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# The Vision of Pierre L'Enfant: A City to Inspire, A Plan to Preserve

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# **The Vision of Pierre L'Enfant: A City to Inspire, A Plan to Preserve**

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Historic Preservation Seminar  
Georgetown University Law Center  
Spring Term, 2005**

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## I. INTRODUCTION

On April 28, 1909, Pierre Charles L'Enfant was disinterred from Digges Farm in Prince Georges County, Maryland, where he had died on June 14, 1825. A military escort transported L'Enfant's body to the Capitol Dome on Capitol Hill—formerly Jenkins' Hill—where L'Enfant had years ago placed the Capitol building on his now nascent plan. After lying in state for three hours, L'Enfant's body was again transported by military escort to Arlington National Cemetery where he was interred that same afternoon.

Two years later, on May 22<sup>nd</sup>, the monument marking L'Enfant's grave was dedicated, with President William Howard Taft giving the dedication address. The monument itself is a marble slab held up by six posts, located at the foot of Arlington house, facing east toward the city L'Enfant designed. The inscription on L'Enfant's grave reads:

PIERRE CHARLES L'ENFANT ENGINEER - ARTIST - SOLDIER UNDER THE  
DIRECTION OF GEORGE WASHINGTON DESIGNED THE PLAN FOR THE  
FEDERAL CITY \* MAJOR U.S. ENGINEER CORPS 1789 CHARTER MEMBER OF  
THE SOCIETY OF THE CINCINNATI DESIGNED ITS CERTIFICATE & INSIGNIA  
\* BORN IN PARIS, FRANCE AUGUST 2, 1755 DIED JUNE 14, 1825 WHILE  
RESIDING AT CHILHAM CASTLE MANOR PRINCE GEORGE'S CO MARYLAND  
AND WAS INTERRED THERE REINTERRED AT ARLINGTON APRIL 28, 1909.

However, a far more telling tribute to L'Enfant is at the end of the marble slab: a reproduction of L'Enfant's plan as submitted to Congress in December of 1791. It is a lasting tribute to L'Enfant's genius that as the viewer stands at the foot of his grave and looks out at the city he planned over 200 years ago, the reproduction of the plan on the monument can be recognized in the city across the river.

On April 4, 1997, the L'Enfant Plan of the City of Washington, District of Columbia, was entered in the National Register of Historic Places. From the 1791 map, to the 1909 reinterment,

to the 1997 entry, much has changed from L'Enfant's initial vision. The city designed to be a worthy capital for a blossoming nation and designed to rival the economic centers of New England has developed and changed throughout the years with varying regard (and disregard as the case may be) to L'Enfant's plan. The city took a long time to develop as investment and population were both slow in coming. Transportation needs first lead to a railway station on the mall and later to freeways across the southern portion of the plan and even one leg cutting through the heart of the city. The McMillan Commission, while acknowledging the worth of L'Enfant's plan, formulated some of the greatest deviations from it: including the overlay of City Beautiful stylistic tenets onto L'Enfant's original Baroque design. Urban renewal brought massive construction and the loss of significant segments of L'Enfant streets. Nevertheless, following the McMillan Commission in 1901, the Year 2000 Plan of 1961, and the Comprehensive Plan of 1984, the L'Enfant plan began to be recognized as the work of genius it truly is: a monumental yet functional city plan, one whose integrity is essential to the character and identity of the City of Washington.

The paper which follows is an examination of the long effort to preserve the major attributes of Pierre Charles L'Enfant's plan. At the outset, it must be emphasized that preserving the plan is more than preserving a mere roadmap. Rather, when speaking of preserving the L'Enfant plan, it is best to speak of preserving L'Enfant's vision for what a capital city should be. And vision is the appropriate word: L'Enfant's design focuses on vision—vistas which highlight federal structures and thereby indicate the power and prestige of the national government and visible open space which indicates room for the interaction of citizens in a democratic society. Therefore, it is necessary to begin with a brief history of the L'Enfant plan from its conception to present day. Next, I will proceed to discuss significant alterations to the

plan, focusing primarily on the recent additions of the Techworld building, the D.C. Arena (MCI Center), and the New Convention Center. In juxtaposition to the damage done to the plan, I will indicate significant steps which can be taken to preserve the plan. Finally, and most importantly, this paper will address the means by which the L'Enfant plan can best be preserved for future generations.

Though listed in the National Register as a structure, the L'Enfant plan obviously differs from other historically preserved structures on the Register. The L'Enfant plan is abstract: it is a spatial conception rather than a physical entity. It is far easier for an untrained eye to recognize when a historic building is demolished or altered so as to no longer represent anything historic than to recognize such an alteration in an abstract plan. When preserving the L'Enfant plan, the question is not how many roads can be removed or how many vistas can be impeded while retaining the plan's historic essence, but how can one best preserve L'Enfant's vision for future generations. Additionally, following the January 1997 expansion of the L'Enfant plan listing in the D.C. Inventory of Historic Sites and the April 1997 placement on the National Register, it is necessary to reexamine the impact on existing historic preservation law of increased recognition for the plan.<sup>1</sup>

Due to both federal and municipal interests in the District of Columbia, several bodies have input into the preservation of the L'Enfant plan. Within the D.C. government, decisions by

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<sup>1</sup> Dates of legally-significant recognition of the L'Enfant plan under historic preservation statutes include: DC listing 11/8/64 (preliminary identification), major elements designated 1/19/71; DC designation expanded 1/23/97 to include virtually all extant components of the historic city plan; incorporates former separate listings of the Eighth Street Vista (DC listing 3/7/68), Franklin Square (DC listing 3/7/68), Rawlins Park (DC listing 11/8/64), and East Capitol Street (DC listing 11/8/64, extended 6/19/73), but excludes L'Enfant Reservations 10, 11, and 12 (intended as Bank and Exchange Squares; returned to private ownership by 1822; now occupied by the U.S. Court House and Department of Labor); NR listing 4/24/97. D.C. Inventory of Historic Sites (updated to July 1, 2002), entry for L'Enfant Plan of Washington *available at* [http://www.planning.dc.gov/planning/frames.asp?doc=/planning/lib/planning/preservation/pdf/history\\_inventory\\_070102.pdf](http://www.planning.dc.gov/planning/frames.asp?doc=/planning/lib/planning/preservation/pdf/history_inventory_070102.pdf).

the Office of Planning, the Office of Historic Preservation (a unit of the Office of Planning), and the Historic Preservation Review Board (HPRB) all effect the L'Enfant plan. On the federal level, the National Capital Planning Commission (NCPC) and the Advisory Council on Historic Preservation both affect the preservation of the plan.

Certain legislation also impacts the L'Enfant plan, including: the National Historic Preservation Act, 16 U.S.C. § 470(f) (Section 106); the Department of Transportation Act 49 U.S.C. § 303 (Section 4(f)); and the D.C. Historic Landmark and Historic District Protection Act of 1978 (D.C. Law 2-144). Two other specific statutes also have a dramatic impact: An Act to Regulate the Height of Buildings in the District of Columbia (1910), and the Street and Alley Closing and Acquisition Procedures Act of 1982. All of the above bodies and legislation will be considered below.

At the end of this paper, I hope to demonstrate that the essence of the L'Enfant plan can be preserved under existing legislation. Even so, I will propose both legislative and policy changes which would greatly advance L'Enfant plan preservation efforts if implemented. Though recent developments might suggest little concern for the plan, the continued professionalization of historic preservation efforts, increased documentation of the plan's significance, and a growing public awareness of L'Enfant's brilliance (including a growing realization of the plan's modern day benefits), accompanied by increased political vigilance, can effectively protect L'Enfant's vision for all future visitors to the Capital City.

## II. HISTORY OF THE L'ENFANT PLAN

Article I, Section 8, clause 17 of the newly ratified Constitution gave Congress the power to create a seat of government for the United States.<sup>2</sup> In a letter dated September 11, 1789, Pierre L'Enfant wrote to President George Washington requesting that his services be employed in the planning of the nation's capital. To that point, L'Enfant declared:

No nation had ever before the opportunity offered them of deliberately deciding on the spot where their Capital City should be fixed, or of combining every necessary consideration in the choice of situation, and although the means now within the power of the Country are not such as to pursue the design to any great extent, it will be obvious that the plan should be drawn on such a scale as to leave room for that aggrandizement and embellishment which the increase of the wealth of the nation will permit it to pursue at any period however remote.<sup>3</sup>

L'Enfant's words, though not intended to this end, presaged the problems his plan would face for years to come. L'Enfant was able to take into consideration all the factors of 18<sup>th</sup> century life, but he was unable to take into "necessary consideration" the appearance of railroads and automobiles. Neither did L'Enfant factor in alley dwellings and urban renewal. In his letter, L'Enfant recognized that the country did not yet have the financial means to pursue a fully designed capital—a problem that would plague his plan for the next century as Washington developed slowly, with little attention paid to many of the public reservations. L'Enfant recognized the need for "aggrandizement and embellishment," but failed to recognize that building massing, skyscrapers, arenas, convention centers, and the like would break apart the vistas and boundaries of his plan.

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<sup>2</sup> This Article reads: "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings." U.S. Const. art. I, § 8, cl. 17.

<sup>3</sup> ELIZABETH S. KITE, Elizabeth S. Kite, L'Enfant and Washington 34 (1929).

## L'Enfant's Vision for a Capital City

Though L'Enfant's actual work on his plan would last only slightly longer than a year, his vision has endured far longer. On January 24, 1791, Washington chose the location for the new capital, and he soon assigned Andrew Ellicott<sup>4</sup> to survey the ten-mile square district and commissioned L'Enfant to plan the city. Although dates associated with L'Enfant's map submissions are not certain, generally the "Map of Dotted Lines" is believed to be the one presented to Washington in August of 1791 and the "Manuscript Map" to be the one shown to Congress in December of 1791, though submitted to Washington sometime earlier. In February 1792, L'Enfant was dismissed.

