



American Land Rights Association National Inholders Association

National Headquarters:
30218 NE 82nd Avenue (PO Box 400)
Battle Ground, Washington 98604
Phone: (360) 687-3087
alra@landrights.org **FAX:** (360) 687-2973
www.landrights.org

Legislative Office:
507 Seward Square SE
Washington, DC 20003
E-Mail:

National Trails

Act

Testimony by Chuck Cushman,
Executive Director
American Land Rights Association
(Formerly the National Inholders Association)

National Parks Subcommittee
Honorable Steve Pearce
Chairman

House Resources Committee
Honorable Richard Pombo
Chairman

US House of Representatives

July 26, 2005
Longworth House Office Building, Washington DC.

Thank you, Chairman Pearce, for the opportunity to testify regarding the National Trails Act and the future of trails in America.

American Land Rights supports trails and access to our Federal lands. We support volunteer programs to enhance our trails system and incentives to encourage landowners to participate in cooperative agreements and other voluntary strategies for trails on private property.

The American Land Rights Association opposes Federal land acquisition or the use of the condemnation or eminent domain for the creation of trails.

The Appalachian Trail was originally a well regarded volunteer effort. It was a great start and during its first 46 years it got along reasonably well with its neighbors. We believe that not having government land acquisition and the power of condemnation forced volunteer groups and Federal agencies to get along with their neighbors. They had to in order to achieve their objectives.

The Appalachian Trail began to go wrong with the passage of the National Trails Act in 1968. It went very wrong when land acquisition and condemnation began to be used aggressively by the National Park Service in 1978. Congress expanded the width of the trail and gave the NPS the responsibility to complete the trail. The result was a trail of tears, land acquisition abuses, broken laws and constant threats to landowners. The Appalachian Trail has consistently been a bad neighbor. Frankly, it has become a bully using condemnation as the threat.

I have been involved with the National Park Service for 51 years. My father served as a ranger naturalist, now called interpreter, in Yosemite with the Park Service from 1955 until 1962. He also owned a cabin in Yosemite that he was required sell to the Park Service if he wanted to keep his job.

I have served as a volunteer in what are now three National Parks. Yosemite, where I used to help my father write out and pick slides for his ranger talks; Channel Islands with the Audubon Society rowing bird watchers through the surf for several years; and as a member of the second Student Conservation Corps in

1959 in Olympic National Park. I actually was accepted into the first Student Conservation Corps but served one year later. We built trails, rehabilitated trails and carried out all kinds of park enhancement duties during our month long service.

I organized two folk music and dance workshops in cooperation with the National Park Service in Yosemite in the 70's. I purchased my own cabin in Wawona in Yosemite with a partner in 1970 and own it to this day. I am an inholder. I began to do this work when the NPS tried to take my house.

I served three years in the 80's as a member of the National Park System Advisory Board.

I mention these things because I am perceived by some as an enemy of National Parks. Nothing could be further from the truth. I could be more correctly described as opposed to a National Park Service bureaucracy that is often out of control, misleads Congress and fails to live up to its mission to protect our parks. Our parks are very important and should be protected. But the NPS is putting vast amounts of money converting parks so they are less friendly to people.

The NPS does not place a high priority on maintenance. We should be careful to designate truly worthy areas and not allow our parks to become park barrel political trading stock. The funding for our parks and the ability to care for them are being diluted by the addition of areas of dubious national significance. It is the management of our parks and the treatment of landowners by the NPS that I am often in conflict with.

The Park Service often gets confused. It thinks it is a great agency because it manages great places.

The National Park Service has evolved into a second class organization that does not have to compete to be the best. Therefore it doesn't. It is largely been given Congressional immunity and little oversight by the Administration because of the fear of the political consequences of corrective action. Anyone, in any business or service that does not have to compete to get better often gets worse.

As a result, the Park Service has become a cloistered elitist group that caters to one segment of society while constantly working to reduce access and use to society as a whole. It is almost a cult like closed society that is protected by the public's general sense of good will toward our parks. The NPS does everything possible to shield itself from oversight and is remarkably corrupt in its management practices, the way it deals with Congress, the press and the public. The public, and often Congress, knows little about how the Park Service is really managed on the ground.

Our parks were supposed to be public pleasuring grounds as well as be protected for all time. The Park Service largely ignores the first goal while focusing on their vision of protection to the detriment of society.

I have served as executive director of the American Land Rights Association, formerly the National Inholders Association, for 27 years since 1978. I was a volunteer activist for six years prior to that. I've had the opportunity to visit most national parks where land acquisition is or was taking place.

There are continuing attempts to pass legislation to allow and encourage Federal land acquisition on a variety of newer trails across America. Congress should only support these programs if they are kept on a local basis and developed through volunteer programs, incentives, cooperative agreements and other tools.

We believe Federal land acquisition and eminent domain should not be allowed on any national trail program. This view has developed over time with lots of painful examples.

New Trails Could Become Battlegrounds

I've personally had to spend a huge amount of time working on the Appalachian Trail over the past 27 years to save landowners from threats and intimidation. I've led campaigns to defeat many large scale eminent domain actions by the Park Service. I know of no Park Service area where the abuses have been larger, more numerous or more consistent than the Appalachian Trail.

