Appendix B

Interpreting the National Trails System Act – A Guide and Index

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INTRODUCTION

The National Trails System Act (NTSA) is a complex set of authorities that was first passed in 1968 and amended almost 25 times since then. This discussion looks at the Act, as amended through March 30, 2009.

The words "shall" and "may" are associated with most of the Act's legal authorities and indicate which authorities are mandatory (the shalls) and discretionary (the mays). A full listing of those two types of NTSA authorities is given in **Appendix A** above.

In addition, most of the NTSA authorities apply to the entire National Trails System – or at least to a specific category of many trails, such as national historic trails. Those broad authorities will be the focus of this paper. Other authorities pertain only to one or a few trails (or make

exceptions to the broad authorities for a particular trail or category of trails), and those will only be discussed minimally as relevant.

Some of these authorities have been used over and over again – and others perhaps not at all. None of the Federal agencies responsible for carrying out these authorities have had any guiding policy until recently, so practice has diverged over the years. The discussion will first present the various sections of the Act and then go back and discuss key authorities that have been significant, problematic, or often misunderstood. And index of the Act is presented below following the text.

SECTION BY SECTION DISCUSSION

Section 1 – The National Trails System Act's title.

Section 2, Statement of Policy – This section gives the general purposes of the National Trails System – to offer America's expanding population outdoor recreation and historic experiences -- with an emphasis on urban areas. Its purpose is to establish methods and standards by which trails can be established and made part of the System, beginning with the Appalachian and Pacific Crest National Scenic Trails (NSTs). It also highlights the important roles of volunteers in carrying out the purposes of the Act.

Section 3, National Trails System – This section defines the four types of trails created under this act: national recreation trails (see also Section 4), national scenic trails and national historic trails (see Section 5), and connecting and side trails (see Section 6). This section also describes "Federal protection component" for NHTs and gives authority for certification of non-Federal NHT segments. It gives authority for a uniform National Trails System marker and defines an "extended trail" as over 100 miles in length.

Section 4, National Recreation Trails – This section further defines the category of National Recreation Trails (NRTs) and outlines how they are recognized through secretarial action. The current NRT application procedures (different in Interior from Agriculture) are based closely on this wording.

Section 5, National Scenic and National Historic Trails
Subsection (a) of this long section lists all the NSTs and NHTs established by Congress under this Act. Each authorizing paragraph gives the name and category of the trail, the approximate length of the trail, and the geographic scope of the trail -- supplemented by a reference to a map in the related feasibility study of the trail. The "nature and purpose" of some trails is given in this paragraph; for others only the generic definitions in Section 3(a)(2) and (3) can be used. Authorities specific to individual trails, such as the "willing seller" provisions, are cited for each trail. (These passages seldom give the significance of a trail -- for that information, see each trail's feasibility study.)

Subsection (b) gives the requirements for NST and NHT feasibility studies, including the three required criteria for NHTs. Subsection (c) lists all the trails authorized to be studied, sometimes naming specific geographic components or other conditions. As in subsection (a), recent entries

have expanded to subparagraphs. Subsection (g), just added in 2009, lists dozens of supplemental routes associated with four NHTs to be studied for possible addition to those trails. A 1998 Interior solicitor's opinion asserts that the geographic scope of a trail is defined in the feasibility study, if adopted by Congress in the designating legislation.

Subsection (d) outlines the process for establishing and operating an advisory council for each NST and NHT. These are conducted under the rules and requirements of the Federal Advisory Committee Act (FACA). The generic authority calls for an advisory council to be established and operate for the first 10 years after establishment of a trail to guide it through its comprehensive planning and initial stages of development and administration.

Subsections (e) and (f) outline the content requirements of NST and NHT comprehensive management plans.

Section 6, Connecting and Side Trails – This type of trail may be established and designated by either the Secretary of the Interior or the Secretary of Agriculture. However, this authority has now been used just six times. In the absence of a clear application procedure for this type of trail, Federal agencies have adapted the application form for NRTs to document the nominated trails for Secretarial approval.

Section 7, Administration and Development – This section is the heart of the NTSA and defines a wide variety of authorities pertaining primarily to the administration of NSTs and NHTs (a few make reference to NRTs as well). These authorities relate to land acquisition, trail marking, facility development, management agreements, cooperative agreements, use regulations, land exchanges, and even tax benefits for donated interests in land. This section also has many passages that are open to variable interpretations. Many of the more notable or controversial authorities in Section 7 are discussed under "Discussion By Topic" below. In general, this section's authorities pertain to federal administration of these trails -- only in certain circumstances can they be shared with or delegated to trail partners.