As this paper is concerned with the preservation of L'Enfant's plan, it is essential to illustrate the details of his original plan before it was altered and reshaped over the years. Two of many primary sources best describe L'Enfant's vision: a report presented to Washington in August of 1791 and the references on the Manuscript Map itself. In the report, L'Enfant outlined the essence of his city plan:

Having determined some principal points to which I wished to make others subordinate, I made the distribution regular with every street at right angles, North and South, east and west, and afterwards opened some in different directions, as avenues to and from every principal place, wishing thereby not merely to contract with the general regularity, nor to afford a greater variety of seats with pleasant prospects, which will be obtained from the advantageous ground over which these avenues are chiefly directed, but *principally to connect each part of the city*, if I may so express it, by making the real distance less from place to place, by giving to them a *reciprocity of sight* and by making them thus seemingly connected, promote a rapid settlement over the whole extent... (emphasis added)<sup>5</sup>

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<sup>4</sup> Ellicott was notably aided by Benjamin Banneker, a self-taught astronomer and one of the few free blacks in the area. Banneker's calculations established the boundaries of the District, and he is appropriately recognized as a "significant person" on the National Register nomination form.

<sup>5</sup> KITE, *supra* note 3, at 53.

Thus, a principle concern of L'Enfant was to connect the city both physically and spatially. Avenues were to promote easy access to widespread parts of the city, and a "reciprocity of sight" was to make the chief reservations and federal structures easily discernible, thereby linking together the various communities.

L'Enfant envisioned that the city would grow around the chief reservations, and he proposed each of these be dedicated to the citizens of the various states. As the references on the Manuscript Map read:

The situation of these Squares is such that they are the most advantageously and reciprocally seen from each other and as equally distributed over the whole City district, and connected by spacious avenues round the grand Federal Improvements ... The Settlements round these Squares must soon become connected.<sup>6</sup>

Yet, L'Enfant was not solely concerned with settlement. He had grander ideas on his mind. Also on the Manuscript Map:

The center of each Square will admit Statues...or any other ornament such as the different States may choose to erect: to perpetuate not only the memory of such individuals...but also those whose usefulness hath rendered them worthy of general imitation, to invite the youth of succeeding generations to tread in the paths of those sages, or heroes whom their country has thought proper to celebrate.

...  
This mode of taking possession of and improving the whole district at first must leave to posterity a grand idea of the patriotic interest which prompted it.<sup>7</sup>

Thus, L'Enfant's "reciprocity of sight" served not only as a community linkage, but also as a moral tool and patriotic device. This was no street plan: this was a city designed to edify a nation. Appropriately, one must take great care to consider the visual connections between the various points of the L'Enfant plan when attempting to preserve it. Preserving streets is important; preserving the ideals behind the streets is equally important, if not more so.

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<sup>6</sup> *Id.* at 65-66.

<sup>7</sup> *Id.*

Three other features of the L'Enfant plan are worth mentioning here. As to the placement of the Legislative branch, or "Federal House," L'Enfant wrote, "I could not discover one [location] in all respects so advantageous...[as] the western end of Jenkin's Heights [which] stands really as a pedestal waiting for a superstructure."<sup>8</sup> As for the President's house:

Two considerations determined me; first, to lessen the distance to the Federal House, and secondly to obtain a more extensive view down the Potomac, with a prospect of the whole harbor and the town of Alexandria; also to connect with more harmony the public walks and avenue of the Congress House with the garden park and other improvements round the palace, which, standing upon this high ridge, with a garden in a slope towards the canal would overlook the vast esplanade in the center of which, and at the point of intersection of the sight from each of the Houses, would be the most advantageous place for an equestrian statue.<sup>9</sup>

And thus L'Enfant established the connection between the Capitol and the White House along Pennsylvania Avenue as well as the two grand axes of the Mall and the Ellipse connecting at the site of the Washington Monument (built as an obelisk rather than a equestrian statue).

As to Pennsylvania Avenue, L'Enfant described it as "a direct & large avenue from the bridge on the potowmack to that on the Eastern branch...with a middle way paved for heavy carriage and walks on each side planted with double Rows of trees."<sup>10</sup> A brief glance at the Manuscript Map shows what L'Enfant had in mind: a bridge to the west would connect the district with Georgetown while a bridge to the east would cross the Eastern Branch of the Potomac (now the Anacostia) toward Maryland. Coming up from Maryland, the Avenue would intersect with the Legislative and the Executive branches, and pass by several important federal

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<sup>8</sup> *Id.* at 55.

<sup>9</sup> *Id.* at 56.

<sup>10</sup> RICHARD W. STEPHENSON, "A Plan Whol[l]y New" Pierre Charles L'Enfant's Plan of the City of Washington 22 (1993). Stephenson's work was prepared to commemorate the bicentennial of the L'Enfant plan and the preservation of the Manuscript Map by the Library of Congress. He quotes directly from several original documents in the Library of Congress archives. This particular quotation is from a report L'Enfant hand-delivered to George Washington which now resides in the possession of the Manuscript Division of the Library of Congress under the title "Report on the District of Columbia as Suitable for a City by L'Enfant. 1. No. 1. (PB&G) 1791. *Enclosure.*"

buildings. Off that same avenue, L'Enfant planned a Judicial building opening onto the Mall between 4<sup>th</sup> and 5<sup>th</sup> Streets and a National Church on the 8<sup>th</sup> Street axis.

Next, the Mall extending westward from the Capitol would intersect with the lawn extending southward from the White House.<sup>11</sup> Both the Capitol and the White House were to have expansive views up and down the Potomac—symbols of federal power surveying the land over which the Legislature and Executive govern. Though the structures along Pennsylvania Avenue are of utmost importance, chief to L'Enfant's vision was the idea of public space; hence L'Enfant allocated 68% of the original city to avenues, streets, squares, circles, and public reservations.<sup>12</sup> While prominent federal buildings would display the power and importance of government, ample public space would underline the democratic ideals upon which the nation was formed.

In the end, it was L'Enfant's passion for his plan which led to his dismissal. After L'Enfant razed the under-construction house of a prominent landowner because it stood in the proposed New Jersey Avenue, Washington wrote to L'Enfant: "In future I must strictly enjoin you to touch no man's property without his consent, or the previous order of the Commissioners ... Having the beauty, & harmony of your Plan only in view, you pursue it as if every person, and thing was obliged to yield to it."<sup>13</sup> Without L'Enfant to pursue his plan, today the task belongs to historic preservationists and the various governmental entities with control over the District of Columbia.

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<sup>11</sup> The names of streets and of buildings were not part of L'Enfant's Manuscript Map. In fact, Secretary of State Thomas Jefferson penciled in a few changes on L'Enfant's map, including renaming the "Congress House" the "Capitol." *Id.* at 39. It is likely L'Enfant intended the avenues to be named after states as the state names appear on the Ellicott-based engraving; the suggestion of a numerical and alphabetical grid was made by Jefferson to L'Enfant in a September 1791 letter. *Id.* at 51.

<sup>12</sup> George Speer Coyle, *The L'Enfant Plan in Downtown Washington: Its History And Prospects For Survival 5* (1987) (unpublished Ph.D. thesis, George Washington University, on file with Professor Tersh Boasberg of Georgetown University Law Center).

<sup>13</sup> STEPHENSON, *supra* note 10, at 34.

## Redefining the Vision

L'Enfant's actual contribution to the design of D.C. has since been questioned, though in the opinion of this author without any real merit. Though L'Enfant drew inspiration from previous city plans—notably from Versailles where he spent his childhood, from the several city maps sent to him by Jefferson, and from colonial cities like Williamsburg and Philadelphia—his vision was his own. In a letter to Washington, L'Enfant wrote, “It was my wish to delineate *a plan wholly new*...an undertaking of a magnitude so worthy to concern of a grand empire...that over its progress the nations of the world, watching with eyes of envy, themselves having been denied the opportunity, will stand as judge.”<sup>14</sup>

Subsequent to L'Enfant's dismissal, two maps were engraved in Philadelphia based on Ellicott's preparations which were in turn based almost exclusively on L'Enfant's design. A later map commissioned by Washington and later officially endorsed by the President in March 1797 was prepared by James Dermott.<sup>15</sup> In *A City Evolving: The Planning Continuum*—a document prepared on behalf of the D.C. Arena L.P.—the authors take great pain to indicate that the Ellicott Map made various changes and that the first officially recognized map is the Dermott Map.<sup>16</sup> The authors further indicate that, “Neither the L'Enfant Plan nor other plans for the city were intended to be static or sacrosanct. While the L'Enfant Plan provided a concept and framework...alterations to the physical layout of the streets have always been intended to be permitted as appropriate for the well-being of the city.”<sup>17</sup> Though much is made of the fact that L'Enfant was discharged and subsequent appointees made maps, one must not fail to recognize

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<sup>14</sup> KITE, *supra* note 3, at 72 (emphasis added).

<sup>15</sup> See Coyler, *supra* note 12, at 59.

<sup>16</sup> See Wilkes, Artis, Hedrick and Land, Chartered, *A City Evolving: The Planning Continuum* 4 (May 1995) (unpublished manuscript, on file with the D.C. Office of Historic Preservation). See generally *Morris v. United States*, 174 U.S. 196, 255 (1899).

<sup>17</sup> Wilkes, Artis, Hedrick and Land, Chartered, *supra* note 16, at 8.

that all subsequent maps pay homage to L'Enfant and follow his vision. As *Morris* points out, “This L'Enfant plan contains all the essential features of the city of Washington as they exist today.”<sup>18</sup> Minor variations were made, but L'Enfant's vision remained intact. The map-drawers and engravers were far less important than the map visionary.

One more historical factor bears mention: the turn-of-the-century McMillan Commission. In fact, the National Register nomination for the L'Enfant plan indicates that “the area nominated is the L'Enfant Plan area with modifications made in accord with the McMillan Plan.”<sup>19</sup> The McMillan Plan recognized the importance of the L'Enfant plan while overlaying the City Beautiful style on top of L'Enfant's Baroque achievements and augmenting the Classical architecture of the preceding century with the en vogue Beaux Arts style. As the nomination puts it, “The plans of the McMillan Commission, while inspired by L'Enfant's visions of grandeur, sought on one hand to preserve the original scheme, but also called for the most drastic changes to date.”<sup>20</sup>

Several elements of the 1901 Commission plan were soon accomplished. The Commission sought to restore the ceremonial core of the mall but did so in City Beautiful fashion. Thereby, the Capitol and White House vistas were closed off by the Lincoln and Jefferson Memorials, respectively, on the newly reclaimed land from the Potomac.<sup>21</sup> The Commission also called for a railroad station to be removed from the Mall, partly restoring the

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<sup>18</sup> *Morris*, 174 U.S. at 256.

