

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RECENT PAST PRESERVATION)
NETWORK, a Virginia non-profit corporation,)
P.O. Box 100505, Arlington, VA 22210;)
DION NEUTRA, 2440 Neutra Place, Los)
Angeles, CA 90039; and CHRISTINE)
MADRID FRENCH, 2522 Willard Drive,)
Charlottesville, VA 22903,)

Plaintiffs,)

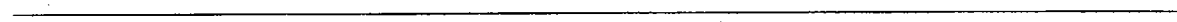
v.)

JOHN LATSCHAR in his official capacity as)
SUPERINTENDENT OF GETTYSBURG)
NATIONAL MILITARY PARK, 97)
Taneytown Rd., Gettysburg, PA 17325;)
DENNIS REIDENBACH in his official)
capacity as ACTING DIRECTOR,)
NORTHEAST REGION OF THE)
NATIONAL PARK SERVICE, 200 Chestnut)
Street, Philadelphia, PA 19106; MARIE)
BOMAR in her official capacity as)
DIRECTOR OF THE NATIONAL PARK)
SERVICE, 1849 C Street, N.W., Washington,)
D.C. 20240; DIRK KEMPTHORNE in his)
official capacity as SECRETARY OF THE)
UNITED STATES DEPARTMENT OF THE)
INTERIOR, 1849 C Street, N.W., Washington,)
D.C. 20240; THE NATIONAL PARK)
SERVICE, 1849 C Street, N.W., Washington,)
D.C. 20240; and THE UNITED STATES)
DEPARTMENT OF THE INTERIOR, 1849 C)
Street, N.W., Washington, D.C. 20240,)

Defendants.)

Civil Action No.: _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**



INTRODUCTION

1. This is an action to compel defendants (hereinafter collectively referred to as “the Park Service”) to comply with the National Environmental Policy Act of 1969 (“NEPA”), with the National Historic Preservation Act (“NHPA”), and with regulations and guidance implementing those two statutes. Specifically, plaintiffs seek declaratory and injunctive relief to ensure that the Park Service does not demolish the historic Gettysburg Cyclorama Center (the “Cyclorama Center”) in violation of NEPA and NHPA, and to force the agency to comply with specific, mandatory provisions of NHPA governing management and use of historic properties owned by federal agencies.

2. The Park Service commissioned the Cyclorama Center as part of the agency’s landmark Mission 66 program, an unprecedented and widely-celebrated initiative which brought modern architecture and environmentally sensitive design to America’s national parks. The building, located near a part of Gettysburg National Military Park known as Ziegler’s Grove, was designed and sited according to the Park Service’s own specifications by world-renowned architect Richard Neutra.

3. The Cyclorama Center remains the sole example of Neutra’s governmental work in the Eastern United States. The Keeper of the National Register of Historic Places has determined that the Cyclorama Center is associated with a significant contribution to history, is the work of a master architect, and, for those reasons, is eligible for listing in the National Register of Historic Places.

4. The Park Service has adopted a general policy calling for the “restoration” and “rehabilitation” of Ziegler’s Grove. That policy was approved as part of a 1999 General Management Plan/Environmental Impact Statement (the “GMP/EIS”). However, neither the

GMP/EIS nor any other document prepared by the Park Service discloses or evaluates any specific proposal for implementing the general policy of “restoring” and “rehabilitating” Ziegler’s Grove.”

5. In fact, the Park Service’s GMP/EIS studiously avoided any discussion of specific means of implementing its general policy of “restoring” and “rehabilitating” Ziegler’s Grove, noting instead that the document does not include “site specific details and recommendations” because “more detailed assessments of impacts” would be prepared later, “as part of necessary implementation planning.”

6. Now, without disclosing to the public any “site specific details and recommendations,” and without preparing any “more detailed assessments of impacts,” the Park Service has issued several statements—statements that it refuses to explain, deny, or retract—indicating that the agency has decided to implement its general policy of “restoring” and “rehabilitating” Ziegler’s Grove by demolishing the Cyclorama Center.