Using the Appalachian Trail as a learning tool to evaluate future trails and trail management proposals can prevent a repeat of the land acquisition and condemnation abuses in the future on other trails.

The Appalachian Trail started out as a very good program of volunteers building a trail from Maine to Georgia. It was built and maintained by a number of volunteer trail groups and we believe got along well with landowners along the trail.

However, advocates for the trail pushed for a more aggressive trail program and the 1968 law was passed giving the Park Service, Forest Service and states the authority to acquire 25 acres per mile. Problems began to appear but there still was not the institutional drive to acquire land that would later rear its ugly head.

When the 1978 law was passed, land acquisition authority for the Park Service was expanded and the width of the trail was expanded to 125 acres per mile. Sometime later wording was changed so that the Park Service now believes it can condemn land using an AVERAGE of 125 acres per mile.

Since the trail is often only a few feet wide in some places, the Park Service uses their perceived authority to threaten land miles from the trail putting wide bubbles on their maps. Saddleback Mountain in Maine is an example where this threat was used.

The Appalachian Trail is a bad neighbor. Over the years, under its present and former management executives, it has been involved in an incessant string of controversy and unwillingness to look for or find reasonable solutions to conflicts. Present management feels insulated by the political power of the Appalachian Trail Conference and its associated clubs. And it is generally right. Those groups will defend the Park Service and help the NPS crush lonely landowners.

American Land Rights has been closely involved with conflicts on the Appalachian Trail at numerous locations. The areas that stand out are Saddleback Mountain Ski Area in Maine; Hanover, New Hampshire; Sheffield, Massachusetts; Garrison, New York; and Cumberland County, Pennsylvania.

Congress is considering changes to trails legislation and new trails across the nation. We believe Congress should oppose any new land acquisition authority. You should make sure there won't be massive land acquisition. But like night follows day, the Appalachian Trail will be the model for future trails.

At first, each new trail is a model of cooperation with landowners. There are no threats. Deals are struck to run the trail across the land of willing participants. Eventually this arrangement gets too cumbersome so the local trail society (like the Appalachian Trail Conference and all its local groups) lobby Congress to add land acquisition. Gradually the power of the managing agency is ratcheted up as the lobbying intensifies.

These groups talk about and promote the notion that all acquisitions will be willing seller. But that gradually changes as the agency and its support groups get impatient and more powerful. Look further in this testimony for a more comprehensive discussion of the fact that willing seller acquisition is largely a myth.

Because a trail is a long string of land, the trail clubs have the power of many Congressional delegations supporting them while the poor landowner only has one Congressman and two Senators and virtually no chance to fight back. Because it is a long linear corridor, there is not enough population affected at any one time in any one place to bring balance to the political process. Trail groups impose their will on a small minority of landowners. The result is generations of anger and frustration as landowners lose their land. Examples along the Appalachian Trail are numerous.

Another problem with trail management is that the support groups or clubs like the Appalachian Trail Conference largely set management goals for the NPS. In most parks, the managers are routinely rotated from park to park. But in a few cases they develop fiefdoms and managers spend most of their careers in one place. This is against Park Service policy but the policy is often not enforced.

The current management of the Appalachian Trail is one example. The current project manager has been at that one location for well over 20 years. The Appalachian Trail Conference wants consistent power. They constantly lobby to keep "their" person in charge. The result is bad management and political nest building that damages the Park Service and strains relations with local governments and others who must deal with trail management.

Below you will read some examples. A common thread is that there is little negotiation, the Uniform Relocation Act is largely ignored and the NPS usually fails to negotiate in good faith. Why should they? There is no incentive to do so. There is no penalty. They regularly fail to tell the truth to Congress about condemnations and other issues. When they are caught, it is ignored. There is little or no oversight by the Administration or Congress and virtually never any penalty. The result is years of pain and suffering by landowners at the hands of the National Park Service on the Appalachian Trail and some other areas.

Here are a few examples:

Appalachian Trail, Hanover, New Hampshire-----The Park Service, working closely with the Dartmouth Outing Club, attempted to use LWCF funds to buy a greenway around Dartmouth College. They did this by moving the Appalachian Trail over at the request of the Outing Club to make it go through the middle of local farms rather than along the fence lines as it was supposed to go. They used a 1000 foot acquisition corridor to broaden their “greenway.” That was never the intent of Congress.

The NPS was found to be lying to Congress and Interior Department officials about their activities when called in to explain and ultimately had to move the trail back to the fence lines and share the impact among adjacent owners. They were forced to use easements even though they tried to avoid using them. These changes saved the NPS lots of money over the original cost of their grandiose scheme. The local landowners had extremely competent leadership and worked closely with American Land Rights who intervened to help them save their lands. All seven landowners in Hanover including the Water Company joined in this fight.

Appalachian Trail, Sheffield, Massachusetts----- Park Service ignored the Land Protection Planning Process and ran the trail through town without consulting local officials, holding hearings or meetings. They failed to produce a land protection plan for the area that had been shown to either local landowners or officials. In fact, the Park Service had deliberately rerouted the trail at the request of the environmental groups to run it through the land that was planned to be used for a high tech, low impact recycling plant the environmental groups wanted to stop. The Appalachian Trail has often been used as a weapon. Park Service officials repeated this kind of abuse over and over along the Appalachian Trail.