<sup>19</sup> Sara Amy Leach & Elizabeth Barthold, Registration Form for “L'Enfant Plan of the City of Washington, District of Columbia” continuation sheet section 7 page 1 (July 20, 1994) [hereinafter “Registration”] (on file at the National Register of Historic Places).

<sup>20</sup> *Id.* at section 8 page 33. For the remainder of this paragraph, *see generally Id.* at section 8 pages 31-35, and Coyer, *supra* note 12, at 119-29.

<sup>21</sup> The City Beautiful idea emphasized Roman order; therefore, L'Enfant's infinite Baroque vistas were brought to an ordered completion. This is a complete shift in the plan that future preservationists would do well to avoid: the vistas represent state power by symbolizing the sovereign's view over all he controls. Instead of the Capitol surveying the entire west, it now surveys a couple miles of lawn leading to the Lincoln Memorial.

L'Enfant plan but partly damaging it as well: the new railroad station (Union Station) required the annihilation of the majority of Delaware Avenue for railroad tracks. Nonetheless, the Commission's regard for L'Enfant led to the creation of Louisiana Avenue as an avenue radiating from the Mall and the creation of Union Plaza (also called Columbia Plaza) as a reservation on Massachusetts Avenue. Also under the guidance of the Commission, massive downtown development projects such as Federal Triangle began. The Federal Triangle was one of the nation's first urban renewal projects; it cleared out infamous slums and replaced them with massive offices. However, 23 original city squares, several streets, and all of Ohio Avenue were eradicated in the process.

### Reaffirming the Vision

The preceding history is designed to provide a background for the following sections of this paper. Before preserving the L'Enfant plan, one must understand the essence of the plan as reflected in its principal attributes. First, it is essential to keep in mind L'Enfant's vision for the City of Washington. The HPRB staff describes L'Enfant's vision as the most remarkable aspect of the plan:

Among the most remarkable aspects of the L'Enfant plan is that it adopts the devices used by European monarchs to express absolute dominion, and transforms them in to an equally powerful, but symbolically opposite, expression of the democratic structure of a popular republic ... In its entirety, L'Enfant's grand design for the capital city expresses not only the balance of power among the braches of government, but also the relationship of institutions and citizens to the nation as a whole.<sup>22</sup>

The NCPC defines four further characteristics which reflect the essence of L'Enfant's plan: "1) the selection of topographically prominent sites for public buildings; 2) the placement of a set of monumental cross-axes and series of avenues radiating from the major building sites; 3) the

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<sup>22</sup> Stephen Richie, David Maloney, & Nancy Kassner, Historic Preservation Review Board Staff Report and Recommendation: Proposed D.C. Arena 2-4 (July 10, 1995) (on file with the D.C. Office of Historic Preservation).

creation of an orthogonal street system; and 4) the designation of squares and reservations.”<sup>23</sup>

Since 1791, those four characteristics have been ignored and acclaimed, bypassed and followed, destroyed and reclaimed. The goal of this paper is to indicate how the essence of the L’Enfant plan can be better recognized, more closely adhered to, and progressively restored.

Without a doubt, considerable changes have been made to the L’Enfant plan over the past two-hundred-plus years, yet L’Enfant’s vistas are still easily identified while walking the streets of Washington, and federal buildings still hold positions of prominence. Though the vistas may be broken up and the buildings not as prominent as they once were, the plan remains intact and is a rich source of present-day benefits. Washington is a city of special character: it is walkable because very few super-block structures interrupt streets; important attractions are easily located along the main Mall axis; the power of the federal government is obvious due to the great number of federal building on federal reservations; and public space continues to facilitate democratic expression with countless demonstrations every year. Much of Washington’s current character is a direct result of Pierre L’Enfant’s inspired vision.

Despite all the changes to L’Enfant’s plan, there is reason for optimism: one of the distinct advantages of a historic plan is that unlike a historic structure it can be easily reestablished. Though significant alterations have been made to the plan in recent years, significant restorations are also on the horizon. I will first discuss recent alterations before turning to the growth of preservation efforts and the opportunities for restoration.

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<sup>23</sup> National Capitol Planning Commission, Section 106 Historic Resources Report for the Proposed Washington Convention Center 5-8 (December 1996).

### III. ALTERATIONS TO THE PLAN

In 1932, Congress delegated authority to the Commissioners of the District of Columbia to close streets and convey ownership to adjacent owners of private property.<sup>24</sup> That same authority was conveyed to the Mayor and City Council with the passage of Home Rule.<sup>25</sup>

Though the L'Enfant plan is spatial and comprises far more than streets, the plan does run along streets. Therefore, while fee simple ownership of the D.C. streets and reservations remains with the federal government, the fact that the D.C. municipal government has the authority to close streets by itself is quite significant. In 1982, the D.C. City Council passed the Street and Alley Closing Procedures Act of 1982, D.C. Code § 7-421 et seq. (now § 9-202.01 et seq.) to alter the process by which it closed streets. Unfortunately, the street closing power under that act has been abused to the detriment of the L'Enfant plan. The alterations discussed in this section are by no means the only alterations to the L'Enfant plan in recent years, but they are some of the most significant deviations.

Prior to the modern historic preservation movement,<sup>26</sup> L'Enfant reservations were altered and discarded essentially at whim—automobile traffic being the main culprit. By 1950, several traffic circles and squares had been “channelized” (broken apart with roadways cutting corners or cutting straight through), and every circle in Northwest D.C. except Logan Circle had been

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<sup>24</sup> See *Techworld Dev. Corp. v. D.C. Pres. League*, 648 F. Supp. 106, 112 (D.D.C. 1986) (citing the Street Readjustment Act of 1932).

<sup>25</sup> See *id.* at 111 (“Congress never intended the Home Rule Act to circumscribe the street closing authority D.C. governments have so long enjoyed”).

<sup>26</sup> Two touchstone dates mark the birth of historic preservation in the United States, the “modern” movement as used above beginning with the second date: 1) the purchase of Mount Vernon by the Mount Vernon Ladies’ Association on April 6, 1858; and 2) the Supreme Court’s decision in *Penn Cent. Transp. Co. v. New York*, 438 U.S. 104 (1978) decided June 26, 1978.

tunneled under.<sup>27</sup> L'Enfant's vision for D.C. was pushed aside in the name of progress, or more specifically, the name of traffic congestion.

The 1950s also brought Southwest urban renewal and the Southeast/Southwest Freeway. Urban renewal in Southwest devastated the L'Enfant plan with massive government (e.g. Department of Agriculture) and private developments (e.g. Waterside Mall) spanning across city squares and with the replacement of Baroque vistas with City Beautiful cul-de-sacs (cul-de-sacs supposedly providing more order than lengthy views). The Southwest leg of the freeway essentially replaced F Street SW with an elevated, vista-blocking freeway before cutting across several Southeast L'Enfant streets. Again, the L'Enfant plan fell victim to new ideas about what a city should be and what infrastructure a modern city needs.

Yet another freeway project of the time period, the Center Leg freeway, cut through the center of Northwest D.C., eliminating several blocks of L'Enfant streets and disrupting otherwise magnificent views down F and G Streets NW. Even worse, the Center Leg freeway became the justification for several more alterations to the L'Enfant plan. In the 1960s, the Department of Labor building was built over 2<sup>nd</sup> and 3<sup>rd</sup> Streets NW in order to block the view of the Center Leg freeway from the Mall. A church parish building was moved into the F Street right-of-way because freeway construction required a portion of the church lot. Georgetown University Law Center extended its campus over both the F and G Street right-of-ways for the same reason (more on the Georgetown extensions later). Worst of all, as will be discussed shortly, the MCI Center's takeover of the 600 block of G Street was partly rationalized by the existence of the Center Leg freeway. In other words, if G Street went through, it is possible the MCI Center would have been placed in a more L'Enfant-plan-sympathetic location.

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<sup>27</sup> Registration, *supra* note 19, at continuation sheet section 8 page 38.

In a paper this size, it is impossible to catalogue every alteration to the L'Enfant plan, so I will focus on three of the most recent and most contested cases: the Techworld building, the MCI Center, and the New Convention Center. I will consider the cases in chronological order. All three structures have a dramatic and detrimental effect on one of the chief L'Enfant vistas: 8<sup>th</sup> Street NW. The 8<sup>th</sup> Street axis is the central street between the Capitol and the White House, and it was L'Enfant's proposed location for a National Church. Though a church was never built on the reservation, the third oldest building in D.C. (the Old Patent Office) stands where the church was intended to go.<sup>28</sup> By examining what went wrong in each of the three examples, one can discern necessary steps for the future preservation of the L'Enfant plan. With Techworld, the need for citizen enforcement opportunities and thorough documentation is apparent. With the MCI Center, the need for independent control outside of the municipal government is strikingly clear. Finally, with the New Convention Center, the benefits of early action are evident.

### Techworld

The Techworld building (officially the World Technology Trade Center) encroached on the 8<sup>th</sup> Street right-of-way, narrowing the right-of-way from 100 to 60 feet; Techworld closed a block of 8<sup>th</sup> Street to vehicular traffic; and Techworld placed a several-story bridge across the 8<sup>th</sup> Street vista. In terms of protecting the L'Enfant plan, Techworld struck out. However, despite strong language from the HPRB and the NCPC, the Zoning Commission approved construction.<sup>29</sup> Thus, the preservation battle was left to non-public preservation organizations, leading to *Techworld Development Corporation v. D.C. Preservation League* in the United

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<sup>28</sup> The fact that a church was not built in no way lessens the significance of the reservation. L'Enfant suggested a church to fill a central reservation but the needs of the government required a patent office. In accordance with the plan, a monumental government structure was built.

<sup>29</sup> See Coyler, *supra* note 12, at 243-44.

States District Court for the District of Columbia.<sup>30</sup> A resounding loss for preservationists, the case clearly indicated areas where historic preservation had to improve.

In *Techworld*, the judge addressed six specific areas of law: street closures under the Home Rule Act, the Appointments Clause, zoning proceedings, the National Historic Preservation Act, the Height of Buildings Act, and the Historic Landmark and Historic District Protection Act. First, the court held that the Mayor may close any street in accordance with D.C. Code § 9-201.01, reasoning the “history of street closings effected since the passage of the Act [Home Rule] conclusively demonstrates Congress’ ongoing satisfaction with the local government’s exercise of that authority”<sup>31</sup>— despite the fact that the United States was a party to this case and argued that the City Council’s street closure violated Home Rule.

