

GUARDING AMERICA'S HERITAGE . . .



The National Trust **Legal Defense Fund** responds on many fronts to help local communities around the country protect their historic character, their neighborhoods, their unique places, and their quality of life. The LDF team works with preservation advocates all over the country, not only in the courtroom, but also in city council chambers and executive offices at the federal, state, and local levels, to protect the irreplaceable qualities that make our communities special. Our first goal is to avoid the need to go to court at all, by using advocacy to encourage

better government decisions that protect historic sites, neighborhoods, and landscapes. When necessary, however, the **Legal Defense Fund** is prepared to litigate to protect the Nation's historic resources.

The following update summarizes a few of the recent developments in our current advocacy efforts. These cases represent only a fraction of the preservation controversies we work to resolve each year. More information on recent LDF developments is available on the Trust's website:

www.nationaltrust.org/law

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RECENT WINS . . .

CALIFORNIA COURT OF APPEAL REJECTS STEVE JOBS' TEAR-DOWN BID FOR HISTORIC JACKLING HOUSE IN WOODSIDE

On January 10, 2007, Apple CEO Steve Jobs lost a court appeal seeking permission to demolish a historic 17,000-square-foot Spanish Colonial Revival mansion in Woodside, California. The house was originally built in 1925 for copper magnate Daniel Jackling, and designed by George Washington Smith, who is widely credited with introducing Spanish Colonial architecture to Santa Barbara. While most "tear-downs" replace smaller homes with massive

structures, Jobs' proposal was to build a new house of only 6,000 square feet on six wooded acres—just one-third the size of the historic Jackling House, which includes 14 bedrooms and 13½ baths. Jobs bought the house in 1984 and lived there for a decade before renting it and then abandoning the property in 2000.

The National Trust and the California Preservation Foundation filed an amicus brief with the California



Steve Jobs had sought to tear down the 1926 Daniel C. Jackson House, an important Spanish Colonial Revival mansion in Woodside, California, which he has owned since 1983. [Photo: Woodside History Committee.]

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Court of Appeal in September 2006, arguing successfully that the Town of Woodside violated the California Environmental Quality Act (CEQA) when it narrowly approved a demolition permit in 2004, because there was insufficient information to support the Town's conclusion that preservation would be "economically unjustifiable." In the court's ruling, issued January 10, 2007, Justice Stewart Pollak stated that, without any information about the es-

timated cost of building the replacement house proposed by Jobs, "it is not possible to determine whether the cost of renovating the existing historic structure is reasonable or feasible."

The Trust's Western Office has been actively involved in efforts to protect the Jackling House, working closely with the local preservation group, Uphold Our Heritage, which filed the lawsuit challenging the demolition permit. The local group has also

identified potential buyers who have offered to restore the Jacking House or move it elsewhere for rehabilitation. This David-and-Goliath court victory for preservationists follows closely on the heels of the California Court of Appeal's August 5, 2006 decision overturning a demolition permit for "IBM Building 25" in South San Jose. Together these cases will serve as strong precedent under CEQA to require consideration of viable preservation alternatives.

NATIONAL TRUST AND LANDMARKS ILLINOIS SAVE NATIONALLY SIGNIFICANT LANDSCAPE IN HIGHLAND PARK FROM SALE BY FEDERAL MARSHALS



The Becker Estate in Highland Park was saved through emergency objections filed in a RICO proceeding by the National Trust and Landmarks Illinois. [Cultural Landscape Foundation]

When insurance mogul Michael Segal was convicted of racketeering in June 2004, the U.S. Marshals Service seized his 17-acre estate in Highland Park, with the intention of selling the property to the highest bidder in order to satisfy part of a \$30 million penalty. However, the estate (historically known as the Becker Estate) included a 1921 Tudor Revival mansion designed by renowned architect Howard Van Doren Shaw, and a nationally significant historic landscape designed by Jens Jensen, which was especially well-preserved.

For more than a year, the Illinois State Historic

Preservation Office and the Advisory Council on Historic Preservation had tried without success to get the US Marshals Service to comply with Section 106 of the NHPA, which would normally result in the sale of the property with preservation covenants. The Justice Department refused to cooperate, and even threatened litigation to block local landmark designation by the City of Highland Park. As a result, Landmarks Illinois and the National Trust filed formal "objections" to the sale of the property with the federal district court on September 13, 2006, arguing that the

federal government was required to comply with Section 106.

As a result of the objections, the developer who bid on the property stepped forward to negotiate a detailed settlement agreement for the long-term protection of the property. The settlement requires the restoration or rehabilitation of the main house and coach house for residential use, and allows 11 new homes to be sensitively designed and sited away from the historic landscape. A conservation easement on the historic buildings and landscape will be conveyed to Landmarks Illinois.

