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Testimony
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Before the
Subcommittee on National Parks, Forests and Public Lands of the
Natural Resources Committee of the
U.S. House of Representatives

Regarding H.R. 1286
Washington-Rochambeau Revolutionary Route
National Historic Trail Designation Act

October 30, 2007

Thank you for the honor of testifying today at the Subcommittee hearing on H.R. 1286, the Washington-Rochambeau Revolutionary National Historic Trail Designation Act. My name is Carol W. LaGrasse, President, Property Rights Foundation of America, a voluntary, non-profit, educational organization. We are national in scope, while based in Stony Creek, New York. I am a retired civil and environmental engineer.

New York is the state that I know best, and the trail passes through a significant portion of New York, including that long populated and developed area involving Peekskill and southward toward to Morristown, New Jersey. This statement draws entirely from my personal investigations, along with references by news sources to situations that I investigated separately.

Our concern is private property rights. I'd like to testify about five deficiencies of National Trails under the auspices of the National Park Service and how they can be corrected for the proposed 600-mile historic trail from Rhode Island to Virginia by amending H.R. 1286.

1. The Secrecy Problem

The Washington-Rochambeau Revolutionary National Historic Trail proposal is top secret as far as local property owners are concerned. This is a problem with Park Service trails. During the years when the National Park Service is developing a trail or is *involved* in the development of a major trail, our organization has the experience of receiving distress calls from confused property owners who are faced, without warning, with imminent trail development through their property. Eminent domain may be threatened. Investigation often reveals that the National Park Service is the primary party of one of the parties instrumental in the trail.

In 2002, a property owner ran across the proposal for the so-called Saratoga County Canalway Trail purely be accident when a piece of paper describing the time and location of a secret meeting was left carelessly on a desktop. Uninvited, I attended the meeting and discovered

that a new north-south trail being developed under cover was part of the new east-west cross-state Erie Canalway Trail. The new trail would be part of the National Park Service Erie Canalway Trail and would extend along the old Champlain Canal Route or the Hudson River north to Whitehall at the southern end of Lake Champlain. Many property owners would lose some of their land, often prime waterfront, but none had been notified. The article that I wrote, entitled "Saratoga County Canalway Trail Shrouded in Secrecy" and which our organization published in its New York newsletter was picked up by a local daily, *The Saratogian*.

However, even though our photos and description made it crystal clear where the trail would likely be built, and even though the daily *Saratogian* has good circulation, the property owners apparently failed to grasp the significance of what was published.

Now, five years later, people in the vicinity of the border of the towns of Saratoga and Stillwater, an area for which we actually have kept our photograph posted for these several years on our home page, are upset about unannounced physical trail cutting through their property. Where the Saratoga Canalway Trail would be located in Washington County to the north and elsewhere, there are large new National Park Service signs announcing the National Park Service Erie Canalway Heritage Area Trail. Freedom of Information Law disputes with the Town of Stillwater are arising, according to the more prominent daily to the south, the Schenectady *Gazette*, this month. Such landowner distress and the searches for concealed information related to their property would be prevented in the future with respect to the trail under discussion today with amendments to the bill to provide property owner notification to every individual property owner before any work proceeds to develop the trail, even through existing park land.

The bill should be amended to provide a prohibition of any work on the ground or planning work toward the trail even through park land, because this is where the trails that eventually proceed through a great deal of private property always start. The National Park Service's use of a park (a waterfront park in Schuylerville) as an innocent starting place was indeed the case with the Saratoga Canalway Trail, or north branch of the cross-state Erie Canal Trailway trail.

In additional to mailed notification of every individual property owner along the proposed trail, the bill should be amended to require that a public hearing be held in every municipality, e.g., every town, village and city, along the trail to publicize the specific route of the proposed trail and to receive the reaction of the potentially affected property owners. The National Park Service should be required to disclose not only the specific route, but the width of the trail, and the location of access routes, of which, for instance, there are many along the developing Saratoga Canalway trail. Speakers at this hearing should be restricted to private property owners, so that the trail group cultivated by the National Park Service does not overwhelm the meeting with outsiders.