As in the earlier examples, this is the tip of the iceberg. When there is little oversight there is no reason for the agency to even attempt to obey the law. And they end up spending many millions dollars that do not have to be spent.

Appalachian Trail, Saddleback Mountain Ski Area in Maine-----Time after time, for over 20 years until 2002, the Breen family that owned Saddleback tried to work out a settlement of the route for the Appalachian Trail. They needed to modernize, add additional safety improvements and complete their ski area. Bad faith followed bad faith by the Park Service as a no negotiation standoff continued until the Park Service was forced to negotiate by the states two Senators after American Land Rights became involved. In fact, Saddleback offered the Park Service twice the land they could condemn under law just to settle the matter. Yet Saddleback sat twisting in the wind for many years.

The losers were the family and the community that was in constant stress over the possible loss of jobs and \$40 million of much needed economic activity per year for the region. The recreation ski community could have lost access to what has the potential become one of the finest ski areas in America. The environmental groups want new National Parks in Maine. It is hard to imagine why Maine or Congress would allow the Park Service to take over 5 to 10 million more acres in Maine when the NPS showed no willingness to solve problems and get along with people and communities on a simple trail. Finally a delegations of elected officials and others came to Washington and stopped any potential condemnation.

Appalachian Trail – Garrison, New York.

Friars Hold Firm in 16-Year Land Dispute With Parks Service
New York Times - August 16, 2000

By COREY KILGANNON

GARRISON, N.Y. -- For more than a century, the Franciscan friars have made the Graymoor Spiritual Life Center, set in a hilly swath of forest here, their world headquarters.

Even today, much of Graymoor is like a page out of Chaucer, with whispering friars in brown robes and sandals strolling past abbey-style buildings. Though they may resemble their legendary jolly counterparts of yore, today's friars are hardly known for taking up a stiff cudgel for bandying errant knaves who refuse to yield the path.

On occasion, however, they can be as fiercely territorial as their forefathers, and they are now fighting to keep a wooded 18-acre section of their property the National Park Service is trying to acquire.

The parcel is adjacent to the Appalachian Trail, which runs through Graymoor's 400 acres of woods in Garrison, about an hour north of Manhattan, in Putnam County, and is used extensively by hikers.

The Park Service, which oversees the 2,144-mile trail stretching from Maine to Georgia, says the friars could pose a threat to one section of trail.

But the friars insist that it is the Park Service that is encroaching and starting a land grab that they say could endanger the future of their ministries. So they are standing their ground.

Graymoor, the world headquarters for the Franciscan Friars of the Atonement, was established in 1898. There are 45 friars and 86 nuns living there; they operate a retreat, a drug and alcohol rehabilitation center, an ecumenical institute and St. Christopher's Inn, a homeless shelter.

Graymoor definitely has one foot in the past with its abbey-style buildings and wandering friars, but the friars now wear their robes over their street clothes, and their sandals are Birkenstocks. The Rev. Arthur M. Johnson, minister general of Graymoor, has a secretary and a computer in his fifth-floor office in the center's main administrative office building.

The friars say that losing the parcel involved in the dispute would cripple their ministry in the future. Though the only building on the 18-acre parcel is a maintenance shed, the land is crucial to the maintenance of their complex, they say. Relinquishing rights to it would hinder maintenance of roadways and other buildings. Also, they say, the parcel is next to the center's sewage treatment plant, and surrendering it would hinder access to the plant and any expansion in the future.

"We may have to take up archery again," Father Johnson said.

His quip was only partly in jest. Instead of stout oaken staffs and longbows, the Graymoor friars are wielding slightly more modern weapons: a publicist and a lawyer.

The Park Service already has an easement on 58 acres of the friars' property. But the friars said they did not learn until July that in May, the Park Service had asked the Justice Department to order the friars to sell the government an easement on 18 more acres as "buffer land" for the trail, under eminent domain, a legal procedure that allows governments to take land for the public good, like roadways and parks, at its fair market value. Neither the friars nor the government would say what the Park Service was offering, but both sides privately acknowledged that it was far less than \$10,000 an acre.

Father Johnson said the battle was not over money but over "the principle that the federal government thinks it can come in and take over our land." Allowing the Park Service to have the parcel, he said, could open the floodgates to future government land acquisition.

"Who's to say they won't come along next time and say they want more?" he said, adding that the friars would consider challenging a forced acquisition in court.

Edie Shean-Hammond, a spokeswoman for the northeast region of the National Park Service, said the agency was simply fulfilling its mandate from Congress to obtain any land it needs to ensure that the trail remains continuous.

The relationship between the friars and the trail goes back to 1923, when they and the trail's organizers agreed to allow the path to cross an undeveloped wooded area along the eastern edge of the friars' property.

In 1984, the Park Service wanted to move the trail, and paid \$116,500 to acquire a formal easement of 58 acres, much closer to the friars' buildings. Since then, the Park Service has tried unsuccessfully to get the friars to give it an easement on the 18-acre parcel.

Though the friars still technically own the property covered by the easement, they cannot build on it or sell it without permission from the Park Service.

Ms. Shean-Hammond said that almost immediately after the friars sold the government the easement in 1984, they violated its terms by building a pump house for the sewage plant on it and by running pipes under the trail. The Park Service has decided to seek more of Graymoor's land to preclude a similar encroachment in the future, she said.

