the final expectation for the studio level. Work demonstrates strong integration of design issues in relation to the design problem. Work shows consideration of relevant analysis to support design decisions. (U.S.R. 5.1.1: “Represents a high achievement as a result of ability and effort.”)

C – Assigned to work completed at the below average expectation for the studio level. Work represents minimal integration of design issues. Work does not exhibit significant or strong solutions to design criteria or analysis. (U.S.R. 5.1.1: “Represents unsatisfactory achievement for graduate students and is the minimum passing grade for which credit is given.”)

I – U.S.R. 5.1.3.2: “A grade of I (Incomplete) may be assigned to a graduate student if a part of the work of a course remains undone and there is a reasonable possibility that a passing grade will result from completion of the work. All incompletes must be replaced by a regular final letter grade within 12 months of the end of the academic term in which the I grade was awarded.”

## **Change**

As the course develops, I may make changes in the readings to accommodate your interests in the class. If there are issues, ideas or readings you want to include in this course, please let me know. This is your course, and we will make time for any new ideas if possible. You should be willing to devote some time to finding material and leading discussion on those new ideas.

## **Academic Integrity**

All students are expected to comply with the University Code on Academic Integrity ([http://www.uky.edu/Ombud/ForStudents\\_AcademicIntegrity.php](http://www.uky.edu/Ombud/ForStudents_AcademicIntegrity.php)). Students are encouraged to talk with each other about class content, including the content of the readings; however, any work submitted by a student in this course must be the student's own work.

## Accommodations

For Students With Disabilities If you have a documented disability that requires academic accommodations in this course, please make your request to the University Disability Resource Center. The Center will require current disability documentation. When accommodations are approved, the Center will provide me with a Letter of Accommodation which details the recommended accommodations. Contact the Disability Resource Center, Jake Karnes, Director, at 859.257.2754 or [jkarnes@email.uky.edu](mailto:jkarnes@email.uky.edu).

## Course Schedule

Section 1: Introduction to HP Law

Section 2: Evolution of Historic Preservation Law

Section 3 and 4: NHPA

Section 5-6: Environmental and Transportation Laws

Section 7: State Laws and Local Ordinances

Section 8: Archaeology Law

Section 9: American Indian Issues

Section 10: Takings Challenges

Section 11: Religious Challenges

Section 12: Easements and Open Space Preservation

Section 13: Preservation in Conflict

Course wrap-up and final exam

## Course Summary:

Date	Details	
Mon Jan 22, 2018	 <b><u>MANDATORY: Syllabus and Discussion Board Read and Understood</u></b> <a href="https://uk.instructure.com/courses/1911677/assignments/10025927">https://uk.instructure.com/courses/1911677/assignments/10025927</a>	due by 11:59pm
	 <b><u>Who are you?</u></b>	

Thu Feb 1, 2018	<a href="https://uk.instructure.com/courses/1911677/assignments/10025906">https://uk.instructure.com/courses/1911677/assignments/10025906</a>	due by 11:59pm
Sun Feb 4, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025904">Discussion: Is this parking spot taken?</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10025904">https://uk.instructure.com/courses/1911677/assignments/10025904</a> )	due by 11:59pm
Wed Feb 7, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025907">Discussion: Defining Significance</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10025907">https://uk.instructure.com/courses/1911677/assignments/10025907</a> )	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025910">Discussion: No Time for Ugliness</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10025910">https://uk.instructure.com/courses/1911677/assignments/10025910</a> )	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025908">Discussion: Redefining Integrity</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10025908">https://uk.instructure.com/courses/1911677/assignments/10025908</a> )	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025909">Discussion: What About Intangible Cultural Heritage?</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10025909">https://uk.instructure.com/courses/1911677/assignments/10025909</a> )	due by 11:59pm
Mon Feb 12, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025911">Discussion: DAPL and the problem with 106</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10025911">https://uk.instructure.com/courses/1911677/assignments/10025911</a> )	due by 11:59pm
Sun Feb 18, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10026002">Assignment 2: The Color of Law Rothstein Lecture</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10026002">https://uk.instructure.com/courses/1911677/assignments/10026002</a> )	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10032857">Discussion: DAPL and the problem with 106 Copy</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10032857">https://uk.instructure.com/courses/1911677/assignments/10032857</a> )	due by 11:59pm
Mon Feb 19, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025912">Is NEPA a paper tiger?</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10025912">https://uk.instructure.com/courses/1911677/assignments/10025912</a> )	due by 11:59pm
Mon Feb 26, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025913">Coordinating NHPA and NEPA</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10025913">https://uk.instructure.com/courses/1911677/assignments/10025913</a> )	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025898">Federal Nexus</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10025898">https://uk.instructure.com/courses/1911677/assignments/10025898</a> )	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025902">Is it or isn't it?</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10025902">https://uk.instructure.com/courses/1911677/assignments/10025902</a> )	due by 11:59pm
Mon Mar 5, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025903">Protected Highway Features</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10025903">https://uk.instructure.com/courses/1911677/assignments/10025903</a> )	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025896">Pick a state... any state</a> ( <a href="https://uk.instructure.com/courses/1911677/assignments/10025896">https://uk.instructure.com/courses/1911677/assignments/10025896</a> )	due by 11:59pm
	 <a href="#">Assignment 2: NHPA, NEPA, and 4(f) in Action</a>	