The bill should be amended to provide that the trail will go forward through private property only if the impacted private property owners individually support the trail in writing.

Thus the secrecy deficiency would be eliminated, while also providing that the National Park Service would be motivated to make trail development more palatable to private property owners and to reign in its plans, so as to respect private property.

For background information, attached are reprints of two articles describing the use of secrecy to build a major trail, "Saratoga Canalway Trail Shrouded in Secrecy" and "Proposed Rondout creek Trail Threatens Private Property" (part of a cross-state trail where the National Park Service was guiding the trail from the background).

2. Lack of Public Participation

The second deficiency in H. R. 1286 is lack of public participation. Of course, this deficiency is intertwined with the secrecy deficiency. Amendment of H.R. 1286 to eliminate secrecy by requiring individual property owner notification by mail, coupled with the local public meetings describing the proposed trail route, and receiving property owner reactions before trail expenditures are made would, for this trail, solve the issue of the lack of public participation that is fundamentally wrong with past trail development.

3. Piecemeal Development

H. R. 1286 should be amended to overcome the current practice of piecemeal development of a major National Park Service or Park Service-affiliated trail, perhaps a side spur to the main Washington-Rochambeau Historic Trail, over decades to take one portion at a time, starting with existing parks, using local municipalities as covers for a more ambitious plan, and weathering one local defeat or another, returning to a locality after a local defeat, tackling another section of a trail, and gradually building the trail after exhausting one little bastion of opposition after another.

This aspect is important, because the town level of organizing is that level where the citizenry can influence government. However, their influence solely extends at that level to the local government itself. So, the local citizenry can see that local officials who accept a grant for the so-called "study" of a trail through private property are forced to back off for fear of defeat in the elections, for instance, but these citizens do not have the resources to organize an entire trail route, as became the case after local citizens defeated the relatively short Rondout section of the cross-state Delaware and Hudson Canalway Trail. Although they began to understand that, because it had a genesis that involved even the National Park Service, the trail threat would return, they did not have the organizational capacity to organize cross-state.

Therefore, H.R. 1286 should be amended to announce the entire trail route, to concurrently hold all of the hearings along the entire trail length, and to come back to Congress with the results of property owner participation along that entire trail length. If it is possible to garner property owner support, then the trail should be developed analogously to the construction of an interstate highway, all at once, rather than sneaking appropriations in one category or expenditure or another for the next 10 to 40 years.

4. Use of False Fronts for the National Park Service

Another deficiency that is typical of development of Park Service-related trails is the use of false fronts for the Park Service. One type of false front is the local municipality.
This device hides from the citizenry the true genesis and extent of the trail, and facilitates abuse of private property rights. H. R. 1286 should be amended to require that all trail development and

acquisition, except for that already in government ownership at the time of the passage of the bill, be directly and openly under the auspices of the National Park Service.

This deficiency in trail development also has a second feature, the use of non-profit trail "friend" organizations and management organizations to development and potentially manage the trail. Particularly objectionable is the Park Service's practice of planting and nurturing pseudo-grassroots "friends" organizations to create a false appearance of local support (while local citizenry and property owners are kept in the dark about the trail).

In the example of the Saratoga County Canalway Trail, the alias for the north branch of Park Service's Erie Canalway Trail, the Park Service and its consultants, the New York affiliate of the National Parks and Conservation Association and a paid local consulting architect whose name was not available on request, were training a local "friends" organization that, at the time I crashed their secret meeting in the local central school cafeteria, was made up of one woman and *potentially* one additional person to make an application for a pre-approved grant.

5. Use of Eminent Domain

The fifth deficiency of trail development by the National Park Service that should be remedied by amending H.R. 1286 is the use of eminent domain to develop trails. The amendment should apply in three respects. Obviously, the Park Service may have to occasionally use eminent domain to develop a trail, because a linear park, just as a linear highway, cannot be completed without coercion. But this use of force should be greatly reduced.