Father Johnson called the construction of the pump house "a miscalculation," but noted that the building is the size of a one-car garage and is barely visible from the trail.

"With all due respect for the Franciscan friars, the land has been built on," Ms. Shean-Hammond said. "And we have to ensure that it won't happen again. We're simply trying to protect the taxpayers' investment in perpetuity."

"Our job is to protect that corridor," she added. "In other cases, we have acted more immediately, but we recognize that the friars have been good hosts to the hikers."

She also voiced concern that the friars would someday sell the land to a private developer. Father Johnson said the friars had no immediate plans to do so, but he would not rule out such a sale in the future.

The friars say they are friends of the trail and have always put up hikers without charge, often allowing them to camp overnight. Day hikers may park free, and the friars have built showers, toilets and a shed for them. Trail users may roam the entire Graymoor property, use the friars' library, and are invited to share dinner with the friars -- usually a salad bar and a hot meal -- without charge. Some guidebooks call Graymoor the "Hilton of the Appalachian Trail."

Representative Sue W. Kelly, a Republican whose Congressional district includes Garrison, wrote a letter to Interior Secretary Bruce Babbitt asking him to have the Park Service drop the acquisition proceedings.

"I find this drastic action against the friars offensive," she wrote, "and using these strong-arm tactics against the friars is inappropriate."

Touring the property in a sport utility vehicle, Father Johnson said that despite its claims against the friars, the Park Service was the one encroaching on the property.

"It's like inviting someone for the weekend," he said, "and all of a sudden they stay and claim squatters' rights."

Appalachian Trail – Cumberland County, Pennsylvania -- Park Service Condemns Game Preserve In Pennsylvania

From an American Land Rights Association e-mail Alert in 2000.

The Tumbling Run Game Preserve, a beautiful piece of property owned by 24 families in Cumberland County, Pennsylvania is an excellent example of private conservation. It is a good neighbor to the Michaux State Forest, and has voluntarily allowed access to hikers along the Appalachian Trail.

This week, the National Park Service (NPS) announced its latest land grab, arrogantly claiming that it will proceed immediately to condemn the property. That is the thanks that the Game Preserve Association gets for attempting to cooperate with the federal government's power hungry bureaucrats. The landowners have offered to donate a trail corridor to the Park Service.

Even more incredible, NPS intends to use a procedure called a "Declaration of Taking." This is a law passed in 1931 that allows, in cases of national emergency, the federal government to seize land immediately, and pay the property owner an arbitrary amount at some point in the future! That's right - Steal Now, Pay Later!

The law was intended to restart idle businesses in the depths of the Great Depression, and to retool factories to produce armaments during the Second World War. The NPS has taken this law, used to fight the Nazis and the Japanese Imperial Empire, and has turned it against innocent citizens!

The Park Service Appalachian Trail Project was heavily criticized recently for threatening condemnation proceedings against a monastery in New York and the Saddleback Ski Area in Rangeley, Maine.

These condemnations are funded by the Land and Water Conservation Fund now under review by Congress as the Conservation and Reinvestment Act (CARA) AKA the Condemnation and Relocation Act. CARA will vastly increase the funds available to the Park Service for land acquisition and remove the land acquisition process from Congressional oversight. It is a blank check for government abuse.

Why are there so many condemnations by the Appalachian Trail? Because they have an out-of-control project manager-superintendent that is backed by the huge Appalachian Trail Conference hiking corporation and their assortment of hiking subsidiary clubs who gladly throw their weight around crushing landowners in the process.

Pam Underhill is the Project Manager and she is completely out of control. She doesn't care about who she hurts. She's been at the Appalachian Trail for over 20 years when most park managers are supposed to rotate every five years. Why is she still there? Sheer political power. CARA will only add to that kind of political power and enable people like Underhill to build more fiefdoms in the parks.

Why did we have the Boston Tea Party? To throw off the yolk of taxes and power by unelected bureaucrats who controlled the colonies. But over 200 years we've created a whole new generation of colonies (national parks, forests and refuges) run by unelected bureaucrats who feel they are responsible to no one. CARA will give them the money to thumb their noses at Congress and you. It must be stopped.

Parks, forests and refuges can be good. It's bad people that can make them bad. Do you know an example of where giving a Federal land agency more money made them better neighbors?

Anyone living near any other proposed or designated hiking trail must look at the abuse of power on the Appalachian Trail as an example of what they will face in the future. We support trails. But trails must be good neighbors. They must not evolve into massive land grabbing machines like the Appalachian Trail that has crushing thousands of landowners and communities over its 2,000 miles. Just look at the landrights.org website for plenty of documentation.