Mon Mar 19, 2018	<a href="https://uk.instructure.com/courses/1911677/assignments/10025922">https://uk.instructure.com/courses/1911677/assignments/10025922</a>	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025901">What's going on in YOUR state?</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025901">https://uk.instructure.com/courses/1911677/assignments/10025901</a>	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025897">What's your state's take on local?</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025897">https://uk.instructure.com/courses/1911677/assignments/10025897</a>	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025914">Combatting looting with technology</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025914">https://uk.instructure.com/courses/1911677/assignments/10025914</a>	due by 11:59pm
Mon Mar 26, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025916">Discussion: Diaz or Smyer?</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025916">https://uk.instructure.com/courses/1911677/assignments/10025916</a>	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025915">Thoughts on Contested Ownership</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025915">https://uk.instructure.com/courses/1911677/assignments/10025915</a>	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025905">Discussion: Easements: Good or Bad?</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025905">https://uk.instructure.com/courses/1911677/assignments/10025905</a>	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025900">National Conservation Easements Database</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025900">https://uk.instructure.com/courses/1911677/assignments/10025900</a>	due by 11:59pm
Mon Apr 9, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025899">Quick Quiz: Easement Holders</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025899">https://uk.instructure.com/courses/1911677/assignments/10025899</a>	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025917">What's going on in your state?</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025917">https://uk.instructure.com/courses/1911677/assignments/10025917</a>	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025923">Assignment: Watch a Film</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025923">https://uk.instructure.com/courses/1911677/assignments/10025923</a>	due by 11:59pm
Mon Apr 16, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025919">Eminent Domain in Your State of Choice</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025919">https://uk.instructure.com/courses/1911677/assignments/10025919</a>	due by 11:59pm
	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025918">What do you think about Kelo?</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025918">https://uk.instructure.com/courses/1911677/assignments/10025918</a>	due by 11:59pm
Mon Apr 23, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025920">Discussion: RLUIPA - Necessary or not?</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025920">https://uk.instructure.com/courses/1911677/assignments/10025920</a>	due by 11:59pm
Fri Apr 27, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025921">Assignment 1: Go to a Preservation Meeting</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025921">https://uk.instructure.com/courses/1911677/assignments/10025921</a>	due by 11:59pm
Sat May 5, 2018	 <a href="https://uk.instructure.com/courses/1911677/assignments/10025925">Final Exam</a> <a href="https://uk.instructure.com/courses/1911677/assignments/10025925">https://uk.instructure.com/courses/1911677/assignments/10025925</a>	due by 11:59pm

 **[Assignment 3: Putting together the Federal Laws](https://uk.instructure.com/courses/1911677/assignments/10026039)**  
(<https://uk.instructure.com/courses/1911677/assignments/10026039>)

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 **[Assignment 4: Richard Rothstein Lecture: The Color of Law \(Feb. 13\)](https://uk.instructure.com/courses/1911677/assignments/10025989)**  
(<https://uk.instructure.com/courses/1911677/assignments/10025989>)

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 **[Easement Assignment](https://uk.instructure.com/courses/1911677/assignments/10025924)**  
(<https://uk.instructure.com/courses/1911677/assignments/10025924>)

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 **[Final Exam](https://uk.instructure.com/courses/1911677/assignments/10025926)** (<https://uk.instructure.com/courses/1911677/assignments/10025926>)

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