



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

IN THIS ISSUE:

| | |
|---|----------|
| LDF IN ACTION... | 1 |
| NEW LITIGATION ... | 4 |
| UPDATE... | 6 |
| PUBLICATIONS, WORKSHOPS AND CONFERENCES... | 6 |
| CONTRIBUTORS, SPONSORS, AND SUPPORTERS ... | 7 |

LDF IN ACTION . . .

NEW PLAN FOR PARTIAL PRESERVATION AND MUSEUM DISPLAY OF SURVIVORS' STAIRCASE AT WTC SITE

Preservationists were encouraged to learn, in an announcement on August 6, 2007, that the Lower Manhattan Development Corporation (LMDC) has significantly revised its proposal for moving the Vesey Street Staircase, the only surviving above-ground remnant of the original World Trade Center complex. The Staircase served as the escape route for hundreds of survivors from the Twin Towers on September 11,

2001, and after surviving the collapse of the Towers, the Staircase also played an important role during the recovery process by serving as an entry point for rescue and recovery workers headed to the below-grade portion of the site underneath the Staircase. The proposed destruction of the Staircase led the Trust to include the Staircase in its 2006 list of America's Eleven Most Endangered Historic Places.



An August 2007 proposal would preserve the original stairs from the Vesey Staircase next to a new entrance stair for visitors to the National September 11 Memorial and Museum.

Instead of cutting the Staircase into small pieces and placing a few isolated treads in the sidewalk next to a new office tower, as proposed in January 2007, the LMDC now intends to retain the entire run of stairs intact, and to display it adjacent to the stairs and escalator that will be used by all visitors at the National September 11 Memorial and Museum to descend down to bedrock level. Although the run of stairs would be cut away from the concrete struc-

ture that currently supports and surrounds the stairs, the degree of preservation and integrity would substantially exceed the LMDC's prior proposal. More importantly, the staircase would be transferred to the care of professional museum staff, and would be displayed in a way that would allow maximum visitation and meaningful interpretation. The Trust and its partners in the Lower Manhattan Emergency Preservation Fund (LMEPF) are working

closely with the LMDC and the Museum to maximize the haunting and evocative power of the Staircase by refining the design and working to incorporate as much of the original Staircase structure as possible. The Trust and LMEPF applaud Governor Spitzer and his key staff for their creativity and responsiveness to the outpouring of concern and advocacy from preservationists around the country supporting the preservation of the Staircase.

U.S. DISTRICT COURT UPHOLDS RESTRICTIONS ON VEHICLE USE WITHIN GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT IN UTAH

On June 29, 2007, the U.S. District Court for the District of Utah dismissed a lawsuit filed by two Utah counties (Kane and Garfield Counties) against the Bureau of Land Management (BLM), rejecting the counties' challenge to BLM's management plan for the Grand Staircase-Escalante National Monument in southern Utah. The counties alleged that certain roads within the Monument are considered county roads, and therefore, BLM did not have the authority to restrict vehicle use on those roads. The district court upheld BLM's 1999 management plan, concluding that BLM was not obligated to address the counties' claims that

they held public rights-of-way prior to developing a management plan for the Monument.

The National Trust joined the Southern Utah Wilderness Alliance, Sierra Club, and The Wilderness Society as intervening defendants in the case in November 2005. The management plan, through a public participation process and environmental analyses, restricted motorized travel as a means of preventing and limiting impacts to the monument, including nearly 4,000 identified cultural resources. After BLM adopted the plan in 1999, the counties defiantly removed BLM road signs and posted illegal signs that

encouraged the use of closed routes. We intervened as defendants in part to ensure consideration of the public interest in protecting the Monument's significant cultural resources from damage by motorized vehicles.

The 1.7-million-acre Grand Staircase-Escalante National Monument was created in 1996 as the first National Monument to be managed by BLM. The cultural resources within the Monument include prehistoric Ancestral Puebloan and Fremont remains, Navajo and Paiute sacred sites, historic trails, and sites connected to Mormon



Photo by Ray Mathis.
Grand Staircase
Escalante National Monument

Pioneers and other early settlers.

The counties received an extension to file an appeal of the district court's ruling, and we anticipate that the counties will file

an appeal to the Tenth Circuit Court of Appeals. The Trust and its partners will continue to fight to protect Grand Staircase-Escalante from inappropriate vehicle use. The Denver office of

Earthjustice is representing the Trust and the other environmental interveners in the case.