When the National Park Service has the power of eminent domain, it creates falsely construed "willing sellers" by wielding the fact that it ultimately has this power. The construction of a 600-mile trail is not an essential public service in the same sense as a highway or utility line. Therefore, the power of the Park Service to wield the force of eminent domain to create "willing sellers" should be ameliorated. H. R. 1286 should provide that the Park Service will have to return to Congress for approval of each individual property along the trail where eminent domain will be applied. This will stop a single property owner holding out, yet assure that the much abused use of eminent domain will be brought under control.

The second abuse of eminent domain to build a National Park Service trail is more subtle. When the citizens of Rosendale, New York, along the Rondout Trial, which was secretly a part of the cross-state Delaware and Hudson Trail, organized in 2003 to stop the trail because they feared that it threatened them with property degradation and recreational liability, they were drawn together by the threat of the Town of Rosendale using eminent domain to build the trail. They succeeded in forcing the Town to drop this policy. Another example in where trail eminent domain was threatened in New York where a surrogate appeared to be involved in acquiring land for a National Park Service-related trail was the case of Janice Revella facing the City of Schenectady. Her story was told in the local newspaper *Metroland* on November 7, 2002, which stated that the trail through her land was to "eventually connect to the 500-mile Canalway Trail that runs across the state" (the Erie Canalway Trail, article attached). H. R. 1286 should be amended to provide that the Park Service not accept any trail segments that have been acquired by eminent domain by any other government agency for trail purposes after the passage of the bill.

A third issue involving the use of eminent domain to build a National Park Service trail is more long range, but protection from this deficiency can be incorporated in H. R. 1286 in the case of the Washington-Rochambeau Trail. This issue is the use of eminent domain to widen an existing trail.

An eminent domain battle that held the attention of the public was the Park Service's imposition of eminent domain to widen the Appalachian Trail through the monastery of the Franciscan Friars at Graymoor in Garrison, New York. The Park Service already controlled 58 acres of the 400-acre Graymoor property through an easement granted by the friars, according to *Catholic New York* in July 2000 (article attached). The friars needed to keep the property to meet its future need for infrastructure such as waste water disposal. Their social ministries included a shelter for homeless men, an AIDS ministry, and other ministries, as well as free meals, showers, camping facilities, and lodging for hikers. Only when U.S. Representative Sue Kelly intervened as a result of the publicity generated by the threat to the beloved friars, did the Park Service have the U.S. Attorney General withdraw its formal eminent domain action.

To correct this deficiency before it arises, H. R. 1286 should be amended to specifically prohibit the National Park Service from using eminent domain from widening the Washington-Rochambeau Trail in the future, except where the use for a particular parcel is approved by Congress.

In summary, the proposal of a 600-mile trail through nine states plus the District of Columbia presents serious problems to private property owners that are not addressed in the bill. Amending H.R. 1286 to individually notify property owners, hold local meetings in every municipality, and obtain property owner support before any on-the-ground action by the Park Service is taken will correct the secrecy and the public participation deficiencies. Eliminating the deficiency of piecemeal development will foster full disclosure, public comprehension, and a level playing field for property owners. Eliminating the deficiency of false fronts of municipalities and non-profit organizations will facilitate fair public discourse and decision-making about the development of the proposed trail. Requiring that the Park Service come back to Congress for eminent domain to take parcels to develop for the trail or to widen the trail, and that the Park Service be prohibited from acquiring parcels acquired by others through eminent domain will reign in the current deficiency in Park Service procedure that favors coercing "willing sellers" under the threat of eminent domain and using others as surrogates to acquire trail sections under that power.

History is not merely events without a framework. Great men and women and the principles by which they lived and died move history. It is my conviction that, with these proposed amendments to H. R. 1286, the proposed Historic Trail in honor of Washington and Rochambeau would be more nearly grounded in the principles were hallowed by the founders in those world-changing days.

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