ADMINISTRATIVE LAW JUDGE GRANTS NATIONAL TRUST PETITION TO SET ASIDE BLM OIL AND GAS LEASES NEAR ZUNI SALT LAKE

After nearly three years, an Administrative Law Judge with the Interior Board of Land Appeals (IBLA) issued a decision on November 20, 2006 setting aside 44 oil and gas leases adjacent to the Zuni Salt Lake and Sanctuary Zone in New Mexico. The judge agreed with the Trust that the Bureau of Land management (BLM) had failed to satisfy the requirements of Section 106 of the NHPA prior to auctioning the leases. The Judge recognized that BLM had failed to examine whether cultural resources were potentially affected on the

leased parcels before BLM issued the leases.

The Trust's appeal was filed after BLM's State Director in New Mexico denied a formal protest submitted by the Trust, which sought to enforce BLM's compliance with Section 106. The Judge set aside the State Director's decision denying our protest and remanded the matter back to BLM to address the issue of Section 106 compliance.

The Zuni Salt Lake, a Traditional Cultural Property listed on the National Register, is home to Salt Woman, called Ma'lokyattsik'i by the Zuni

Pueblo, and is a place where the Zuni, their ancestors, and other tribes like the Hopi, Acoma, and Laguna Indians have made pilgrimages for thousands of years to request spiritual guidance and rain, to make offerings, and to collect salt for ceremonial, ritual, and domestic uses. In addition, a 182,000-acre area surrounding the lake, the Sanctuary Zone, contains burials and shrines, and by tradition is a neutral zone where warring tribes could come together without conflict.



Zuni Salt Lake & Sanctuary Zone, Catron and Cibola Counties, NM. [Carolyn Johnson, Citizens Coal Council]

HEARING EXAMINER RECOMMENDS REALIGNMENT OF DOMINION VIRGINIA POWER TRANSMISSION LINES TO MINIMIZE HARM TO OATLANDS VIEWSHED

Late last year, the National Trust learned that Dominion Virginia Power had submitted an application to place a major high-tension power line along a cross-country route in Loudoun County, Virginia, that would significantly impact Oatlands Plantation and its surrounding viewsheds. Other historic properties at stake include the Goose Creek Rural Historic District and the Washington & Old

Dominion Trail along a former railroad corridor.

The proposed new power line route, which would pass less than a mile north of Oatlands, must be approved by the Virginia State Corporation Commission, which is required to ensure that the final route will reasonably minimize harm to historic properties. The Commission appointed a Hearing Examiner, who has studied the route in detail and

even proposed his own less harmful alternative.

Lawyers from WilmerHale agreed to represent the National Trust and Oatlands, Inc. as pro bono counsel during the Commission's complex administrative review process. The formal proceedings before the hearing examiner lasted from mid-June to mid-July. Deputy General Counsel Elizabeth Merritt and Oatlands Director David Boyce both



A proposed major high-tension power line along a cross-country route in Loudoun County would significantly impact Oatlands Plantation and its surrounding viewsheds. [NTHP]

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testified at the hearing, outlining the adverse effect of the power line on Oatlands, and our pro-bono counsel submitted a lengthy post-hearing brief.

Currently, the hearing examiner is reviewing the testimony and numerous briefs from the parties. Once the hearing examiner concludes his review,

he will prepare a recommendation to the State Corporation Commission for its consideration.

NEW LITIGATION . . .

CONNECTICUT ATTORNEY GENERAL JOINS PRESERVATIONISTS IN COURT BATTLE TO PROTECT GRUMMAN-ST. JOHN HOUSE IN NORWALK



The Grumman-St. John House, in Norwalk, Connecticut, proposed for demolition by the nearby Norwalk Inn.

The Norwalk Preservation Trust in Connecticut is leading a knock-down, drag-out court battle—still ongoing as this newsletter goes to press—to save the Grumman-St. John House, a pre-Revolutionary home in the National Register-listed Norwalk Green Historic District, which was damaged in the 1779 Battle of Norwalk, but later repaired.

The nearby Norwalk Inn bought the historic house in 2001, intending to demolish the building in order to construct a modern annex to the Inn, and applied for a demolition permit from the City in September 2006. Norwalk has a local ordinance that requires an automatic 90-

day demolition delay for all buildings over 50 years old. That demolition delay was invoked, but expired on December 21.