List of recommendations:

1. It is supposed to be the policy of the National Park Service to move park managers around every few years. This is a good policy and should be enforced. This has not occurred on the Appalachian Trail. Dave Ritchie had a very long tenure and now Pam Underhill has been in charge of the AT for well over 20 years. This has led to building of a fiefdom and very negative relations with landowners and communities. The Appalachian Trail itself has suffered bad publicity for a very long time.
2. When the Park Service requests permission from the various committees to use a Declaration of Taking type of condemnation, the superintendent should have to sign an affidavit that the facts are true. Often the agency just throws paper at the Congress that is completely false. In the case of Hanover, New Hampshire, their book they sent to Interior to justify condemnation was shown to be a complete fabrication with all the pictures of land not in dispute.
3. Congress should insist on updated Land Protection Plans at each park unit every two years and that the Park Service follow their priority acquisition list.
4. Land Protection Plans should be submitted to public comment with an each updated every two years where active land acquisition is taking place.
5. Land Protection Plans should be distributed to all local elected officials, the press and to all landowners adjacent to the trail.
6. Oversight hearings should be held about any trail where land acquisition is occurring every two years with multiple landowners invited as well and elected officials. The Park Service and other agencies must be made aware that their actions will be subject to scrutiny and often.

Willing Seller – A Myth

“John Jones is a willing seller. He didn’t want to sell and held out as long as he could. First the Park Service came in and purchased the homes, farms and timberlands of his neighbors who did want to sell. There will always be some. Then the agency began to search out those families who were in some kind of financial distress such as from a death, divorce, loss of job and other reason.

“Jones watched as his community was checker boarded by the Park Service. He remembered being told when the park was created that he would not be forced out. But now the agency was targeting local businesses and the county itself. Many small businesses were purchased and put out of business. The Park Service purchased the holdings of several large timberland companies. Smaller timber owners began to sell as they saw that the logging infrastructure might eventually not be there. The mill eventually had to close because it could not get enough wood. Like a natural ecosystem, the economic ecosystem of a community is very fragile.

“As more timberland was purchased, more homes and farms began to disappear. Many residents wanted to hold out but with fewer jobs in the county, the value of their homes and property began to go down. As the Park Service purchased them, they lay empty for months or even years because the agency said they did not have the funds to clear them out. They became havens for vandals and drug houses.

“The Nature Conservancy and other land trusts began to circle like buzzards. They would buy from financially distressed landowners, then turn the land over to the Federal government. Time after time this happened, quietly, secretly and silently they helped undercut the community.

“As properties were taken off the tax rolls, the schools and county services began to suffer. Several closed making longer trips to school necessary for families. The school district didn’t have the money for the necessary busses. Roads began to close. As the Park Service purchased large areas, the agency put up chains across the roads. Some of these roads had been used for years by neighbors as access points to the river or to go camping, woodcutting or berry picking. Usually we knew another way but over time, all the access was closed off.

“Churches, clubs and other community services began to close. The library was in trouble. The hours were cut for it and other county services. There had been several markets in town and three gas stations. There is only one of each now and it looks like the store will close. That means a 80 mile drive to Millersville for groceries. Over time, other essential services and stores began to disappear.

“When the park was created they promised tourism. I don’t know where it is. We gave up a lot of good jobs for this park and the tourists don’t come. Several motels and restaurants were built in anticipation of the visitors. All but one restaurant is closed, and it cut its hours back. We have two motels still open but they are struggling.

We have a very nice ski area but a Park Service trail runs through it. The agency has harassed the owners so often that they’re close to giving up. They can’t get any kind of commitment from the Park Service as to a final trail location so they can’t invest in modernizing and expanding the ski area. There sure are a lot of people in town who would benefit if the ski area was allowed to meet its potential. We thought the Park Service supported recreation. Now it seems the opposite is true. We heard from people out West that the Park Service and the environmental groups were becoming anti-recreation. It couldn’t be true we said. It looks like we were wrong. They seem to be against skiing and snowmobiling. It doesn’t make sense.

“The county had no choice but to raise our taxes. The tax base for the county was shrinking almost daily. We had one local bank and several bank branches. Now there is only one branch open as part of the market, but it may go away too. The banks have not made loans in our town for several years now because the future is unstable. They won’t make loans to loggers, equipment suppliers, or small businessmen because of threat from the Feds. No new houses have been built in some time. The theater closed and the cable television company is considering shutting down. It feels like a ghost town.

“Some of my neighbors are determined to stay and suffer the consequences and severe hardships of living within a now nearly all Federal enclave. I love my town. I was born and raised here, went away to college and came back. It looks like that even though I stood up to those Federal land acquisition agents, there will soon be nothing left to stand up for. I never thought I’d be a willing seller. But I am now.”

It is often suggested that there is no problem with land acquisition as long as it is willing seller. There are numerous problems with this concept. Congress does not have to authorize condemnation. It comes automatically with the money to fund an area and the authority to govern that area. Congress must prohibit the use of condemnation to prevent condemnation. Even then, as seen in the Appalachian Trail experience, there is often an incremental increase in power, goals and funding so that landowners are rarely, if ever, safe.

Many in Congress are not aware that when the Park Service makes a report to Congress, it generally lists all sellers who sell before a judge rules on a condemnation case as willing sellers. Condemnation or Eminent Domain are ALWAYS used as threats in the land acquisition process. The agency continually fails to notify landowners of their rights or provide copies of the Uniform Relocation Act (91-646) as required by law.

The “willing buyer, willing seller procedure of acquiring land touted by park officials is ‘meaningless’ and a more proactive method is generally used,” said William Kriz, chief of Land Acquisition in an article in the Concord Journal in 1988.

