



# National Preservation Institute

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## Decisionmaking for Cultural and Natural Resources in the Legal Environment

### Seminar Overview

The management of cultural and natural resources and cultural property collections requires knowledge of the relevant law, the legal process, and specific obligations, and an understanding of the manager's responsibilities. Learn how to navigate the legal environment and survive scrutiny by a variety of constituencies. Discuss how to evaluate choices that lead to creative solutions and sound decisionmaking, while limiting or quickly resolving legal actions.

### Agenda

#### Knowing the legal mandates for decisionmaking

- Types of law
  - Common law
  - Court made law
  - Constitutional law
  - Statutory law
  - Administrative law
- The legal process
  - Federal court process
  - Administrative law process
  - Dispute resolution
- Specific obligations
  - Antiquities Act
  - ARPA
  - NAGPRA
  - NEPA
  - NHPA
  - Executive orders, sacred sites and environmental justice
  - Criminal/civil prosecution Title 18 and Title 16

#### Responsibilities: Defining terms

- Defining legal terms
  - Good faith
  - Discretion

- Public trust
- Fiduciary duty
- Arbitrary capricious and abuse of discretion
- Taking
- Consultation
- Statutory construction
- Applied definitions, case study analysis

#### Options: Evaluating Choices

- Planning among competing forces
  - When no decision is not an option
  - Ambiguity as a battlefield
  - Public officer liability, agency liability
  - Consensus and abdication
  - Decisionmaking tools, GIS
- Applied decisionmaking case study analysis
- Creative solutions, prospective actions
  - Documenting the record
  - Identifying resources at risk
  - Prosecution policy
  - Prioritizing actions
  - Team building
  - Assessing court cases as impacting future actions
  - Evaluation as part of planning