Section 8, State and Metropolitan Area Trails – This section gives authorities to the secretaries of the Interior, Housing and Urban Development, Agriculture, and Transportation. The aim of this section is to incorporate trails and opportunities to create trails into a broad array of federal activities, such as HUD block grants and state comprehensive outdoor recreation plans, as well as state and local outreach programs. Executive Order 13195, *Trails for America in the 21st Century*, signed January, 2001, updates ways that these authorities can be implemented throughout the Federal Government. Subsections (d) and (e) lay the foundation for the preservation of railroad rights-of-way (ROWs) proposed for abandonment as recreational trails (see also subsections 9(c) and (d)).

Section 9, Rights-of-Way and Other Properties – This section is a set of discretionary powers to preserve and protect Federal rights-of-way (ROWs) for use as trails. It also gives powers to grant ROWs across trails to others, using laws pertaining to national forests and national parks. Subsections (c) and (d) give details about abandoned railroad ROWs and jurisdictions for management.

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Section 10, Authorization of Appropriations – With certain limits for specific trails, this section gives general authority for all necessary appropriations needed to carry out the Act. Significant amendments to this section in 1978 launched the land protection program for the Appalachian NST and in 2009 eliminated the prohibition of Federal funds for land acquisition for nine NSTs and NHTs.

Section 11, Volunteer Trails Assistance – This section encourages volunteerism for trails in general and components of the National Trails System specifically. Volunteers are encouraged to "plan, develop, maintain, and manage" trails of all types, as well as conduct research and provide education and training. Various volunteer act authorities are to be used as necessary. Federal facilities, equipment, tools, and technical assistance may be made available to volunteers.

Section 12, Definitions – Four terms are defined here: "high potential historic site," "high potential route segment," "state," and "without expense to the United States." The first two relate to NHTs and limit where Federal agencies may acquire lands and waters for NHTs. "States" include all U.S. states, territories, and possessions. "Without expense" makes an exception for Land and Water Conservation funds made available through state agencies.

DISCUSSION BY TOPIC, IN ALPHABETICAL ORDER

Another way to look at the National Trails System Act (NTSA) is by topic. This is especially true for authorities which appear in several sections or reference each other. To give an overview of these subjects, Appendix B offers a subject matter index to the Act, citing the sections and subsections where specific authorities occur. The most used, complex, or controversial topics are discussed below.

Advisory Councils

The intent of the NTSA is that each new trail will enjoy the guidance of a citizen advisory council as outlined in Sec. 5(d). This requirement was added to the Act in 1978 (PL 95-625). The first such council pertained to the Appalachian NST. It ended up offering invaluable access to high levels of state agencies in the trail's 14 states. Many of the councils over the years have greatly helped guide comprehensive management plans in the early days of a trail. The main problems faced by these councils are the biennial re-chartering and re-appointment requirements under FACA (The Federal Advisory Committee Act). Sometimes it takes 3-5 years just to get a council appointed in the first place. Often in the early days of a trail there is not even sufficient funding to support a council. Such councils can be waived if there is "lack of adequate public interest."

Carrying Capacity

Sections 5(e) and 5(f) of the NTSA outline the requirements for newly established trail comprehensive management plans (CMPs). Each section begins with calls for "specific objectives and practices to be observed in the management of the trail . . ." and ends with the phrase, "… and an identified carrying capacity for the trail and a plan for its implementation."

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The term "carrying capacity" derives from field ecology and attempts describe the nutritional substrate on which a species or multi-species community subsists. In theory, if the capacity is inadequate the species or community declines. Applied to recreation, carrying capacity implies that there may be a maximum amount of human use beyond which resource deterioration or human crowding are likely to occur. This concept is quite difficult to apply to long-distance trails that cross many physiographic regions and widely varying types of terrain. As a result, the concept was not even addressed in most trail planning documents until very recently. Meanwhile, lawsuits involving management of wild and scenic rivers (especially along the Merced River in Yosemite National Park) have caused a coalition of Federal agencies to re-examine the ways they define and implement carrying capacity and seek to widen the discussion to the more comprehensive term, "visitor use management."