TRUST CONTINUES TO OPPOSE MULTI-STATE "NATIONAL CORRIDOR" DESIGNATIONS FOR HIGH VOLTAGE POWERLINES IN THE NORTHEAST AND SOUTHEAST U.S.

For more than a year, the National Trust has battled the implementation of a troubling provision of the Energy Policy Act of 2005 – Section 1221(a) – which directs the Department of Energy (DOE) to designate geographic areas as "National Interest Electric Transmission Corridors" (NIETCs or National Corridors). The designation of specific National Corridors will have draconian results, including the potential of overriding or preempting reviews by state and local governments, and by other federal agencies. The provision allows the Federal Energy Regulatory Commission (FERC) to step in and specifically authorize the construction of transmission facilities, notwithstanding any opposition or denial by other federal, state, or local agencies. The law also imposes severe time-limits for state agencies reviewing proposed powerlines, allowing only one year to approve transmission lines within designated "corri-

dors," after which the applicant can ask FERC to take over the review. Most worrisome, Section 1221 authorizes the broad use of federal "eminent domain" power to advance transmission projects.

In late April 2007, the DOE raised the stakes by proposing to designate massive multistate areas as "National Corridors," within which these pre-emption provisions would apply, including the entire states of New Jersey, Delaware, and Maryland; most of New York, Pennsylvania, and West Virginia; and the entire area between Los Angeles, Las Vegas, Phoenix, and San Diego.

The National Trust is concerned that the National Corridor designations, and the DOE's interpretation of Section 1221, could lead to the approval of transmission lines without fully considering harm to historic resources and landscapes, and without adequate exami-

nation of alternatives. For example, a recent map prepared by the National Park Service shows that a wide variety of our nation's most significant historic places are directly in the path of, or adjacent to, the National Corridor in the northeast. These resources include historic battlefields, rural and historic landscapes, historic districts, and congressionally designated heritage areas.

In close coordination with a coalition of national, state, and local organizations, including the Piedmont Environmental Council in Virginia, National Parks Conservation Association, and The Wilderness Society, the Trust has engaged Congress, DOE, and the public in an effort to promote reforms to Section 1221, and to enforce DOE's compliance with environmental and preservation laws. On April 23, 2007, Elizabeth Merritt testified before the House Oversight Committee, Subcommittee on Government Affairs, fo-

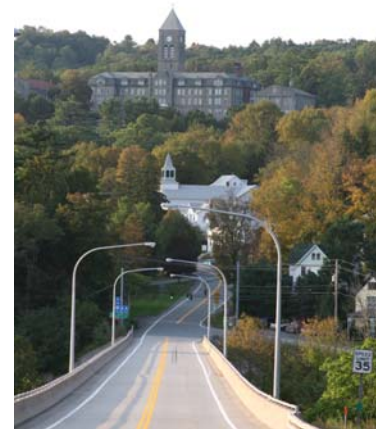


Photo by Dorene Warner, from *Upper Delaware Scenic Byways* website, available at <http://www.upperdelawarescenicbyway.org/gallery/gallery.php?image=14&direction=next>

St. Joseph's Seminary, in the Upper Delaware River community of Callicoon, is individually listed in the National Register. St. Joseph's would be virtually in the shadow of the proposed New York Regional Interconnect powerline, which would be built just over the top of the rise.

Cont'd . . .

ocusing on the adverse impacts of proposed National Corridor designations on historic resources and landscapes. The Trust urged the Committee to develop amendments to Section 1221, in order to correct deficiencies.

In June 2007, the Trust listed the historic places within the proposed Mid-Atlantic national powerline corridor as one of America's 11 Most Endangered

Historic Places for 2007. The listing was intended to elevate awareness about the severe consequences associated with the designation of National Corridors. More recently, on July 6, 2007, we submitted strong comments on DOE's proposed NIETC corridor designation, focusing on DOE's failure to prepare a programmatic Environmental Impact Statement under the National Environmental Policy Act, and

failure to comply with Section 106 of the National Historic Preservation Act. We believe this issue has far-reaching implications on how state, local, and federal agencies make decisions about the location of high voltage powerlines, including the possible use of federal eminent domain. DOE has not yet issued a final decision for the proposed National Corridors, but we expect this fight to continue.

NEW LITIGATION . . .