Meanwhile, the Norwalk Preservation Trust filed a lawsuit, claiming that the Norwalk Inn failed to comply with the Connecticut Environmental Protection Act (CEPA), which requires a showing of no “feasible and prudent alternatives” before demolition is allowed. Preservation alternatives include using the historic house as a high-end Bed & Breakfast, selling the building for adaptive reuse as medical offices, and designing an addition to the Norwalk Inn that would be sited to occupy vacant land, rather than

requiring the demolition of the Grumman House. The injunction hearing in Stamford Superior Court began on December 18, continued after the holidays, and is still going strong, with the Inn raising a wide variety of issues, ranging from an attack on the building’s National Register eligibility to a demand that preservationists post a security bond. The court has not yet ruled in the case.

The Connecticut Attorney General intervened in the case in early December, on behalf of the Connecticut Commission on Culture and Tourism, and the Connecticut Trust and the National Trust have asked to file an amicus brief in the case.

NATIONAL TRUST AND PRESERVATION ALLIANCE OF MINNESOTA JOIN FORCES IN LAWSUIT TO PROTECT NICOLLET ISLAND IN MINNEAPOLIS

In November, the Trust and the Preservation Alliance of Minnesota (PAM) asked to join as co-plaintiffs in a pair of lawsuits filed by Friends of the Riverfront against the City of Minneapolis and DeLaSalle High School, challenging the Minneapolis City Council's decision to approve the destruction of the eastern half of Grove Street on historic Nicollet Island in the Mississippi River.

DeLaSalle High School has proposed a massive new athletic complex, including a 750-person stadium and a parking lot on several acres of open park land on Nicollet Island. All of Nicollet Island is within the St. Anthony Falls Historic District, which is listed on the National Register and also designated by the Minneapolis Heritage Preservation Commission (HPC). Construction of the new stadium would

destroy half of Grove Street (a historic street platted in 1866 as part of the original street grid), which would harm the character and integrity of the historic district.

The HPC denied the school's request to build the stadium in July 2006. However, the Minneapolis City Council overturned the HPC's decision and issued a certificate of appropriateness, despite public opposition, including objections from the National Park Service, the Minnesota State Historic Preservation Office, and the National Trust. Friends of the Riverfront filed two lawsuits – one in district court and one appealing the certificate of appropriateness directly to the court of appeals.

Both lawsuits charge that the project would violate the Minnesota Environmental Rights Act (MERA), which requires a showing that there is “no

feasible and prudent alternative” to any project that would require the destruction of environmental or historic resources. The requirements of MERA have not been satisfied, since there are feasible and prudent alternative locations for the athletic complex, which would avoid the destruction of historic Grove Street.

A short hearing was held January 9, 2007 in the district court case, while briefing will continue through January in the Court of Appeals case. The district court has 90 days to issue a decision, which will address the City's motion to dismiss the case, and the preservationists' motion for summary judgment.



The National Trust has joined with Friends of the Riverfront to bring the City of Minneapolis and DeLaSalle High School into compliance with state law requiring alternatives be explored before development projects destroy historic resources, including Grove Street, which dates from 1866. [Friends of the Riverfront.]

LDF IN ACTION . . .**PRESERVATIONISTS' CONCERNS PROMPT REDESIGN OF WORLD TRADE CENTER MEMORIAL MUSEUM, BUT SURVIVORS' STAIRCASE REMAINS THREATENED**

The Vesey Street "Survivors" Staircase: the only remaining above-ground remnant of the original World Trade Center. [NTHP]

After years of frustration with the Lower Manhattan Development Corporation (LMDC), preservation advocates working to protect the World Trade Center Site were rewarded with a surprise announcement at a Section 106 consultation meeting on September 29, 2006. Alice Greenwald, the new director of the World Trade Center Memorial Museum, presented a revised conceptual plan that will preserve and open up access to the footprints of the twin towers. Instead of chopping up the space at bedrock with massive shear walls and filling the footprints with infrastructure, the new plan will

treat the authentic remains of the tower footprints as sacred ground, exposing and protecting the bases of the box beam columns that outlined the perimeter of the towers and even realigning the drainage infrastructure to avoid disturbing intact portions of the original slab.

However, even as preservationists celebrate the new museum design, the Vesey Street "Survivors" Staircase remains extremely threatened by redevelopment plans at ground zero. Despite overwhelming public support in response to the Trust's "Most Endan-

gered" Listing of the Staircase, Silverstein Properties, the developer of "Tower 2" at the WTC Site, has made little or no effort to plan the new building in a way that would integrate this last remaining above-ground element of the World Trade Center complex. Additional advocacy will be crucial in order to save the Staircase, which preservationists hope to relocate off-site during construction in order to explore alternatives for long-term preservation.