Assorted reading opportunities: (Available on the ALRA WEB site at WWW.landrights.org)

A SOCIO-CULTURAL ASSESSMENT OF INHOLDERS ALONG THE APPALACHIAN TRAIL IN THE STATE OF NEW HAMPSHIRE by Kent Anderson. A report funded by the American Land Alliance located in Mountain View, California in 1983. Copies may be obtained through the American Land Rights Association, P. O. Box 400, Battle Ground, WA 98604. (360) 687-3087. FAX: (360) 687-2973. Web: www.landrights.org

PEOPLE OF THE BLUE RIDGE: A SOCIO-CULTURAL ASSESSMENT OF INHOLDERS ALONG THE BLUE RIDGE PARKWAY by Kent Anderson. A report funded by the Institute For Human Rights Research located in San Antonio, Texas in 1980. Web: www.landrights.org

THE PEOPLE OF THE BUFFALO: A SOCIO-CULTURAL ASSESSMENT OF INHOLDERS ALONG THE BUFFALO NATIONAL RIVER by Kent Anderson. A report funded by the Institute for Human Rights Research in 1981. Available at www.landrightgs.org

Testimony by Chuck Cushman regarding CARA, the Conservation and Reinvestment Act for the House Resources Committee from June 20, 2001 is available at www.landrights.org. It goes into far more detail about the land acquisition process, provides expanded lists of GAO reports, films, books and much more relevant to the debate over land acquisition by the National Park Service and other federal agencies.

Books

A Rage for Justice, The Passion and Politics of Phillip Burton. By John Jacobs. 1995, University of California Press, Berkeley and Los Angeles, California. (Former chairman of the Resources Comm.)

The Adirondack Rebellion by Anthony N. D’Elia. 1979 Onchiota Books, Glens Falls, New York.

The Taking by Joseph Gughemetti and Eugene Wheeler, 1981 Hidden House Publications, Palo Alto, California.

At The Eye Of The Storm, James Watt and the Environmentalists by Ron Arnold, 1982 Regnery Gateway, Chicago, Illinois.

Playing God In Yellowstone by Alston Chase, 1986 Harcourt Brace Javanovich, Orlando, Florida. Still in print in paper back on the Web.

Wake Up America, They’re Stealing Your National Parks by Don Hummel. 1987 Free Enterprise Press, Bellevue, Washington. Mr. Hummel was the former mayor of Tucson, Arizona, an Assistant Secretary in the Kennedy Administration and former concessionaire in Glacier National Park, Lassen National Park and Grand Canyon National Park.

Cades Cove, The Life and Death Of a Southern Appalachian Community by Durwood Dunn, 1988
University of Tennessee Press.

Films

“For The Good Of All”, an episode of the Public Television “Frontline” series first aired on June 6, 1983. Copies are available.

“For All People, For All Time”, a film by Mark and Dan Jury, that documented land acquisition in the Cuyahoga Valley National Recreation Area in Ohio. Copies are available from American Land Rights.

“Big Park” a part of the Outdoor Magazine Television Series. Produced by Grant Gerber and the Wilderness Impact Research Foundation, Elko, Nevada. Copies are available.

“Vanishing Freedom” a FOX NEWS Special by the FOX NEWS Network in July, 2000. Contact FOX NEWS at (888)-443-6988.

“Vanishing Freedom II” a FOX NEWS Special aired in May, 2001. For copies call FOX NEWS at (888) 443-6988.

Attached to this testimony is the statement of Kitty Breen, Daughter of Don Breen, the former owner of the Saddleback Mountain Ski Area in Maine.

Testimony of Kitty Breen to the House Subcommittee on National Parks, July 26, 2005.

To: The U.S. House of Representatives, Committee on Resources.

My name is Katherine Breen and I would like to thank you for providing me the opportunity to comment on my family's experience with the National Park Service (NPS) at Saddleback Mountain and why Congress should not give the National Park Service eminent domain authority on Trails.

The following is drawn from the 23 years of experience of Saddleback Ski Area with the NPS staff securing the Appalachian Trail.

Let me start by saying that when my father purchased Saddleback Ski Area in 1978, and the land around it in 1984 (comprising close to 12,000 acres) we viewed the presence of the Appalachian Trail as a plus, and as a wonderful natural summer recreational activity complementing the ski season. Likewise, the Rangeley Region prided itself on its hospitality to hikers. We wanted to develop Saddleback Mountain in an environmentally sensitive manner that honored and continued to sensitively promote the region's unique resources.

The Appalachian Trail had crossed Saddleback Mountain for many years and Congress was hoping to secure the passageway from willing landowners. From the beginning, we were willing landowners. We readily offered to donate to the NPS a protective corridor for the AT, to specifications that we believed were clearly spelled out, in relatively plain language, in the National Trails System Act of 1968 and its amendments in 1978. We believed that this donation could be made without significantly compromising the economic potential of the ski area: we thought this was a simple "win-win."

From our first meetings with the NPS, however, it was clear that their sights at Saddleback and their interpretation of the Act was quite different. In hindsight, it is clear that the NPS staff responsible for the AT regarded it as a primitive, wilderness trail, and Saddleback's plans were inconsistent with that goal. The fact that Congress had explicitly rejected the characterization of the AT as a wilderness trail in favor of a multi-use designation, designed to work in harmony with its neighbors, did not seem to have guided their behavior.