Certification

The authority given for this in the NTSA is found in Section 3(a)(3) and pertains only to non-Federal segments of national historic trails which are already protected and are administered "without expense to the Federal Government." Building on this authority, some NHT offices have also certified trail-related sites and sites far from certain trails (but related to them thematically). In addition, some NST offices use the concept of certification to document fully completed sections of trail.

NHT segment certification is usually documented through some type of agreement citing this authority. Some of these are limited to five years, some are perpetual or until mutually terminated. For some trails certification was seen as a voluntary alternative to Federal land protection, and in some cases that has worked well. Partners have found certification a welcome and non-coercive way to gain recognition as an officially recognized part of a trail. Although the NTSA limits certification to segments, the demand for certification often comes from partners associated with specific sites. In the absence of commonly agreed-to guidelines and practices both within agencies and from one agency to another, many potential certifications have been put on hold.

Compliance

Compliance with related Federal laws is not specifically mentioned in the NTSA. However in many of the activities associated with national scenic and historic trails – as Federal actions -- compliance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and other regulatory and environmental laws, executive orders, and regulations, occupies significant time and effort. This also relates to trail staffs reacting to project proposals (highways, pipelines, solar plants, wind farms, etc.) that may adversely impact a trail and its land or water corridor.

NEPA requires that an environmental impact statement (EIS) be completed before any Federal action is taken that may have a significant effect on the quality of the human environment. Similarly, Federal actions are subject to review under Section 106 of the National Historic Preservation Act (NHPA) that requires Federal agencies to consider the effects of their actions on historic properties and provide the Advisory Council on Historic Preservation an opportunity to comment on such actions. The Council's regulations (36 CFR Part 800) implement Section 106 and outline the process by which "historic properties" (those listed on or eligible for listing

on the National Register of Historic Places) are considered in plans and treatment actions. In general feasibility studies and comprehensive management plans are conducted as environmental assessments (EAs) unless the level of controversy moves it into a more complex environmental impact statement (EIS) process.

For national trails, both the feasibility study and management planning stages offer ideal opportunities to establish ongoing consultation with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), the U.S. Fish and Wildlife Service (for rare and endangered species), and Federally recognized Indian tribes. At the planning stage – when the exact trail route, site details, and impacts may not yet be fully known -- one strategy that may work well is development of a Programmatic Agreement (PA). For historic preservation issues, a PA is often developed in consultation with the Advisory Council on Historic Preservation and other partners as needed, including SHPOs, THPOs, Federally recognized Indian tribes, local governments, and non-profit organizations.

For Federal agencies, Section 504 of the Rehabilitation Act relates to requirements for full accessibility along trails and related facilities. Section 508 of the same act deals with electronic equipment and information (especially websites). Soon the U.S. Access Board will issue rules about applying accessibility standards to new trails and trail-related facilities on Federal lands. Everyone involved with these trails will need to become familiar with the requirements of the new rules and the methods for seeking exceptions as appropriate to various trails and trail-related resources.

Compliance with a number of other laws and executive orders (EOs) may also be required, including, the American Indian Religious Freedom Act, the Archaeological Resources Protection Act of 1979, EO 13007 (*Indian Sacred Sites*), EO 13175 (*Consultation and Coordination with Indian Tribal Governments*), floodplain management EOs 11988 and 12148, the Native American Graves Protection and Repatriation Act, EO 11989 (*OHVs on Public Lands*), Prime and Unique Farmlands, Endangered Species Act (16 U.S.C. 1531-1544), and EOs 11990 and 12608 on Wetlands Protection.

In addition to the Federal requirements, many States and local governments have legal procedures for adhering to important laws safeguarding water quality, wildlife management, public safety, and other issues. Unless a trail under consideration for action (or planning) is completely on Federal land, there is a strong likelihood that applicable state and local laws will apply, especially for large-scale local actions.

Many Federal and State agencies have no idea that there are portions of the National Trails System on their lands or waters. For example, Section 3(a)(3)'s term "Federal Protection Component" implies that any Federally-controlled high potential site or segment of an NHT should be considered a protected resource. Guidance on how to conduct compliance varies from agency to agency. This becomes complex when two or more Federal Agencies are conducting a plan or operating a trail together. one approach to optimize pro-active compliance and minimize misunderstandings among agencies and partners is to foster continuing consultation, coordination, and concurrence on key issues.