7. In doing so, the Park Service has violated NEPA and NHPA. The Park Service violated NEPA because (1) it never prepared an Environmental Impact Statement (EIS) or Environmental Assessment (EA) disclosing and evaluating the potential environmental impacts of demolishing the Cyclorama Center and (2) it never considered reasonable alternative means of implementing the general policy of “restoring” and “rehabilitating” Ziegler’s Grove, including, without limitation, relocation of the Cyclorama Center to another site, prior to determining that the Cyclorama Center will be demolished. The Park Service violated NHPA because (1) it did not use the historic Cyclorama Center to the maximum extent feasible before committing to relocate agency facilities to new buildings and (2) it failed to prepare a program for proper management and maintenance of the Cyclorama Center.

8. By this action, Plaintiffs seek to prevent the Park Service from demolishing the historic Cyclorama Center without complying with NEPA and NHPA, and to force the Park Service to comply with specific, mandatory provisions of NHPA governing management and use of historic properties owned by federal agencies. To that end, Plaintiffs request that this Court grant declaratory and injunctive relief sufficient to ensure that the Park Service prepares an adequate Environmental Impact Statement (“EIS”) or Environmental Assessment (“EA”) evaluating the impacts of demolishing the Cyclorama Center and alternative means of effecting the agency’s general policy of “restoring” and “rehabilitating” Ziegler’s Grove, as required by NEPA, including, without limitation, relocating the building to another site; that the Park Service properly uses and preserves the Cyclorama Center, as required under section 110 of NHPA, 16 U.S.C. § 470h-2; that the Park Service uses the Cyclorama Center to the maximum extent feasible before using new buildings for purposes of carrying out agency responsibilities, as required under section 110 of NHPA, 16 U.S.C. § 470h-2; and that the Park Service prepares a program sufficient for proper management and maintenance of the Cyclorama Center, as required under section 110 of NHPA, 16 U.S.C. § 470h-2.

JURISDICTION AND VENUE

9. This action arises under NEPA, as amended, 42 U.S.C. § 4321 *et seq.*, and its implementing regulations, including the Council on Environmental Quality (“CEQ”) NEPA Regulations, 40 C.F.R. Parts 1500-1508, and under NHPA, as amended, 16 U.S.C. § 470 *et seq.*, and its implementing regulations.

10. Plaintiffs seek judicial review pursuant to Chapter 7 of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706.

11. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1361.

12. This Court may grant declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201 and 2202.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

PARTIES

14. Plaintiff Recent Past Preservation Network (“RPPN”) is a non-profit corporation dedicated to the preservation and understanding of the modern built environment. RPPN is headquartered in Arlington, Virginia, and has more than 220 members throughout the United States, including Pennsylvania and Washington, D.C. Members of RPPN regularly advocate for the preservation of significant examples of modern architecture, including the Cyclorama Center. Members of RPPN regularly visit the Cyclorama Center, and they use the building and surrounding areas of Gettysburg National Military Park for educational, recreational, professional, and aesthetic purposes. RPPN and its members are and will be aggrieved and adversely affected by the actions of Defendants, and they have suffered, and will suffer, injury in fact due to Defendants’ failure to comply with the law. Such injuries are redressible by the relief requested herein.

15. Plaintiff Dion Neutra is the architect son and partner of the late Richard Neutra. He is Principal of Richard and Dion Neutra Architects and Executive Consultant to the Neutra Institute for Survival Through Design. He regularly advocates for the preservation of significant examples of modern architecture, including the works of his firm and his father. Dion Neutra was his father’s collaborator and architectural partner for 30 years. He served as project architect for the Cyclorama Center. For many years, Dion Neutra has advocated for the preservation of the Cyclorama Center, and he continues to have a deep personal, professional, and educational interest in the building and its preservation, both as means of commemorating the battle of Gettysburg and as a means of preserving one of the most important examples of Richard

Neutra's architecture. Dion Neutra regularly visits the Cyclorama Center, and he uses the natural and physical environment of the building and surrounding areas of Gettysburg National Military Park for educational, recreational, professional, and aesthetic purposes. Dion Neutra resides in Los Angeles, California. He is and will be aggrieved and adversely affected by the actions of Defendants, and he has suffered, and will suffer, injury in fact due to Defendants' failure to comply with the law. Such injuries are redressible by the relief requested herein.