The negotiations over the fate of Saddleback Ski Area and the AT continued for 23 years, and consumed major financial resources which otherwise would have been used to further the mountain. Once the NPS raised the prospect of eminent domain, and targeted some of the most valuable ski terrain, Saddleback's ability to pursue even a modest expansion plan was reduced to zero. While Saddleback's closest competitors saw their ski areas expand and blossom over the years, Saddleback remained a small ski area trapped in a regulatory straightjacket. The ski area struggled financially, and its economic potential for the residents of Franklin County could not be realized.

Negotiations went on fitfully for many years. Saddleback made numerous donation offers, each more generous than the last, but never even received the courtesy of a reply. Because Saddleback was the largest winter employer in one of Maine's highest unemployment regions, politicians and community members joined in. Unanimous State Senate resolutions, newspaper editorials, and Gubernatorial and U.S. Senatorial and Congressional letters urging the NPS to accept one of the donations or work it out, were all to no avail.

From a family perspective, it became all time consuming. With the inability to grow, the ski area continued to lose major amounts of money. After 23 years at the helm, my father wanted to retire. However, with the land under the threat of eminent domain, Saddleback wasn't a viable business for any future owner to take on.

Even so, in late 1997, I left my career to help my father try and sell the ski area. We had given up completely on ever reaching an agreement with the NPS. It appeared that their strategy was to simply wait us out. The

Rangeley Region for Economic Growth Organization however had reopened the cause and asked us to meet with a member of Senator Snowe's staff in early 1998. They promised this time to really help resolve the issue.

Senator Snowe personally oversaw the next two negotiations with staff representatives attending from the other federal Congressional representatives. On several occasions during these and other negotiations, agreements were reached, only to be withdrawn later by the NPS once they returned to Washington. They never came to a single negotiation with a decision maker or the power to make a decision. At our request Chuck Cushman became involved and helped bring the issue to a head in the public arena.

In the summer of 2000, Saddleback found a long forgotten hiking trail on the back side of the mountain that would easily solve the problem. The staff of the Congressional Delegation hiked it and enthusiastically endorsed the solution. The executive director of the ATC who had previously hiked the path also agreed that it was beautiful and a viable solution. Saddleback's fourteenth donation offer was comprised of this complete wilderness trail as well as the continued hiking passageway over the mountain ridge, if desired. When the NPS refused to even explore it, the parties came to a complete stalemate. The issue was finally resolved only when the entire Maine Congressional Delegation, with the additional support of former Senator George Mitchell, brought the matter to the Secretary of the Interior, and over the heads of the NPS Appalachian Trail staff. Secretary Babbitt directed the NPS to accept Saddleback's corridor donation offer and to purchase the dissected and no longer attainable parcel of Saddleback's land for \$4 million. The sale was completed on Inauguration Day, 2001.

(Ironically, the NPS did indeed accept, as a donation from Saddleback Ski Area, the trail corridor itself as well as some land around an alpine pond. To the NPS, in the end we were "willing sellers," but as this statement will demonstrate, the use of this term when a landowner is dealing with the NPS staff responsible for managing the AT is anything but accurate.)

Although this sum relieved some of the financial pressure on Saddleback, it was obtained only after years of negotiation and tremendous legal and technical expense. Saddleback's financial losses over this period greatly exceeded that amount.

I raise all of these points because few other rural landowners have the financial resources required to make a comparable effort to resist the various pressures that a federal agency--and especially one with eminent domain authority--can bring to bear. In that vein, we strongly oppose permitting the NPS access to eminent domain authority for any existing or future trail. Although in theory the limited use of this authority may appear to provide a necessary tool to accomplish worthwhile public purposes, in our experience its use by the NPS is instead characterized by bad faith, arbitrary and inconsistent applications of the law, disregard of Congressional intent, and the simple but persistent bullying of rural landowners. We sincerely hope that no other landowner has to repeat our experience and learn these bitter lessons; after all, the same NPS staff that tormented Saddleback for 28 years is still in place, and able to continue this abuse of authority over the 2700 miles of the AT. There is nothing to prevent them from coming back for more to widen the trail.

Following are examples of NPS implementation of the National Trail Systems Act on the Appalachian Trail at Saddleback Mountain.

1. NPS staff consistently and repeated disregarded the express intent of Congress in creating the National Trails Systems Act. During Senate floor debate on the initial Act in 1968, two senators (one of whom was a sponsor of the Act) engaged in a colloquy specifically intended to establish land uses permitted near the Appalachian Trail. One use specifically mentioned by the sponsor as consistent with the Act's intent was ski areas. The debate, and the underlying Committee reports, also established that Congress intended to allow landowners whose property was bisected by the AT to cross the Trail in order to access and utilize their land.

Ski Areas, in particular, were cited as harmonious activities to have with the hiking trail. Congress was concerned with the rights of the landowner. In cases of conflict, the onus fell on the Trail to "meander" around.

In Saddleback's case, the ski area and its supporters repeatedly raised this history, without response from the NPS staff. Saddleback's ski terrain was bisected by the Trail. Despite numerous proposals by the ski area to design trail crossings that would have been barely noticed by a passing hiker, the NPS staff refused to entertain meaningful discussion on trail crossings in any commercially viable manner.