TRUST LDF SUPPORTS APPEAL ON STANDING ISSUE IN HISTORIC FORT RITCHIE BASE CLOSURE REDEVELOPMENT CASE



Fort Ritchie (Maryland National Guard building) (1926) [USACE]

As the latest round of Base Realignment and Closure (BRAC) actions moves forward in local communities around the country, some issues from previous rounds of BRAC remain unresolved. One such case has raised major national policy issues regarding who has "standing" to enforce agency compliance with Section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA).

Fort Ritchie is an Army base in north-central Maryland, which was closed through the Base Realignment and Closure Act (BRAC) in 1995. It was originally developed in 1926 as a training post

for the Maryland National Guard. In 1942, Camp Ritchie was converted to an Army base and used for military intelligence training and the development of psychological warfare. When the Fort was closed in 1995, the Army complied with Section 106, executing a Programmatic Agreement (PA) and adopting design guidelines for reuse of the property. PenMar Development Corp. (the "Local Redevelopment Authority" created by the Maryland legislature) leased the property to Corporate Office Properties Trust, who is developing the site as a mixed-use, residential, and high-security office complex. However, the

current development proposal violates the design guidelines by calling for the construction of office buildings and parking lots within the historic parade ground.

Two local property owners, Jim Lemon and Robin Biser, brought a lawsuit in 2005 against the Army, PenMar, and COPT, to enforce compliance with the PA, even though the plaintiffs had no legal representation. Unfortunately, a federal district judge in D.C. ruled in August 2006 that the plaintiffs lacked standing to bring their claims, in a decision that failed to acknowledge or cite to a single NHPA case, including numerous cases in which other courts have

upheld standing in similar circumstances.

Now armed with excellent *pro bono* counsel on appeal—O'Melveny & Myers, which was secured with assistance from the Trust LDF—it is hoped that the district

court's wayward standing decision will be reversed on appeal. The Trust successfully opposed the Army's motion for summary affirmance of the district court's ruling last winter, and on September 4, 2007, the

Trust and the Natural Resources Defense Council filed an amicus brief with the U.S. Court of Appeals for the D.C. Circuit urging the court to overturn the lower court's ruling that the plaintiffs lack standing.

TRUST JOINS LANDMARKS ILLINOIS IN LAWSUIT TO PROTECT OLD MAIN BUILDING AT BARAT COLLEGE IN LAKE FOREST, IL

On July 10, 2007, the Trust joined with Landmarks Illinois in filing a lawsuit challenging the demolition of a historic building on the campus of Barat College in Lake Forest, Illinois. Barat College operated from 1904-2004, but then closed its doors, and the entire 23-acre campus was purchased in early 2006 by local developer Robert Shaw, who plans to convert the Old Main building (c.1904) to condominiums, after demolishing the 1924 Thabor Wing, including the Sacred Heart Chapel, which is identified as a contributing element to the East Lake Forest Historic District.

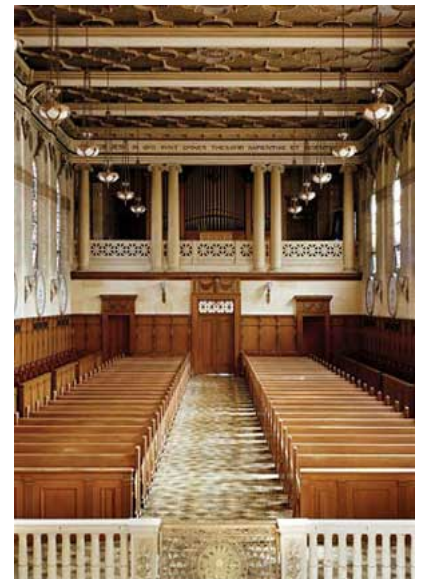
The developer sought a certificate of appropriateness for his plan, but the local Historic Preservation Commission (HPC) denied the certificate, and

denied an Economic Hardship petition as well, in November 2006. The Lake Forest City Council reversed the findings of the HPC and approved the demolition on June 4, 2007, notwithstanding substantial public opposition, including a petition with more than 2,000 signatures and 30 people testifying against the demolition.

The City of Lake Forest has a strong preservation ordinance, which has been conscientiously applied by the HPC. The local ordinance strictly prohibits the demolition of historic properties in the absence of economic hardship, and the developer did not qualify under the economic hardship standards. However, without addressing economic hardship at all, the City Council reversed the

HPC's decision and approved the demolition, based on the rationale that the ordinance does not specifically regulate interiors, and therefore, demolishing the Sacred Heart Chapel, which has an ornate interior, would not be prohibited by the ordinance (even though the exterior of the Chapel would be demolished as well). In addition, the City Council improperly entertained additional testimony from the developer.