16. Plaintiff Christine Madrid French is the author of several published works on the Mission 66 program and the architecture of Richard Neutra, including the Cyclorama Center, and she continues to devote scholarly attention to those topics. Ms. French is also president of RPPN. She regularly visits the Cyclorama Center, and she uses the natural and physical environment of the building and surrounding areas of Gettysburg National Military Park for educational, recreational, professional, and aesthetic purposes including, without limitation, contemplation of the building and its historic significance. Ms. French resides in Charlottesville, Virginia. She is and will be aggrieved and adversely affected by the actions of Defendants, and she has suffered, and will suffer, injury in fact due to Defendants' failure to comply with the law. Such injuries are redressible by the relief requested herein.

17. Defendant John Latschar is sued in his official capacity as Superintendent of Gettysburg National Military Park, which includes the Cyclorama Center. His official residence is in Gettysburg, Pennsylvania.

18. Defendant Dennis Reidenbach is sued in his official capacity as Acting Regional Director, Northeast Region, of the National Park Service. His official residence is in Philadelphia, Pennsylvania.

19. Defendant Marie Bomar is sued in her official capacity as Director of the National Park Service. In that capacity she administers the National Park Service. Her official residence is in Washington, D. C.

20. Defendant Dirk Kempthorne is sued in his official capacity as Secretary of the United States Department of the Interior. In that capacity, he is responsible for the activities of the Department of the Interior and its component agencies, including the National Park Service. His official residence is in Washington, D.C.

21. Defendant National Park Service is an agency within the United States Department of the Interior with responsibility for the proper and lawful management of the national park system, including the Cyclorama Center and Gettysburg National Military Park.

22. Defendant United States Department of the Interior is an agency of the United States and is responsible for the proper and lawful management of the federal public lands committed to its control, including the lands administered by the National Park Service.

APPLICABLE LAW

23. NEPA mandates that federal agencies identify and evaluate the environmental consequences of their actions and reasonable alternatives thereto. NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C); NEPA § 102(2)(E), 42 U.S.C. § 4332(2)(E). In applying NEPA, federal agencies must undertake a three part analysis:

- First, agencies must determine whether the action is subject to an existing categorical exclusion. Categorical exclusions are classes of actions that the agency has previously identified, in procedures adopted by the agency after consultation with the Council on Environmental Quality, as having no individually or cumulatively significant effects on the environment. 40 C.F.R. §§ 1507.3, 1508.4.

- Second, if the action does not fall within an existing categorical exclusion, the agency must determine whether an Environmental Assessment (“EA”) is required. NEPA requires federal agencies to prepare an EA when necessary under their individual implementing procedures. 40 C.F.R. § 1501.3. NEPA also requires federal agencies to prepare an EA for actions that do not normally require an EIS. 40 C.F.R. § 1501.4. Required elements of an EA include, without limitation, discussions of the need for the proposed action, the environmental impacts of the proposed action, and alternatives to the proposed action. 40 C.F.R. § 1508.9. If an EA indicates that the proposed federal action will not have a significant impact on the environment, a Finding of No Significant Impact (“FONSI”) must be prepared. 40 C.F.R. § 1508.13.
- Third, the agency must determine whether an Environmental Impact Statement (“EIS”) must be prepared. NEPA requires preparation of an EIS if the action may have a significant impact on the environment, or if the agency’s individual implementation procedures provide that an EIS is necessary. NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1501.4, 1507.3, 1508.3, 1508.11, 1508.27. Required elements of an EIS include, without limitation, a detailed discussion of the action’s environmental impacts and an analysis of alternatives thereto. 40 C.F.R. §§ 1502.14, 1502.16.