WOODLAWN PLANTATION TO BE IMPACTED BY ROAD WIDENING; LAND TRANSFER FROM FORT BELVOIR PROPOSED AS MITIGATION

A proposed road realignment to improve access to Fort Belvoir in Virginia would affect the National Trust's Woodlawn Plantation. [NTHP]

For the past two years, the LDF has been working actively with the Woodlawn Plantation in Alexandria, Virginia, to ensure that a proposal by state and federal officials to widen and realign roadways adjacent to the National Trust's Historic Site would minimize adverse effects on the property.

Following the events of September 11, 2001, several local connector roads through Fort Belvoir in Alexandria, Virginia were closed to the public. In order to improve local access, the Army and Federal Highway Administration have planned a new connector route to provide access between major arterials. The new

connector would realign and widen Old Mill Road, which crosses Route 1 right at Woodlawn's entrance. In order to do so, however, a strip of Woodlawn's property would be taken by the government in order to widen the road.

Because Woodlawn is a National Historic Landmark, Section 4(f) of the U.S. Department of

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Transportation Act and Sections 110(f) and 106 of the National Historic Preservation Act were triggered. Through extensive consultation, the National Trust has worked with the federal and state agencies to develop a mitigation package for the project. For example, Congress has authorized the transfer of approximately 2.5 acres of federal property from Fort Belvoir adjacent to Woodlawn. The federal government will transfer the land to the Commonwealth of Virginia and then the Commonwealth

will transfer the land to the National Trust as partial mitigation for taking the strip of land along Old Mill Road. The parcel being transferred will reconnect Woodlawn with the historic Woodlawn Friends Meeting House, and will eliminate an entrance to Fort Belvoir that currently separates Woodlawn from the Friends Meeting House. Under the terms of the original Woodlawn gift, the National Trust is prohibited from disposing of any portion of the Woodlawn property; accordingly, the Commonwealth

will need to acquire the property by eminent domain in order to widen the road.

The results of these negotiations are expected to be incorporated into a Memorandum of Agreement, which will outline the conditions of the transfer of the property along with additional mitigation measures, such as the redesign of Woodlawn's entrance driveway and the installation of interpretive trails on the National Trust's property along Old Mill Road and Route 1.

NATIONAL TRUST JOINS STATE AND LOCAL PARTNERS IN PENNSYLVANIA TO DEVELOP LONG-TERM PROTECTION FOR PHILADELPHIA'S 1799 LAZARETTO QUARANTINE STATION

On November 1, 2006, the National Trust and Preservation Pennsylvania joined the Preservation Alliance for Greater Philadelphia in the Pennsylvania Court of Common Pleas, seeking to halt a major development project initiated by Tinicum Township, Pennsylvania, on the grounds of the Lazaretto, a historic quarantine station and immigrant screening facility dating from 1799.

The Lazaretto—described by some as “Pennsylvania's Ellis Island”—sits on the banks of the Delaware River south of Philadelphia. Millions of

immigrants passed through this facility between 1799 and 1893. The Lazaretto is the only surviving immigrant screening facility of this type built before the Ellis Island complex was constructed in 1892. The Lazaretto Property also includes a historic burial ground, which served as the final resting place for immigrants who were quarantined and who later died of various infectious diseases.

Despite the importance of this site, and despite the fact that Tinicum Township purchased the site with \$2 million from the

Commonwealth of Pennsylvania specifically to save it from adverse private development, the Township decided to construct a massive new fire station and evacuation complex, complete with a two hundred car parking lot and banquet hall.

The National Trust, the Philadelphia Preservation Alliance, and Preservation Pennsylvania argued that the fire station would be inconsistent with the Township's obligations under Pennsylvania law on a number of grounds, and would also violate the public trust doctrine under Pennsylvania's Constitu-



Known by some as “Pennsylvania's Ellis Island,” the Lazaretto is an extremely important immigrant screening and quarantine station dating from 1799. It is threatened by the proposed construction of a massive fire station and evacuation complex. [HABS-HAER, historical photo]

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tion, which states that the citizens of Pennsylvania have the right to the preservation of the historic values of the environment.

Following an initial hearing on November 2nd, at

the judge's direction, preservationists and Township officials met to develop a compromise in order to settle the case. The settlement calls for the formation of a new nonprofit organization to

preserve and manage the Lazaretto property, while allowing construction of the fire station with additional screening and other mitigation

CONTRIBUTORS, SPONSORS, AND SUPPORTERS . . .

The work of the National Trust's Law Department would not be possible without the enormously generous contributions of lawyers and law firms and others who have donated substantial pro bono or sponsorship assistance to the National Trust this year, including the following:

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