Since the Home Rule Act was a means by which Congress delegated power to the municipal government, the court deemed it irrational that the same delegation of municipal control would strip a typical municipal power. According to the court, “In 1932, Congress granted the local D.C. government authority to close streets and transfer title because it believed such closings are local matters, undeserving of congressional attention. In 1973, Congress passed the Home Rule Act to relieve Congress of the burden of legislating on local matters. It would be bizarre to read the Home Rule Act as reclaiming for Congress the burden of deliberating on local street closings.”<sup>32</sup>

Additionally, the Home Rule Act does have a check on municipal abuse of power which Congress did not exercise with regard to the Street and Alley Closing Procedure Act of 1982.<sup>33</sup> Under D.C. Code § 1-206.02 (cited as D.C. Code 1-233(c)(1) at the time of the *Techworld*

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<sup>30</sup> *Techworld Dev. Corp. v. D.C. Pres. League*, 648 F. Supp. 106 (D.D.C. 1986).

<sup>31</sup> *Id.* at 113.

<sup>32</sup> *Id.*

<sup>33</sup> D.C. Code § 9-202.02(3). (Cited as § 7-422(3) in the *Techworld* opinion, later renumbered)

opinion), “the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate, a copy of each act passed by the Council and signed by the Mayor...[and] such act shall take effect upon the expiration of the 30-calendar-day period... beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate, or upon the date prescribed by such act, whichever is later, unless during such 30-day period, there has been enacted into law a joint resolution disapproving such act.”<sup>34</sup> Because the Street and Alley Closing Procedure Act “was sent to both houses of Congress, which thereby were confronted directly with a law reaffirming the City Council’s street closing authority,”<sup>35</sup> and Congress did not act, the court found further proof that street closures remain solely under municipal authority.<sup>36</sup>

The court’s reasoning with regard to street closures is persuasive. Barring future Congressional legislation, the City Council’s power to close streets will only be limited by its own legislation, including the Historic Landmark and Historic District Protection Act of 1978. In the next section I will discuss the need for independent control in order to preserve the L’Enfant plan. Part of that independent control would include returning the authority to allot federal property to the federal government. Because, as the court points out, Congress would not want to deliberate on street closings, the authority over D.C. street closures would be best vested in the NCPC as it is the federal agency in charge of capital planning.

Even without such a shift in street closure authority, the expanded listing of the L’Enfant plan on the D.C. Inventory would trigger protection under D.C.’s Historic Landmark Act. Encroachment on a L’Enfant street, closure to traffic, and vista blockage cannot be considered to

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<sup>34</sup> D.C. Code § 1-206.02(c)(1).

<sup>35</sup> *Techworld Dev. Corp.*, 648 F. Supp. at 114.

<sup>36</sup> Moreover, “the delegation of street closing authority has become so accepted over time, that even federal agencies seeking to close a street for their own purposes have petitioned the City Council for a street closing act.” *Id.*

meet the purposes of the act “to retain and enhance historic landmarks in the District of Columbia and to encourage their adaptation for current use; and to encourage the restoration of historic landmarks.”<sup>37</sup> Whether classified as a demolition or alteration of the L’Enfant plan, Techworld’s construction neither retains nor enhances the plan and, in fact, encourages future alteration instead of restoration. Therefore, though the Home Rule Act continues to grant the City Council street closure authority, the Council is limited by D.C. law and likely would not have been able to either encroach on or close off 8<sup>th</sup> Street underneath Techworld had the development occurred after the 1997 expansion of the L’Enfant plan listing.<sup>38</sup>

The next two holdings of the court are outside the scope of this paper but mentioned for completeness. As to the Appointments Clause, the court held that the City Council is not a federal authority and thusly there is no separation of powers problem under the Appointments Clause. Next, Techworld was allowed to use its P.U.D. permit to proceed as a matter-of-right without violating zoning proceedings.

In its fourth holding, the court reasoned that Section 106 of the National Historic Preservation Act “plainly is inapplicable to the NCPC in the context of the Eighth Street closing” because its “minimal participation is insufficient” to trigger the National Historic Preservation Act. In other words, NCPC’s nonbinding recommendation on street closing as required in the Street and Alley Closing Procedures Act is not a federal undertaking.<sup>39</sup> Because “a federal undertaking is where a federal agency has direct or indirect jurisdiction over a project involving the expenditure of federal funds, or the issuance of a federal license [and] the only role the

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<sup>37</sup> D.C. Code § 6-1101(b)(2)(A)-(B).

<sup>38</sup> Of course, any historic preservation concern can be overruled by the Mayor through a Mayor’s Agent finding of “special merit.” *See* D.C. Code §§ 6-1104(e), 6-1105(f), and 6-1102(10)&(11). Today, the Techworld building would likely not meet the “exemplary architecture” or “specific features of land planning” categories, but a non-preservation minded Mayor could push Techworld into the “social or other benefits having a high priority for community services” category. Hence, there is a need for the increased preservation efforts specified in this paper.

<sup>39</sup> *Techworld Dev. Corp.*, 648 F. Supp. at 119-20.

NCPC had in this case was to make a nonbinding recommendation to the Mayor,”<sup>40</sup> the NCPC was not required to allow the Advisory Council on Historic Preservation to make a non-binding recommendation to it.

If, as mentioned above, authority to close streets was returned to the NCPC, then the Advisory Council recommendation would become necessary. Closure of a federally-owned street should be considered a federal undertaking, especially when the street in question is part of the historic fabric of our nation’s capital. Since the Advisory Council “is the only entity with the legal responsibility to encourage Federal agencies to factor historic preservation into Federal project requirements,”<sup>41</sup> its advice regarding the L’Enfant plan should at least be considered.

With its first four holdings, the court effectively stripped any preservationist challenges to the procedural aspects of preserving the L’Enfant plan. If the D.C. City Council has complete authority to close streets and need only accept the recommendations of the NCPC—accept, not follow—who in turn does not need Advisory Council comment, then nothing procedurally bars a non-preservation minded Mayor from closing a L’Enfant street. The final two considerations of the court in *Techworld* consider binding D.C. laws.

According to D.C. Code § 6-601.05, the Height of Buildings Act of 1910, “no building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by 20 feet.” However, the court holds that “there is no general private right of action for the HBA [Height of Buildings Act].”<sup>42</sup> The statute specifically authorizes the D.C. Corporation Counsel

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<sup>40</sup> *Id.* at 119.

<sup>41</sup> About ACHP: General Information, *available at* <http://www.achp.gov/aboutachp.html> (June 22, 2004).

<sup>42</sup> *Techworld Dev. Corp.*, 648 F. Supp. at 120.

or any neighboring property owner to bring suit but not the public at large.<sup>43</sup> In *Techworld*, the government owned the adjacent public space of Mt. Vernon square, but because the court determined that the Corporation Counsel’s judgment permitting Techworld to be 130-feet tall was reasonable—based on the general rule for measuring across public space when next to a public square and on the public reservation exception allowing right-of-way width to be measured on the largest street intersecting the square—even the government could not win the claim.<sup>44</sup>

Lastly, with regard to the Historic Landmark and Historic District Protection Act of 1978, the court held “because the description in the Inventory of the Eighth Street vista is so flawed that it is impossible to know what is described, the HLHDPA does not apply to Techworld.”<sup>45</sup> At the time of the case, the 8<sup>th</sup> Street vista of the L’Enfant plan was listed on the D.C. Inventory, but the L’Enfant plan entry had not yet been comprehensively expanded or fully documented. Therefore, when the court read in the Inventory that the 8<sup>th</sup> Street vista was protected and looked up the definition of “vista” in Webster’s New International Dictionary, the court found what it called “an inscrutable inaccuracy.”<sup>46</sup> The court stated that a “vista” is defined as a view, and “there simply is no view down Eighth Street” because the National Portrait Gallery (Old Patent Office) “completely obscures the view.”<sup>47</sup>

What the court demonstrates with its brief discussion of vistas is a complete lack of knowledge about the L’Enfant plan. However, to the court’s credit, the vision of the plan and its principal attributes (including the importance of the 8<sup>th</sup> Street axis) were not documented

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<sup>43</sup> See D.C. Code § 6-641.09.

<sup>44</sup> *Techworld Dev. Corp.*, 648 F. Supp. at 122.

<sup>45</sup> *Id.* at 124.

<sup>46</sup> *Id.* at 123.

<sup>47</sup> *Id.*

particularly well at the time. Nevertheless, the court could have discerned that the preservationists who listed the 8<sup>th</sup> Street vista on the D.C. Inventory did not overlook the Old Patent Office but thought it to be a contributing element of the vista. A primary aspect of L’Enfant’s plan—especially as modified by the McMillan Commission—is the termination of vistas at important federal structures. Therefore, placing a massive federal building in a central vista location emphasizes rather than detracts from the vista. The 8<sup>th</sup> Street preservationists were not preserving a mere “view” but a vista which included public reservations and government structures which underline democratic and federal ideals.

The last two holdings of the court indicate two primary obstacles in the preservation of the L’Enfant plan: enforcement and documentation. If the D.C. government can by-pass historic preservation laws after merely considering the recommendations of the NCPC and the Historic Preservation Review Board without any opportunity for citizen enforcement of the law (or federal agency enforcement as will be discussed in the next section), a non-preservation minded Mayor can do what he or she wishes. Thereby, historic preservation equates the whims of the Mayor. Providing a means for public enforcement through a neighborhood referendum or a statutory cause of action would make the Mayor’s office more accountable to preservationist claims. If referendum is the choice, then one would expect the ensuing campaigns to educate the public on the L’Enfant plan; if a statutory cause of action is created, then the Mayor’s office would be required to carefully tailor its actions to follow the letter of historic preservation laws without acting arbitrarily, unreasonably, or capriciously.

Next, the fact that the district court could not comprehend the idea of an “interrupted vista” shows the need for precise documentation of the L’Enfant plan. As discussed above, the placement of a prominent federal building in the middle of a prominent vista *reinforces* the plan

because it emphasizes government power and preeminence. The White House and Capitol buildings block the Pennsylvania Avenue vista, making it also an “interrupted vista,” but almost everyone would agree an office-building bridge over Pennsylvania Avenue is inappropriate. Had the 8<sup>th</sup> Street vista been better documented, perhaps it would have been protected from the construction of the Techworld bridge. Therefore, precise documentation must be prepared to catalogue the individual elements of the L’Enfant plan: reservations, streets, and vistas.<sup>48</sup> In sum, citizen enforcement by suit or referendum combined with thorough historical documentation would offer a powerful tool in the preservation of the L’Enfant plan.