2. NPS staff applied the Act in a manner that was arbitrary and inconsistent. Saddleback Ski Area documented, with photographs and deeds, numerous instances in which other ski area operators had been allowed to undertake ski-related activities in close proximity to the AT--activities that were explicitly forbidden to Saddleback. For example, at other ski areas the AT and ski trails run for some distance on the same terrain, and permanent ski lift equipment is literally arms' length from the AT. Even so, in an effort to try and move ahead, Saddleback went to great lengths to find areas in the terrain where structures would be naturally hidden by craggy outcrops etc. Furthermore, because of Saddleback's unique topology with a flat top and steep sides, almost none of the ski development would have been seen in the foreground. The NPS refused to participate in identifying preferred lift locations, slight trail meanderings (in the matter of a few feet), or trail relocations on to other parts of the property that would avoid conflict while still preserving Congress' intended right of passage. In other cases--in particular Saddleback's close commercial competitor, Sugarloaf Mountain--the AT had been moved off of the mountain entirely.

In Saddleback's case, NPS staff refused to follow (or even seriously consider) applying the same standard as the ski area had documented at other sites. As mentioned above, Saddleback even documented a historic trail on other sections of the Saddleback property's ridgeline that would have offered a comparable hiking experience and preserved the permanent right of passage defined in the National Trails System Act, but NPS staff refused to walk or even look at (let alone consider) this alternative.

3. NPS staff construed its eminent domain authority to justify the taking of a far greater amount of land than intended by Congress. In Saddleback's case, the 1978 amendments to the National Trails System Act increased the NPS' condemnation authority to 125 acres per mile, equivalent to a corridor of 1000 feet, or 350 acres. The NPS interpreted this language to allow averaging of its holdings across the 2700 mile length of the AT. Much of the AT runs through national parks, state forests, and other protected areas, which requires a very limited protective corridor. Under the NPS staff's interpretation, this allowed a corresponding "balloon" acquisition in other areas, such as Saddleback, where the NPS had proposed taking 3,000 acres, land as far away as a mile from the AT. Additionally, by preventing a trail crossing, their holding would deny access to an additional 4,000 acres. Thus the NPS' threat to exercise their authority of eminent domain threatened 75% of the mountain's ski terrain.

The only sense that we could make as a family of their behavior was that the NPS' true aim was to create a new national park of sorts. Congress may believe that it is creating a system of trails, but based on Saddleback's experience, Congress may actually be creating the opportunity for NPS staff to create new national parks.

Saddleback Ski Area challenged the NPS staff's version of its authority, and they repeatedly referenced and selectively quoted from court cases they claimed to have won. We repeatedly asked to see these court cases; these were never forthcoming. In our own extensive legal research, we turned up only one court decision that considered the issue--and had not supported the NPS staff's opinion. Nevertheless, what could we do? We did not feel that we had the financial or time resources to sue the federal government. If we did and we won, it was our fellow tax payers, and not the NPS Staff who would bear the burden.

4. NPS staff relied on an outside environmental group, the Appalachian Trail Conference (ATC), to undertake advocacy actions and pressure tactics that would have been inappropriate for the NPS, but clearly served the NPS' goals. In the 1968 Act, Congress recommended that such a group be created to organize groups of volunteers to help maintain the AT in cooperation with the NPS. The ATC and its state affiliates does indeed undertake this component of its work, and does so very well. However, the ATC also engages in activities (such as media campaigns) that would not be allowable on the part of the NPS, but do create tremendous--and inappropriate--pressure on individual landowners to capitulate to the NPS.

In Saddleback's experience, the NPS and ATC spoke with one voice in negotiations, and clearly worked extremely closely. They are located in the same town, Harper's Ferry WV. In many cases in the Saddleback negotiations, NPS staff presented detailed maps that had actually been prepared by the GIS staff of the ATC.

In at least one instance, the NPS had an ATC staff formally present an alternative. Saddleback discussed and negotiated in good faith. At the end of several hours, concessions we had made had become the new baseline for future discussions, but the NPS declared it never supported the original alternatives. In our 23 years of negotiation, the NPS never provided written feedback on any of our fourteen donation offers, and never budged from their two initially desired land grabs.

5. The disparity in power between the federal government on one side and individual rural landowners in cases where the federal government has eminent domain authority makes the concept of the "willing seller" difficult to sustain. In Saddleback's case, our position as a leading regional employer provided the access to key elected officials required to contest the NPS. Legal, public relations and technical fees mounted to enormous amounts of money, well beyond the reach of most landowners, and the negotiations consumed inordinate amounts of time from the senior management of Saddleback Ski Area over a period of three decades.

But, leaving the financial difficulties and the emotional toll aside, what makes me the most sad, is the affect on the life dreams of those who fought so hard for Saddleback Ski Area and the people of Western Maine. These were good people. Their careers and lives were hurt by this lengthy, protracted and often ugly negotiation. They were ordinary people who wanted to do something positive in their lifetimes. Their dreams were destroyed for naught and their herculean energy was channelled instead into fighting an unnecessary battle. They deserved better. It's not what this country is supposed to be about.

It is my greatest hope that no other family, small business or region will have to endure the hardship that the NPS staff imposed on all of us.

Sincerely,

Katherine H. Breen
Formerly, Executive Vice President, Saddleback Mountain