As the lawsuit moves forward, preservationists are also working to develop potential alternatives that would avoid or minimize demolition at Barat College. Landmarks Illinois and the Trust are represented by Rachlis, Durham, Duff & Adler in Chicago.



The Landmarks Preservation Council of Illinois listed Barat College's Old Main chapel as one of the state's most endangered historic places last month. (James Morris)

CITY LOSES HIGH RISE DISPUTE IN TAMPA HISTORIC DISTRICT

On September 11, 2007, the Florida District Court of Appeal denied the City of Tampa's motion for a

rehearing, making final that court's decision to overturn the city's denial of an application to

construct a 28-story apartment building on the inner edge of the Hyde Park Historic District.

Cont'd . . .

Contrary to prevailing preservation practice, case law from other states, and a recently decided Florida court decision on a similar issue, the court concluded that the city's zoning ordinance trumped the city's historic preservation ordinance on matters relating to height within the Hyde Park Historic District, even though the city's guidelines for the historic district expressly

require that new construction must conform to the district's historic character in "height and scale."

In June, the Trust joined the Florida Trust for Historic Preservation, Tampa Preservation, Inc., Historic Hyde Park Neighborhood Association, and Old Seminole Heights Neighborhood Association, in filing an amicus brief in support of

the City's rehearing request. The coalition had also filed an amicus brief in support of the city's appeal in 2006.

The city is currently pursuing a settlement agreement with City National Bank of Florida and Citivest Construction Corporation, which have threatened to demand more than a million dollars in attorneys' fees.



Image by <http://www.floridahistory.org/>
Historic postcard drawing of Hyde Park, Tampa, Florida.

UPDATE . . .

BLM TAKES A STEP IN THE RIGHT DIRECTION TO PROTECT CULTURAL RESOURCES IN UTAH BY CLOSING ILLEGAL OFF-ROAD VEHICLE TRAIL

On September 13, 2007, the Monticello Field Office of the Bureau of Land Management (BLM) issued an order closing substantial portions of an off-road vehicle (ORV) trail system in Recapture Wash located in Southeastern Utah. The approximately twenty-five mile long system of trails, illegally constructed sometime during the fall of 2005, cross directly through at least nine archaeological sites greater than one acre, including a

site commonly known as the Recapture Great House, a former community center for the Ancestral Puebloans that once inhabited the area. The Law department had requested the closure of this ORV trail system in a letter to BLM in May 2007.

Recapture Wash lies on the eastern border of Cedar Mesa, an archaeologically rich region that contains thousands of significant cultural sites. At least thirty-one sites

eligible for listing in the National Register of Historic Places are found within Recapture Wash. BLM is currently drafting an environmental assessment to determine the long-term future of the routes in Recapture Wash. The Trust is working closely with the Southern Utah Wilderness Alliance, Great Old Broads for Wilderness, and Canyon Country Heritage Association on this issue.



A portion of the ORV trail system adjacent to the Recapture Great House. [NTHP]

CONFERENCES AND WORKSHOPS

The Law Department played a significant role in the development of educational sessions at the National Trust's annual

conference in St. Paul and several staff members will be speaking at specific sessions. In addition, legal staff presented

talks at conferences and events organized by other entities and completed three new publications over the summer.

Cont'd . . .

Several members of the Law Department will be speaking or moderating sessions at this year's annual conference.

On October 1, Paul Edmondson and Tom Mayes will provide their annual easement update at the Statewide and Local Partners' per-conference workshop. On October 4, Tom Mayes and Ross Bradford will be speaking at the "Preser-

vation Easements: Best Practices Roundtable;" Julia Miller will lead a discussion on demolition review at the "Teardowns and McMansions Roundtable;" and Betsy Merritt and Mike Smith will be speaking at the "Powerlines vs. Preservation" Session. On October 5, Ti Hays will be moderating a session entitled "Preserving Historic and Cultural Resources on Public Lands."

Julia Miller lectured on advocacy for legal tools to address teardowns and oversized houses at a workshop sponsored by the Maryland Association of Historic District Commissions on July 14th. Ross Bradford will be speaking at the Land Trust Alliance's National Conference in Denver on October 6, 2007. His talk is entitled "Preservation Perspectives on Conservation Easements."