### MCI Center

For all practical purposes, the proposed D.C. Arena (now MCI Center) was going to be built regardless of historic preservation concerns. Its fate was decided long before the preservation battle began. The Mayor (Marion Barry) and similarly powerful parties—both municipal and private—wanted the project to proceed, and so it did. The story of the MCI Center is not a little-engine-that-could story about persevering through a burdensome planning process; rather, it is a bulldozer story about plowing through the historic preservation obstacles meant to derail such projects.<sup>49</sup> Despite the clear weight of all the historic preservation findings and recommendations concluding that the MCI Center should not be built over G Street N.W., the arena was approved and built in a manner which blocked one of the two White House horizontal vistas and had a negative impact on the other. One positive did result from the arena’s historic

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<sup>48</sup> Documentation is well under way. The National Park Service’s Historical American Building Survey is an amazing resource for all-things historic in Washington, D.C. and around the nation. The online catalogue includes reports, photographs, and reference information for several D.C. reservations and L’Enfant streets. Though the search engine leaves something to be desired, the resource itself is fantastic. For example, the page for 8<sup>th</sup> Street may be viewed by navigating to [http://memory.loc.gov/ammem/collections/habs\\_haer/index.html](http://memory.loc.gov/ammem/collections/habs_haer/index.html) and searching for DC-718.

<sup>49</sup> One such obstacle was the HPRB. After the HPRB voted against the MCI Center, the chairman lost was summarily dismissed (i.e. lost his appointment to the Board). The threat of subsequent dismissals swayed future votes of the Board regarding MCI Center.

preservation process: though the conclusion was certain, the fight over the siting of the MCI Center resulted in massive attention to the L'Enfant plan. Thus, though the final decision was a significant blow to L'Enfant's plan, the MCI Center struggles ensured that all major projects in the future would pay much closer attention to L'Enfant's vision.

Private historic preservation organizations' testimony before the HPRB was indicative of the negative response to the then-proposed arena. The statement of the Committee of 100, an over 80-year-old historic preservation organization in DC, was almost vitriolic in tone. The Committee left no doubt about its opinion of the arena, calling it "grotesquely out of scale"; pointing out that it left "no room to provide a setting in keeping with Washington's historic traditions for major public buildings"; and underlining that it failed to provide "transitional open space on the site to respect the dignity and presence of historic buildings in established historic districts." The Committee concluded that "the proposed arena project is based on the assumption that the historic L'Enfant plan streets are throwaway elements of our national Capital."<sup>50</sup>

The National Trust for Historic Preservation—the self-described "congressionally chartered leader of the private preservation movement in this country"—argued that if the arena were built in the proposed location, then "the visual link between the White House, the Patent Office, and Judiciary Square would be broken, and L'Enfant's intended 'reciprocity of sight' lost. The symbolic prominence of the Patent Office would be diminished and the hierarchy established to distinguish public and private buildings would be confused."<sup>51</sup> If such testimony was at all representative of public opinion, building the arena on G Street NW was an egregious

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<sup>50</sup> Dorn C. McGrath, Jr., Statement of the Committee of 100 on the Federal City before the District of Columbia Historic Preservation Review Board for the Section 106 Review of the Proposed Sports/Entertainment Arena at Gallery Place 2-3 (July 10, 1995) (transcript available at the D.C. Office of Historic Preservation).

<sup>51</sup> Patricia Wilson Aden, Testimony of the National Trust for Historic Preservation before the District of Columbia Historic Preservation Review Board on the Proposed Sports and Entertainment Arena 3 (July 10, 1995) (undated transcript available at the D.C. Office of Historic Preservation).

abuse of municipal power. If the testimony was contrary to public opinion, the problem did not lie with the testimony but with the lack of public knowledge regarding the L'Enfant plan.

In line with the testimony before the HPRB, the HPRB staff report findings of adverse affect included: 1) severance of the “intended physical, visual, and symbolic corridor linking the White House with the major national buildings at Judiciary Square and the Patent Office Square”; 2) establishment of a “competing non-historic architectural terminus of the G Street vista from the White House”; 3) establishment of a “highly inappropriate reciprocal association between the White House and an unrelated non-historic building of major proportions” which is immediately visible to White House tourists; 4) overwhelming of the Old Patent Office Square thus “undermining its pivotal position and balanced design”; 5) erosion of the “harmonious scale of buildings in relation to public streets and reservations...[where the L'Enfant plan intended] a balance of buildings and open space, and...an imposing monumental presence by the more ample dimensions of government buildings”; and 6) compromise of “the visual prominence, setting, and integrity of the Old Patent Office” as well as public buildings “symbolically interrelated by the G Street vista.”<sup>52</sup>

If the vision of the L'Enfant plan stands for anything, it is found in the qualities listed in the staff report. More than a mere roadmap, the L'Enfant plan is a communicative device: the plan's symbolic corridors and reciprocal siting communicate federal and democratic ideals. The L'Enfant plan demonstrates the supremacy of the federal government by placing federal buildings with distinguished architecture at focal locations. Similarly, the plan conveys the importance of democracy by including abundant public space in the form of reservations and right-of-ways. When a commercial enterprise is imposed on the L'Enfant plan thereby

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<sup>52</sup> Stephen Richie, David Maloney, & Nancy Kassner, Historic Preservation Review Board Staff Report and Recommendation: Proposed D.C. Arena 5-8 (July 10, 1995) (on file with the D.C. Office of Historic Preservation).

terminating a vista, superseding adjacent historical buildings in massing, taking over a public right-of-way, and disrupting the harmony of an otherwise extant portion of the city plan, the average person's impression is that the commercial building is of utmost and primary importance. The Old Patent Office becomes merely a next-door neighbor of the MCI Center rather than the central focus of its square, and by inference, the federal government becomes a footnote to commercialism. Furthermore, public space bows to commercial gain. The MCI Center not only disrupts the L'Enfant plan, it tramples L'Enfant's vision of what a capital city should be.

Unlike the *Techworld* case where the NCPC was not required to draft a Section 106 report, the construction of the MCI Center required the modification of the Downtown Urban Renewal plan, which qualifies as an undertaking for the purposes of the National Historic Preservation Act.<sup>53</sup> However, the standard of consideration was (and remains) merely "take into account." Since the municipal powers that be had predetermined where to build the arena, NCPC's report was merely a formality before amending of the Downtown Urban Renewal plan and building the arena. Nevertheless, the Section 106 report prepared by NCPC offers a thorough history of the L'Enfant plan and an extensive record of the MCI Center's adverse effects—complete with maps and photographs.<sup>54</sup> In the end, NCPC was only able to encourage the mitigation measures detailed in the Memorandum of Agreement (MOA) discussed below.

As was obvious from the beginning, the arena was built. D.C. State Historic Preservation Officer Hampton Cross's July 25, 1995 letter to the Executive Director of NCPC is quite

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<sup>53</sup> National Capitol Planning Commission, Section 106 Historic Resources Report for the Proposed D.C. Arena 1-2 (June 1995).

<sup>54</sup> The report, of course, considers the effects on several historic resources, not just the L'Enfant plan. For instance, the report specifically addresses several government buildings which are elements of the L'Enfant plan but are also negatively impacted apart from the plan (e.g. the Old Patent Office and the General Post Office).

revealing of the political climate. Cross rationalized that the adverse effects outlined in the Section 106 report were “acceptable losses” because “there have been numerous street closings and deletions from the 19<sup>th</sup> century plan over the years...[and] the closure of the 600 block of G Street, N.W. has been carefully and thoughtfully deliberated in open sessions of the Review Board... Clearly, therefore, this closing is not unique in the evolution of the L’Enfant/McMillan plan.” Furthermore, he stated that “as weighed against the potential economic and social benefits to the District of Columbia which will result from the Arena project, I conclude that I am justified in accepting the losses to historic resources that will result.”<sup>55</sup> By the same reasoning, since the arena continued the street closing trend, any street can be closed as long as public comment is allowed—comment, of course, can be ignored, even comments such as those by the Committee of 100. Additionally, no matter how many groups agree that there are substantial adverse effects to historic structures, losses to historic preservation can always be outweighed by economic benefits.

The MCI Center takes over public space and displaces federal prominence; it compromises the L’Enfant’s plan and it communicates the wrong message. The siting of the MCI Center, like the construction of Techworld, highlights weaknesses in D.C.’s historic preservation laws. Whereas *Techworld* points out the need for stronger public enforcement rights and more comprehensive documentation, the MCI Center demonstrates the need for preservation controls independent of municipal politics. Such “independent control” can be created by a private enforcement right for historic preservation statutes; public education regarding the

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<sup>55</sup> Letter from Hampton Cross, D.C. State Historic Preservation Officer, to Reginald W. Griffith, Executive Director of the National Capital Planning Commission 2 (July 25, 1995) (on file with the D.C. Office of Historic Preservation).

L'Enfant plan, leading to political accountability; and federal agency authority over federally owned land.

Although the D.C. public elects the mayor, political accountability for historic preservation concerns is undermined by the allure of economic development. Political accountability results when an overwhelming public outcry threatens ballot-box repercussions, but outcry is unlikely when the mayor promises jobs and the loss is only a street. Thus, the public must be better informed about the L'Enfant plan and historic preservation in general. The focus must be shifted from preservationists *preventing* development to preservationists *altering* siting for a particular development. Jobs can still be created but in a location which does not compromise the L'Enfant plan. Public education can occur through the legal process (i.e. public enforcement of historic preservation statutes as discussed above in *Techworld*), which will likely draw newspaper attention to preservation concerns, or through directed historic preservation educational efforts.

In order to appreciate the damage MCI Center did to the L'Enfant plan, the public needs to stand on 8<sup>th</sup> Street and hear about the significant elements of the plan—for example, L'Enfant's "reciprocity of sight" and ideals about what a capital city should be. Though massive city-sponsored, preservationist-guided tours are not feasible, demonstrative signage, media attention, and public/preservationist interaction could educate the public to care enough about the L'Enfant plan (and other preservation concerns) to factor it into their municipal voting decisions. A public that is fully-informed about the L'Enfant plan is far more likely to hold the mayor accountable for the closure of L'Enfant streets.