24. NHPA governs the actions of federal agencies with respect to historic properties. Section 110 of NHPA, 16 U.S.C. § 470h-2, imposes requirements on federal agencies that own or control historic properties. Those requirements include the following:

- The heads of federal agencies are required to assume responsibility for the preservation of historic properties that are owned or controlled by such agencies, and the agencies must undertake such preservation as may be necessary to permit the assumption of that responsibility. NHPA § 110, 16 U.S.C. § 470h-2.
- As part of their assumption of responsibility for the preservation of historic properties, federal agencies must use, to the maximum extent feasible, available historic properties prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities. NHPA § 110, 16 U.S.C. § 470h-2. Agencies must undertake such preservation as may be necessary to permit the maximum feasible use of available historic properties. NHPA § 110, 16 U.S.C. § 470h-2.
- Federal agencies must establish preservation programs to protect historic properties they control. Such programs must ensure, among other things, that any historic properties under agency jurisdiction or control that are eligible for listing in the National Register of Historic Places are managed and maintained in a way that considers the properties' historic, archaeological, architectural, and cultural values. NHPA § 110, 16 U.S.C. § 470h-2.

FACTUAL BACKGROUND

25. In 1955, the National Park Service began a 10-year program designed to improve infrastructure and facilities in National Parks. According to the Park Service, this program—known as “Mission 66”—included a variety of “physical improvements adequate for expected demands but so designed and located as to reduce the impact of public use on valuable and destructible features...[i]t is intended to give the fullest possible degree of protection, both to visitors and to resources.” The Mission 66 program included some of the most significant projects ever built by the Park Service. For example, Mission 66 funds were used to construct the Gateway Arch in St. Louis and to rehabilitate Independence Hall in Philadelphia. Equally important was the Mission 66 program’s role in establishing an entirely new building type—the visitor center—in America’s national parks. The vast majority of Mission 66 visitor centers were planned and designed by the National Park Service. In some national parks, however, the Park Service sought to introduce world-class modern architecture—buildings designed to serve as important examples of modern architecture for many years to come—and, to that end, commissioned designs from prominent private architects of the era. Overall, five of the 100 Mission 66 visitor centers were designed by prominent private architects.

26. One of the five was the Cyclorama Center at Gettysburg National Military Park. The building was intended to be used in a variety of ways: as an area for visitor services, as museum exhibit space, as administrative offices, as a location for lectures and speeches, as a place to view the battlefield, as a commemorative monument, and as a location for the display of a cyclorama painting by Paul Phillippoteaux titled “Battle of Gettysburg” (the “Cyclorama Painting”). The Cyclorama Painting is a large canvas designed to be hung in a circle, thereby surrounding

viewers with images of the battle. As one Park Service historian explained, the Cyclorama Center would meet the criteria for both a sacred monument and a utilitarian public facility.

27. After rejecting building plans from its staff architects, the Park Service hand-picked Richard Neutra, partner of the architectural firm Neutra & Alexander, to design the project. Neutra was, and remains, among the most famous, highly-regarded, and influential architects of the era, as recognized by his appearance on the cover of *Time*. Richard Neutra served as Principal and Executive Architect for the project. Plaintiff Dion Neutra served as project architect from the inception of the work.

28. During his career, Richard Neutra designed a variety of celebrated residential, commercial and civic structures. Overall, Neutra's oeuvre was so innovative and influential that he was posthumously awarded the coveted American Institute of Architects Gold Medal in recognition of "a significant body of work of lasting influence on the theory and practice of architecture." Of all these celebrated designs, Neutra himself considered the Cyclorama Center to be the project closest to his heart.