PUBLICATIONS

The Law Department launched two new publications, Protecting Potential Landmarks through Demolition Review and Regulating Historic Religious Properties Under RLUIPA this past summer. Both are available for purchase from Preser-

vation Books (www.preservationbooks.org) in PDF format. Julia Miller and Ross Bradford also updated and expanded an existing Preservation Book publication, Establishing an Easement Program. The revised and retitled booklet, Establish-

ing and Operating an Easement Program to Protect Historic Resources, provides detailed and up-to-date information for organizations interested in or involved in easement programs.

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:

Arnold & Porter, LLP, Washington, DC & New York, NY

Franklin Beattie, Esq., Georgetown, SC

Becker & Walker, LLC, Canton, CT

The Bogaard Foundation, Pasadena, CA

David Bonderman, Esq., Fort Worth, TX

Brandt-Hawley Law Group, Glen Ellen, CA

Buist-Moore Smyth McGee, PA,

Charleston, SC

Clarion Associates, Inc., Chicago, IL

David A. Doheny, Esq., Bethesda, MD

Robert G. Dreher, Esq., Washington, DC

Earthjustice, Denver, CO & Washington, DC

Andrea C. Ferster, Esq., Washington, DC

Fried, Frank, Harris, Shriver, & Jacobson,

LLP, Washington, DC & New York, NY

Steven M. Friedman, Esq., Los Angeles, CA

Carter B.S. Furr, Esq., Norfolk, VA

Walter Handelman, Esq., White Plains, NY

Heller Ehrman, LLP, Los Angeles, CA

William Hassler, Esq. & Mary Gay Sprague,

Esq., Washington, DC

Hunton & Williams, LLP, Washington, DC &

Norfolk, VA

Jerold S. Kayden, Esq., Cambridge, MA

The Malkin Fund, Inc., New York, NY

Joseph H. McGee, Esq., Charleston, SC

Robert Muse, Esq., Washington, DC

Morgan, Lewis & Bockius LLP, Washington,

DC

Nixon Peabody, LLP, Washington, DC

Pepper Hamilton, LLP, Philadelphia, PA & Washington, DC

Pratt-Thomas, Epting & Walker, PA,

Charleston, SC

Rachlis, Durham, Duff & Adler, Chicago, IL

Robins, Kaplan, Miller & Ciresi, LLP,

Washington, DC

Robinson & Cole, LLP, Stamford, CT

Antonio Rossmann, Esq., San Francisco, CA

Smith & Duggan, LLP, Boston, MA

Steptoe & Johnson, LLP, Washington, DC

Peter Stoudt, Free Union, VA

Western Environmental Law Center, Taos,

NM

Wilmer, Cutler, Pickering, Hale & Dorr, LLP,

Washington, DC

A public interest law office serving the cause of historic preservation . . .

Through its Legal Defense Fund, the National Trust for Historic Preservation—

- is the only national organization that regularly goes to court to protect America's heritage;
- defends, enforces, and monitors federal, state and local preservation laws to ensure their effectiveness in protecting historic resources;
- advises both private and government lawyers, as well as citizen activists around the country, on using the tools of legal advocacy to protect our heritage;
- educates lawyers, law students, and others interested in learning more about preservation law, creating a vital network of preservation advocates.



Staff of the National Trust's Law Department:

Left to right:

Paul Edmondson, *Vice President & General Counsel*;
 Ross Bradford, *Assistant General Counsel*;
 Ti Hays, *Public Lands Counsel*;
 Anita Canovas, *Associate General Counsel*;
 Betsy Merritt, *Deputy General Counsel*;
 Mike Smith, *Assistant General Counsel*;
 Julia Miller, *Special Counsel and Legal Education Coordinator*;
 George Siekkinen, *Senior Architect*;
 Natasha Moise, *Office Administrator*;
 Tom Mayes, *Deputy General Counsel*.



NATIONAL TRUST
 for HISTORIC PRESERVATION®

NATIONAL TRUST LEGAL DEFENSE FUND

1785 Massachusetts Avenue, NW
 Washington, D.C. 20036

Tel. (202) 588-6035 • Fax. (202) 588-6272

www.nationaltrust.org/law

The National Trust for Historic Preservation is a 501(c)(3) nonprofit charitable organization chartered by Congress in 1949. The National Trust provides leadership, education, advocacy, and resources to save America's diverse historic places and revitalize our communities. The National Trust's Legal Defense Fund relies almost exclusively on unrestricted membership dues and individual donations for support.