Another vehicle for independent control is empowering federal agencies with binding rather than advisory control. Although this would be a dramatic shift in the power structure of

D.C.—especially in light of the *Techworld* holding—it is sensible that the federal government would have say over construction on federal property, especially when the property in question is of national significance.<sup>56</sup> The L’Enfant plan is not the plan of just any city: it is the plan of the United States Capital. Therefore, alterations to the plan impact far more than D.C. residents: they impact the nation as a whole. A federal agency specializing in D.C. concerns would be in the best position to balance municipal needs with national interests, and the NCPC is perfectly situated for that task.

Currently, the NCPC finds itself in an awkward position: though the federal government maintains fee simple ownership of streets and the NCPC is the federal agency in charge of capital planning, its decisions about street closings are only advisory. If the NCPC had binding authority over federal right-of-ways, the Mayor and City Council would be required to make a much stronger case for closing a street when such a closure has an adverse effect on the L’Enfant plan. Simply put, the L’Enfant plan is a national treasure whose integrity should outweigh all but the most significant and most necessary alterations to its principal attributes. The NCPC has the background to evaluate both what is necessary for D.C. and what is important to preserve for future visitors to the capital. If the NCPC’s finding of adverse effect for the MCI Center had been more than “considered,” construction could have been prevented.<sup>57</sup> Private enforcement, public education, and NCPC binding authority would establish effective independent controls to deter non-preservation-minded city officials from destroying one of the nation’s most valuable historic resources.

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<sup>56</sup> The L’Enfant plan’s nomination to the National Register underlines its national importance, and the plan’s potential listing as a National Historic Landmark would highlight its importance even more.

<sup>57</sup> The political climate around the arena was slightly more problematic than this paragraph indicates. Because of the Mayor’s appointment power to the NCPC, he would be able to manipulate its final decision. Independent control as suggested would thus require a balance of municipal and congressional appointments to the NCPC which tilts in favor of federal concerns.

### The New Convention Center

Despite the negative discussion above, the MCI Center may have had one positive effect on historic preservation: when the time came to build the New Convention Center, municipal officials were willing to work with preservationists to come to more agreeable—though still somewhat less than palatable—solutions. Preservationists had lost the siting battle for the arena, but they had won respect.

The New Convention Center was built on the same much-maligned 8<sup>th</sup> Street axis. Already damaged by Techworld and the MCI Center, 8<sup>th</sup> Street suffered the further degradation of losing three entire blocks to the New Convention Center. Also, like the MCI Center adversely affected the Old Patent Office square, the New Convention Center affected Mount Vernon Square. An HPRB staff report pointed out, “What makes Mount Vernon Square special is that the convergence of view—as at the White House and Capitol—is commanded by a landmark building [the D.C. Public Library]. The primacy of the landmark and the open, expansive quality of the space around are not easily preserved on the front doorstep of the city’s largest building.”<sup>58</sup>

To its credit, the Washington Convention Center Authority (WCCA) worked with rather than against the various preservation organizations. For instance, in the January 23, 1997 report of the HPRB, several adverse effects were recognized, but the report also stated, “Further study of the project has allowed WCCA to develop and revise its initial studies in response to comments from NCPC and SHPO staff.” The WCCA was willing to: 1) sink the largest exhibition hall below grade to reduce building height; 2) retain L and M Streets underneath the

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<sup>58</sup> David Maloney, Historic Preservation Review Board Staff Report and Recommendation: Proposed Washington Convention Center 2-3 (April 24, 1997) (on file with the D.C. Office of Historic Preservation).

Convention Center; 3) and “[refine] the building envelope to reinforce the separation into smaller building blocks.”<sup>59</sup>

Additionally, the HPRB recognized that “a primary asset of the Mount Vernon Square site, unlike the large site assemblies for the existing Convention Center and MCI Arena, is its sympathetic relationship to major elements of the L’Enfant Plan. The site aligns with the 8<sup>th</sup> Street axis and reinforces its role as a location of a series of major public buildings.”<sup>60</sup> Thus while the New Convention Center’s construction was a further negative to the L’Enfant plan, at least its negative effects were minimized thanks to a preservation process that effectively mitigated some issues. Though the loss of three blocks of 8<sup>th</sup> Street and the tunneling of M and N Streets failed to protect the historic neighborhoods surrounding the New Convention Center and succeeded in demolishing the character of the L’Enfant plan, at least the New Convention Center was built on an important axis instead of perpendicular to the axis. Although a small condolence, in the wake of the MCI Center, any positive is a laudable result.

A comparison of staff report language from the MCI Center and the New Convention Center is quite revealing. For the MCI Center, the staff report includes lines like “most [mitigation] proposals are either unrelated to the crucial adverse effects of the project, or are insufficient as amelioration. Some ideas...merely call attention to the arena’s misplacement and are thus counter-productive.”<sup>61</sup> In contrast, for the New Convention Center, the staff report uses language like “through the process of consultation, the parties have formulated a list of major

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<sup>59</sup> Historic Preservation Review Board Report of the Board: Section 106 Review Proposed Washington Convention Center 2 (January 23, 1997) (on file with the D.C. Office of Historic Preservation).

<sup>60</sup> *Id.*

<sup>61</sup> Stephen Richie, David Maloney, & Nancy Kassner, Historic Preservation Review Board Staff Report and Recommendation: Proposed D.C. Arena 9 (July 10, 1995) (on file with the D.C. Office of Historic Preservation).

issues, proposed possible mitigation actions, and attempted resolution.”<sup>62</sup> Though the second staff report is certainly not a sparkling endorsement of street closure, the change in tone between the two reports is dramatic.

Adding onto the lessons of the previous two examples, the New Convention Center demonstrates the importance of early consultation when dealing with L’Enfant plan concerns. When a project’s historic preservation impact is a “fore-thought” instead of an afterthought, communication and subsequent mitigation is facilitated. Therefore, early action is another essential tool in L’Enfant plan preservation. Early action can be encouraged under existing legislation—and the ramifications of the fight in the MCI Center case go a long way toward encouraging diligence on the part of developers—or it could be required by statute or agency rule. If the Office of Planning were to set a multi-month or multi-year mandatory waiting period for any project located in a specified proximity to a L’Enfant street, the resulting interim between filing and building would provide ample time for NCPC and HPRB review. Site mitigation is easier when there is time to change locations, and design mitigation is easier when the architectural drawings are not yet complete. The historic preservation system works much better and runs more smoothly when preservation concerns are dealt with first. Requiring early consultation encourages developer sensitivity to L’Enfant plan concerns.

Though I am presenting the New Convention Center in an optimistic light and its consultation process as a model to follow, the current state of 8<sup>th</sup> Street is a sad affair. From the L’Enfant plan perspective, despite consultation-influenced mitigation measures, the city would have been better off had the New Convention Center been located elsewhere. If one stands at the north portico of the Old Patent Office, the MCI Center to the east is conspicuously out of place

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<sup>62</sup> David Maloney, Historic Preservation Review Board Staff Report and Recommendation: Proposed Washington Convention Center 1 (April 24, 1997) (on file with the D.C. Office of Historic Preservation).

and the 8<sup>th</sup> Street view to the north is less than enthralling. Instead of a clear “reciprocity of sight” between two prominent federal buildings (three if one counts the National Archives further south) and an obvious arrangement of public space, the viewer is confronted by Techworld’s large bridge framing a diminutive-by-comparison D.C. Public Library which is also dwarfed by the New Convention Center towering behind. Both federal and public interests appear overwhelmed by commercial pursuits. L’Enfant’s plan was designed to communicate American ideals. Today, the 8<sup>th</sup> Street vista speaks of commercialism and profit rather than democracy and patriotism.

#### Memorandum of Agreement “Successes”

With both the MCI Center and the New Convention Center, preservationists can claim some “successes.” A few of the mitigation measure mentioned in the Section 106 reports for both projects found their way into the projects’ respective Memorandums of Agreement (MOA). For instance, the MOA for the MCI Center includes: 1) removal of the arena and the reopening of the 600 block of G Street when the arena has outlived its “useful life”; 2) reopening of 10<sup>th</sup> and I Streets following the demolition of the old Convention Center;<sup>63</sup> 3) reopening of three closed blocks of L’Enfant streets; 4) photographic and historic documentation of the Patent Office Square donated to the Historic American Building Survey; and 5) an agreement by the District not to oppose the nomination of the L’Enfant plan to the National Register.<sup>64</sup> Similarly, the New Convention Center MOA includes: 1) reopening of underlying streets when the convention center outlives its “useful life”; 2) creation of a Washington Convention Center Historic

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<sup>63</sup> The obligations in 1 and 2 run with the land. At the time of writing, the old Convention Center has been demolished but the underlying streets are yet to be reopened.

<sup>64</sup> Memorandum of Agreement by and among the National Capital Planning Commission, the District of Columbia State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the District of Columbia Arena Project 3-6, 13, 18 (September 26, 1995) (on file with the D.C. Office of Historic Preservation).

Preservation Committee with a \$1 million budget provided by WCCA; and 3) provision of funding to the D.C. Preservation League for the preparation, filing, and processing of nominations for the D.C. Inventory of Historic Sites and for the National Register.<sup>65</sup>

As both MOAs indicate, unlike historic structures that are demolished forever, L'Enfant plan streets and vistas can be restored. The current demolition of the old Convention Center brings hope that one day G Street and 8<sup>th</sup> Street will be restored as well. However, though the MOAs are helpful future tools, they do nothing to prevent current harm to the L'Enfant plan. Hence, the MOAs are “successes” rather than true *successes*. In the future, one hopes that the lessons learned from the three projects discussed in this section will lead to more effective preservation efforts—that is, efforts which lead to present preservation rather than future agreed-upon restoration. By enabling private enforcement of public statutes, continuing the documentation process, establishing independent controls, and requiring early action, the L'Enfant plan can be preserved for future generations to enjoy.

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<sup>65</sup> Memorandum of Agreement by and among the National Capital Planning Commission, the District of Columbia State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Construction and Operation of the Washington Convention Center at the Mount Vernon Square/Shaw Site (September 1997) (on file with the D.C. Office of Historic Preservation).