29. Although Neutra designed the Cyclorama Center, the Park Service also remained closely involved in certain portions of the project. Among other things, the agency considered alternative locations for the Cyclorama Center, and ultimately selected the site for the building in Ziegler's Grove. The Park Service also gave Neutra detailed instructions concerning the intended uses of the building, including explicit guidance concerning appropriate arrangements for housing and hanging the Cyclorama Painting. For example, the Park Service itself designed and installed the wooden ring supporting the Cyclorama Painting, the dimensions of which determined the diameter of the drum-shaped housing.

30. Neutra's design respected the Park Service's instructions. However, the architecture of the building was indisputably his own. The footprint of the building resembles a keyhole. At

the north end of the structure, the curved shape of the auditorium, the outer wall of the rotunda, and the ramp used to access a viewing platform create a graceful series of concentric circles. A rectilinear office wing extends to the south, topped by a large observation deck. The building made use of a variety of materials, including glass, metal, concrete, and native Pennsylvania stone. The Cyclorama Center also included several distinctive design features, including Neutra's signature "spider legs"—L-shaped beams which anchor the building to the landscape beyond.

31. Neutra's work on the Cyclorama Center won significant praise from the Park Service. Upon receiving Neutra's drawings, the Park Service's Division of Design and Construction sent the architect a letter congratulating him and his staff "for a job well done." The letter noted that the agency was "well pleased" with Neutra's drawings and specifications, as well as the bid process for the building.

32. The Cyclorama Center was designed, planned, and built to be ready for the centennial of the Battle of Gettysburg and the Gettysburg Address, both of which took place in 1863. The building was completed in 1962, was dedicated by Dwight D. Eisenhower, and opened to widespread approval from the Park Service and the general public. The press reported that the building was not only "one of the most handsome buildings in the area," but also served as an effective cultural resource for visitors, exhibits, and staff. For many years, the building was used as a visitor center, as administrative offices, and to the Cyclorama Painting.

33. The Park Service failed to adequately maintain and preserve the Cyclorama Center during the ensuing years. Over time, that failure resulted in damage to the building.

34. During the mid-1990's, the Park Service came to contend that the Cyclorama Center was not an historically significant structure, and therefore did not merit inclusion in the National Register of Historic Places. That contention was thoroughly inconsistent with the Park Service's

own conduct during the planning, design and construction of the building—not only did the Park Service go out of its way to hand-pick one of the most famous architects of the mid-twentieth century to design the Cyclorama Center, but it did so as part of an explicit, self-conscious attempt to bring historically important architecture to the national parks.

35. In 1998, the Keeper of the National Register of Historic Places overturned the Park Service's assessment and declared the Cyclorama Center eligible for listing in the National Register of Historic Places. The Keeper concluded that the building possesses exceptional historic and architectural significance for two reasons. First, the Cyclorama Center was a central part of the Mission 66 program. Specifically, it was "one of only five of a newly-conceived building type, the Visitor Center, designed for the National Parks System by noted, world class architects." Second, the Cyclorama Center is "the work of a master architect." The Keeper specifically noted that Richard Neutra "is recognized as a master architect of Modern design by scholars in numerous publications" and that the Cyclorama Center is "a rare example of Neutra's institutional design on the east coast and one of his very few Federal commissions."

36. During the past 10 years, the Park Service has prepared several documents which discuss the future of Gettysburg National Military Park. Among other things, these documents propose, contemplate, or assume the Park Service's general policy of "restoring" and "rehabilitating" Ziegler's Grove. However, none of the documents proposes to implement this policy by demolishing the Cyclorama Center. And none of the documents analyzes the potential environmental and historic impacts of such demolition and alternatives thereto, as required under NEPA and NHPA.

- Beginning in 1995, the Park Service prepared a Draft Development Concept Plan/Environmental Assessment ("Draft DCP/EA") to evaluate the facilities at Gettysburg National Military Park. The Draft DCP/EA did not propose to