#### **IV. LOOKING TO THE FUTURE: PROBLEMS**

At the time of writing, the political make-up of the D.C. government is far more preservation minded than at the time of the Techworld, MCI Center, and New Convention Center projects. It is hard to imagine a similar project with comparable adverse effects being built today. However, because the personnel and political climate of the City Council and the Mayor's office can change, further action is needed to protect the L'Enfant plan. Implementing the four methods mentioned in the previous sections would protect against non-preservation-inclined action in the future. Additionally, even if one assumes no more block-buster projects will be built, the L'Enfant plan could still fall victim to subtle threats. This section and the following discuss in brief the next generation of threats to the plan and safety measures available to protect the plan.

##### Pressure for street closures

Street closures can take other forms than block-buster structures. Two downtown university campuses stand as examples. George Washington University's 1985-2000 campus development plan called for street closures and pedestrian bridges. Though the university did not desire to build on the right-of-way, it did wish to impede automobile traffic flow and block vistas.<sup>66</sup> Similarly, in 2003, Georgetown University Law Center applied to close a block of F Street (the law center had already closed a block of G Street and wanted to enhance its sense of being a campus instead of a collection of buildings). Because the Center Leg freeway already interrupted the traffic flow of F Street, the HPRB staff report concluded that "the proposed landscape design represents a reasonable accommodation of the goal to establish a campus

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<sup>66</sup> See generally *Levy v. D.C. Bd. of Zoning Adjustment*, 570 A.2d 739 (1990).

environment while not causing undue disruption of the L’Enfant Plan features.”<sup>67</sup> Campus-community-building street closings are especially enticing because the closure puts public space to a public use. However, when L’Enfant plan right-of-ways cease to be traffic ways, the plan is disrupted. Instead of streets leading to important federal buildings or public reservations, streets stop and start upon assorted street closures. Any street closure within the most significant areas of the L’Enfant plan is detrimental to the plan and should be treated accordingly. The HPRB staff recognized this and made sure that “the closure is subject to declaration and easements...[which provide] for the street to be returned to the District upon reconnection of F Street across the Center Leg Freeway.”<sup>68</sup> Closures make more sense where the plan is already decimated, but if previous closures continue to justify new closures, the practice will never stop. If and when the plan is restored, street closures should be removed as well.

#### Projections into the right-of-way

In addition to closures of right-of-ways, projections into the right-of-way damage the plan. Projections break up vistas and overshadow federal structures. Whereas federal buildings were the only structures L’Enfant intended to protrude into right-of-ways in order to emphasize their significance, several current projects intend to invade the right-of-way for both dramatic effect and space expansion. The Frank Gehry designed new wing of the Corcoran Art Gallery will project up to 19 feet into the New York Avenue right-of-way.<sup>69</sup> Though New York Avenue is one of the most important avenues due to its intersection with the White House, the Corcoran pointed out that New York Avenue southwest of the White House is only one block long (another example of past alteration justifying further deterioration of the L’Enfant plan).

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<sup>67</sup> David Maloney, Historic Preservation Review Board Staff Report and Recommendation: HPA No. 03-xxx, NW 1 (May 22, 2003) (on file with the D.C. Office of Historic Preservation).

<sup>68</sup> *Id.*

<sup>69</sup> See Corcoran Gallery of Art, Mayor’s Agent Decision HPA 02-284 (September 19, 2002).

Nonetheless, visitors on that block of New York Avenue will view a spatial relationship where an art gallery is more prominent than the executive offices and White House grounds—a complete deviation from the instructive vision of the city plan.

Other projections-in-progress include the Shakespeare Theater and Arena Stage.<sup>70</sup> In reference to the Shakespeare Theater, the HPRB staff affirmed that projection restrictions “give the city a sense of architectural coherence and social order.”<sup>71</sup> The Shakespeare Theater proposed a three-story glass-pavilion projection over the F Street sidewalk in order to accommodate interior lobbies. After several permutations of the plan (again underlining the importance of early action), the HPRB staff explicitly stated its concerns about projections but recognized the importance of the civic project. The staff agreed that the adjustments made through consultation “represent an appropriate resolution of preservation issues.”<sup>72</sup> Similar to street closures, projections are enticing encroachments on the L’Enfant plan right-of-ways. Though the structures discussed are both architecturally and culturally significant, the projections do damage the L’Enfant vision for D.C. and should be strongly discouraged in the future.

#### Vista and view impairment

As vistas and views are so paramount to the L’Enfant plan, the threat of impairment is serious indeed. Several impairments already exist: the view from Arlington toward the Washington Monument includes a radio tower in the background, and the view of the Treasury Building includes the World Bank tower hovering above. One of the most damaging impairments to the L’Enfant plan is the Rosslyn downtown skyline. L’Enfant’s Baroque vision

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<sup>70</sup> For the Arena Stage development, *see generally* Arena Stage, Mayor’s Agent Decision HPA 02-515 (September 27, 2002).

<sup>71</sup> David Maloney, Historic Preservation Review Board Staff Report and Recommendation: HPA No. 02-285, NW 2 (March 28, 2002) (on file with the D.C. Office of Historic Preservation).

<sup>72</sup> David Maloney, Historic Preservation Review Board Staff Report and Recommendation: HPA No. 02-285, NW 2 (November 20, 2003) (on file with the D.C. Office of Historic Preservation).

for D.C. included vistas stretching outward to infinity to emphasize the extent of federal dominion. With the Rosslyn skyline blocking several D.C. vistas, federal dominion apparently does not extend past Arlington County, Virginia.

In *United States v. Arlington County*, the United States brought suit to prevent the construction of 300ft tall office towers in Rosslyn. The United States alleged illegal zoning and common law nuisance arising out of the Secretary of the Interior's obligation to conserve natural and historic resources, and the NCPC's charge to preserve historical features as part of its planning scheme.<sup>73</sup> Furthermore, the Department of Justice alleged that any building in Rosslyn "over 290 feet above sea level or 20 stories would be a visual intrusion on the monumental core of the Nation's Capital, it would seriously impair the beauty of the Nation's Capital as defined in its horizontal nature and its major vistas of major public monuments both in and from the monumental core."<sup>74</sup> In other words, such development would destroy L'Enfant's Baroque scheme and instructional views. Nonetheless, the court decided that "these buildings would not detract from the average visitor's view of the memorials, monuments, and parks" (which again underlines the need for public education and documentation) and summarily rejected the nuisance claim.<sup>75</sup> Incidentally, the court also insinuated that the distance between the buildings and the monumental core detracts from the government's claim. However, the fact that the Rosslyn buildings disrupted such a *long* view should weigh in favor of preserving the "infinite" view. Any termination of a vista or blockage of a view other than at an intended federal reservation or structure is harmful to the L'Enfant plan. Because it is so difficult to predict vista

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<sup>73</sup> *United States v. Arlington County*, 487 F.Supp. 137, 139 (E.D.VA 1979).

<sup>74</sup> *Id.* at 142.

<sup>75</sup> *Id.* at 144.

and view, the potential damage to D.C. vistas and views from distant structures is a lurking danger.

### Post 9/11 Security Protocols

While street closures and projections are enticing prospects for developers, and vista/view impairment is hardly a thought for far off developers, security concerns in the post 9/11 world are prevalent in most people's minds. Here is an instance where the L'Enfant plan does not and should not have any over-riding influence. Yet, security protocols can be followed with sensitivity to L'Enfant plan concerns. According to Nancy Witherell of NCPC, the Commission is fighting hard to balance security with preservation. NCPC's main method is to focus security efforts on design.<sup>76</sup> Design initiatives include avoiding long, undifferentiated lines of bollards; using landscape security measures whenever feasible; placing security measures to the inside of the sidewalk rather than on the street side in order to continue to foster the idea of public space; and hardening existing streetscape features, such as benches and signage, where possible.<sup>77</sup> Street closure is also a security measure. Security closures encompass all the detrimental effects of campus street closings but in an even worse fashion: instead of inviting community, federal security closures discourage use as a public thoroughfare. Though threats to the L'Enfant plan are far less significant than security threats to people working in federal buildings, it is possible to address security issues while keeping an eye on preservation issues. The ability of NCPC to preserve open space and right-of-ways despite ever-increasing security in Washington remains to be seen.

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<sup>76</sup> Telephone Interview with Nancy Witherell, Historic Preservation Officer, National Capital Planning Commission (April 5, 2005).

<sup>77</sup> *Id.*

## V. LOOKING TO THE FUTURE: SOLUTIONS

The main preservation imperatives of private enforcement, documentation, independent controls, and early action requirements were discussed previously. These four means are the most essential elements of a comprehensive effort to preserve the L'Enfant plan. Nevertheless, the points which follow are simple and practical solutions which could also have an immediate, advantageous effect on L'Enfant plan preservation.

### Existing Legislation

The National Historic Preservation Act, 16 U.S.C. § 470(f) (Section 106); the Department of Transportation Act 49 U.S.C. § 303 (Section 4(f)); and the D.C. Historic Landmark and Historic District Protection Act can all effectively protect the L'Enfant plan. Section 106 requires that the applicable federal bodies “take into account” any effect of a federal “undertaking” on properties listed in the National Register.<sup>78</sup> Thus, listing the L'Enfant plan in the National Register requires the applicable agencies to at least consider the ramifications of alterations to the plan prior to government development of reservations and government occupation of right-of-ways. Though the Section 106 process is only procedural, it has a substantive effect: the more the L'Enfant plan is considered, the more it will become part of the public consciousness and the more difficult it will be for politically accountable bodies to alter the plan.

The Department of Transportation Act provides that the approval of a transportation project must avoid impairment to national, state, and local historic sites.<sup>79</sup> The L'Enfant plan qualifies under all three categories. Under this act, it is unlikely that more freeways will cut holes in the L'Enfant plan. The act requires that “there is no prudent and feasible alternative to using

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<sup>78</sup> 16 U.S.C. § 470(f).

<sup>79</sup> 49 U.S.C. § 303.

that land,”<sup>80</sup> and within D.C., the opportunities for public transportation would weigh heavily in favor of no further demolition of L’Enfant streets.

Finally, as previously discussed, the expanded listing of the L’Enfant plan on the D.C. Inventory provides significant protection to the plan under the Historic Landmark and Historic District Protection Act of 1978.<sup>81</sup> Though the principal attributes of the L’Enfant plan do not fit nicely into either the “alteration” or “demolition” definitions in the act,<sup>82</sup> certainly building on top of right-of-ways or blocking vistas counts as “the razing or destruction, entirely or in significant part, of a building or structure [the L’Enfant plan is considered a structure]” or “a change in the exterior appearance of a building or structure or its site, not covered by the definition of demolition.”<sup>83</sup> Because the act requires historic landmarks to be retained and enhanced,<sup>84</sup> the HPRB should find adverse effects to the L’Enfant plan whenever any proposed construction would occupy right-of-ways or project into vistas.

#### Restoration whenever possible

The MOAs for the MCI Center and the New Convention Center must be followed. If either structure’s useful life comes to an end as determined by the Mayor, the buildings must be torn down and the underlying right-of-ways restored. Furthermore, all new construction regardless of covenants should be built with respect to L’Enfant streets. Therefore, were Southwest D.C. or Federal Triangle to be redeveloped, NCPC should mandate street restoration. Within historic districts, when the HPRB considers applications for new construction, street restoration where applicable should be a mandatory element for a finding of compatibility.

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<sup>80</sup> *Id.* at § 303(c)(1).

<sup>81</sup> D.C. Code § 6-1101 *et seq.*

<sup>82</sup> D.C. Code § 6-1102(1) and (3).

<sup>83</sup> *Id.*

<sup>84</sup> D.C. Code § 6-1101(b)(2)(A).

Restoration is especially vital because it provides a double bonus: not only are streets and vistas restored, the trend of justifying deviations from the L'Enfant plan by referencing past alterations is reversed. Following concentrated restoration efforts, a trend of renewal would replace the trend of alteration. Thereby, not only would future alterations become more difficult to rationalize before the NCPC and the HPRB, they would become harder for municipal officials to support. As the L'Enfant plan grows progressively more intact, alterations will appear progressively less compatible.

An additional L'Enfant plan restoration opportunity is the rebuilding of the Old Patent Office steps on F Street. One of the proposed mitigation measures for the Smithsonian's construction of a glass dome over the Old Patent Office courtyard is the reconstruction of the steps on the south portico which were demolished to facilitate traffic flow.<sup>85</sup> The porticos on each side of the building suggest "the cardinal axes from which the city grid derives,"<sup>86</sup> emphasizing not only the importance of federal buildings but the importance of the city plan as a whole. Rebuilding the steps would serve to promote the visual importance of the Old Patent Office at the intersection of 8<sup>th</sup> and F Streets and to highlight federal control over municipal (and national) space. It is worth noting that the Secretary of the Interior paused to take note of the L'Enfant plan with regard to the Old Patent Office. The Secretary's report to the Advisory Council regarding the Old Patent Office acknowledges the importance of the L'Enfant plan, recognizing that NCPC and the D.C. Office of Planning "have noted that the plan is nationally

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<sup>85</sup> As of April 25, 2005, "The Smithsonian has agreed to [rebuild the stairs] and include the cost in its fiscal 2007 request to Congress." Jacqueline Trescott, *Patent Office Roof: Pending Courtyard's Glass Canopy Delayed*, Washington Post, April 25, 2005 at C01.

<sup>86</sup> David Maloney, Historic Preservation Review Board Staff Report and Recommendation: Section 106 Review, Old Patent Office 3 (September 30, 2002) (on file with the D.C. Office of Historic Preservation).

significant and should be considered for National Historic Landmark designation.”<sup>87</sup> When the L’Enfant plan is recognized even by the Secretary of the Interior, its restoration should be imperative.

#### Preventative and restorative easements

Despite the recent furor over preservation easements and tax credits, easements can be used effectively to preserve the L’Enfant plan’s city blocks and symbolic views. To prevent super-block structures, the government or a preservation group would only need to hold an easement against one large structure on at-risk city blocks.<sup>88</sup> Though the property could be condemned through eminent domain and the mega-structure built regardless, multiple easements would present a formidable obstacle to block-buster structures. Furthermore, for structures encroaching on L’Enfant plan right-of-ways, easements requiring street restoration whenever a building is demolished could be purchased. Preventative and restorative easements do not even need to be on historic properties for the L’Enfant plan to be guarded, neither do they need to bind a property owner against alterations. The easement would simply prevent the lot size of the existing building from expanding or require the underlying right-of-way to be returned to the federal government if demolition occurred; thus a deliberate easement-purchasing regime would create no hassle for property owners while ensuring significant benefits to the L’Enfant plan. Though easement purchase might be cost-prohibitive, in the unlikely event of vast funding for historic preservation, easement purchase could be a worthwhile investment. A more likely alternative is the donation of easements by historic-preservation-sensitive property owners.

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<sup>87</sup> Secretary of the Interior’s Report to the Advisory Council on Historic Preservation in Accordance with Section 213 of the National Historic Preservation Act on Impacts of the Current Rehabilitation of the Old Patent Office Building 5 (January 2, 2005) (on file with Professor Tersh Boasberg of Georgetown University Law Center).

<sup>88</sup> Because of the danger of non-preservation minded officials taking office, easements owned by reputable preservation groups or independent preservation agencies would seem to be the best choice.

Because the easement would do no more than restrict the subdivision of the lot, property owners might be more willing to donate an easement with mostly non-inhibitive restrictions.

As discussed above, vista and view impairment is another threat to the L'Enfant plan. With increased technological developments, a computer-aided topographical study of the District and surrounding counties could be inexpensively conducted in order to locate ridges and hills likely to impair vistas and views. Once potentially injurious locations are identified, height restrictive easements can be purchased or donated on the property. Thereby, the D.C. government or a D.C. preservation group could own easements in Virginia or Maryland to protect D.C. interests without involving the governments of adjacent states (assuming the property identified is privately owned). With a definitive knowledge of where vista and view impairment may occur, preservationists would be better equipped to keep L'Enfant's "reciprocity of sight" and Baroque vistas free from cell phone towers, architectural intrusions, and other threats to the plan's visual objectives.

#### Scale back projections

Projections must be scaled-back so as not to block street vistas and so as to allow federal buildings to maintain their prominent positions. L'Enfant's vision for Washington included easily identifiable federal buildings whose location and minor intrusion into right-of-ways would indicate the focal points of the city while underlining federal power and prestige. However, with overhangs and awnings and Frank Gehry architecture blocking the way, the minor intrusions of federal buildings are superseded by significant intrusions of private buildings. Wherever possible, projections must be reduced to match the setback for the entire street length, especially when a federal building is located on a prominent reservation. Again, easements could be a useful preventative or restorative tool for particularly meaningful vistas. However, with regard to

projections, careful consideration by the D.C. Office of Planning for any proposed projection over a L'Enfant right-of-way and the addition of anti-projection language to the Comprehensive Plan by NCPC would be the most effective options.

#### Enhanced recognition for the L'Enfant plan

The more the L'Enfant plan is recognized for the national treasure it is, the more difficult it will become for developers to destroy the plan. The L'Enfant plan is currently on the D.C. Inventory of Historic Landmarks and the National Register, but recognition as a National Historic Landmark would elevate the L'Enfant plan to the most elite preservation platform available.<sup>89</sup> Additionally, an amendment to the D.C. Historic Landmark and Historic District Protection Act to specifically include preservation of the L'Enfant plan under Section 2(a) would enhance the statutory significance of the plan and ensure that any detriment to the L'Enfant plan will be carefully considered not only by HPRB but also by the Mayor.

Enhanced recognition for the L'Enfant plan is perhaps the best of all solutions discussed in this paper. I find it hard to believe that anyone fully informed of the L'Enfant plan's historical significance and symbolic vision would allow alteration without a most pressing need. Though the City Council will likely define "need" in terms of economic gain, enhanced recognition could increase the financial offset necessary to alter the plan (similar to the political accountability issues discussed above). If the public places a high enough value on the L'Enfant plan, the financial incentive in altering the plan would have to proportionally increase for construction to muster the necessary political support for the City Council to ignore HPRB adverse findings.

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<sup>89</sup> According to Deputy State Historic Preservation Officer David Maloney, a National Historic Landmark nomination is already in the works. Interview with David Maloney, D.C. Deputy State Historic Preservation Officer, D.C. Office of Historic Preservation, in Washington, D.C. (March 18, 2005).

As mentioned with regard to the Anacostia initiative, preservation of the L'Enfant plan does not mean a complete halt to all possibly detrimental construction. Preservation does mean that the balance between incrementally greater economic gain and preservation of one of D.C.'s greatest historical resources should be shifted to weigh far heavier on the side of the resource. It is outside the scope of this research to examine whether the Southwest urban renewal project was a cause worthy of changes to the L'Enfant plan; my immediate reaction is a resounding "no," but I would not rule out urban renewal completely as a category of justification for plan alterations. Still, the more the L'Enfant plan is recognized by statute, by title, and by the public, the better its prospects for survival. Enhanced recognition would grease the wheels of private enforcement, pave the way for documentation, add power to independent controls, and make early action more productive. Recognition would encourage restoration, push for easement control, and encourage projection scale-back. As soon as L'Enfant's name is mentioned in the same sentence with the most brilliant American artists, architects, and inventors, the plan will be secure.

## VI. CONCLUSION

One can do more than hope that future visitors to L'Enfant's tomb will continue to recognize the city below as the city L'Enfant imagined. The groundwork has been laid to preserve the plan; now all that remains is to generate political and popular will to make the tough preservation decisions. Several opportunities exist to preserve the plan under D.C.'s existing preservation scheme, but several more opportunities are available through both private and governmental action.

The L'Enfant plan is a work of genius. Consider: over two hundred years later, the city that L'Enfant designed in about one year of work remains much as he envisioned. L'Enfant was able to explore a tree-covered expanse and imagine a modern city far past his 18<sup>th</sup> century existence. His orthogonal grid and radiating avenues still form dynamic vistas. His expansive public reservations continue to be popular gathering places.<sup>90</sup> His carefully sited federal buildings remain prominent features of the Washington cityscape. The 18<sup>th</sup> century plan works just as well for the 21<sup>st</sup> century city as it did when L'Enfant first drew it up.

L'Enfant created a city to inspire. His legacy leaves us a plan to preserve.

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<sup>90</sup> In fact, L'Enfant's urban organization was so prescient that several of his reservations became metro stop locations because they were community centers just as L'Enfant planned.

VII. APPENDIX

L'Enfant Plan reproduction from the Library of Congress website  
available at <http://www.loc.gov/exhibits/us.capitol/twty-nine.jpg>