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Comprehensive Management Plans

The NTSA guidance for comprehensive management plans (CMPs) is given in sections 5(e) and 5(f) which are almost identical. 5(e) is intended primarily for NSTs and 5(f) for NHTs. Most CMPs conducted over the years (since the first was published in 1981) have roughly complied with these requirements, but many have chosen to ignore key sections, such as identification of all significant resources to be preserved, a discussion of carrying capacity, an acquisition plan, and site-specific development plans.

A working paper about CMPs – how to fully carry out the NTSA requirements and provide a helpful guiding document applicable to all trail partners at reasonable cost – is being completed by the NPS National Trails System Office, in partnership with the Office of Park Planning and Special Studies.

Cooperative Agreements

The NTSA has some of the broadest cooperative agreement authorities available to Federal agencies. Since 1977, cooperative agreements providing federal financial assistance have been governed by the Federal Grant and Cooperative Agreement Act of 1977, as amended. It, in turn, is implemented through Department of the Interior regulations codified at 43 CFR 12 and a variety of OMB and agency circulars and agency guidelines.

Specifically, the NTSA authorizes cooperative agreements to provide federal financial assistance in the following sections:

-- to be shown as models in trail comprehensive management plans (NTSA sections 5(e)(1) and 5(f)(1)), and

-- with states and their political subdivisions and others to operate, develop, and maintain either Federal or non-Federal trail segments (7(h)).

Other NTSA sections use the term "cooperative agreement," but not for financial assistance:

-- to define exceptions for motor vehicles on or across trail sin certain circumstances (7(c)),

-- to accommodate suitable trail markers on non-Federal lands (7(c)),

-- to acquire lands or interests in lands (7(d)), and

-- for states to protect trail lands (7(e)).

In general, cooperative agreements have been stimulatory in nature, providing funding to enable partner groups, in partnership with Federal agencies, to carry out activities that implement the National Trails System Act. Most cooperative agreements must be renewed every five years. In some cases, other types of agreements, such as a memorandum of agreement (MOA) or a memorandum of understanding (MOU), or even a contract, may be more suitable ways to carry out collaborative activities with partners.

Feasibility Studies

The NTSA guidance for feasibility studies is given in section 5(b) and specific criteria for NHTs in subsection 5(b)(11). Feasibility studies are only conducted when authorized by Congress for the trails listed in NTSA section 5(c). Sometimes trails (such as the Washington-Rochambeau Revolutionary Route NHT) are studied as "special resource studies," of which one alternative

(and the one chosen) is to be a national historic trail. In such cases, these studies require that all the study requirements of the Trails Act be met.

Feasibility studies are very important for defining and assessing what a trail actually is. The first national trail studies were conducted by the Bureau of Outdoor Recreation and emphasized local and regional recreation demand. Later ones have been more resource and significance oriented. Most have been conducted by the National Park Service, with a few by other agencies as funds have allowed. In 1998 a U.S. Department of the Interior solicitor ruled that a trail feasibility study defines the geographic scope of a trail (when it is cited by Congress in the trail's establishment act) . If additional or significant changes are needed to more fully define the trail's scope, then Congressional action is required.

A working paper about feasibility studies – how to fully carry out the NTSA requirements and provide a complete analysis of any potential trails at reasonable cost – is being completed by the NPS National Trails System Office in Washington, DC.

Federal Protection Components

NTSA section 3(a)(3) states, *Only those selected land and water based components of a historic trail which are on federally owned lands and which meet the national historic trail criteria established in this Act are included as* ***Federal protection components*** *of a national historic trail.*

This implies that many Federally-owned sites and segments associated with national historic trails receive some type of protection due to their Federal ownership. In fact, NHTs cross the jurisdictions of many Federal agencies – including branches of the military – where multi-use missions or non-recreation missions immediately set up conflict with this assumption. An example of a multi-use agency fully setting aside a significant NHT corridor is the nomination of the 42-mile long Barlow Road along the Oregon NHT through the Mount Hood National Forest as a property listed on the National Register of Historic Places.

A more controversial setting is west of South Pass, Wyoming, where the Oregon NHT passes across Federal lands rich in oil and gas and the mineral trona (sodium carbonate ore). The Bureau of Land Management has worked hard to craft mining and drilling permits in this area which allow extraction while minimizing the visual and noise effects to trail visitors.

Federal protection components should be systematically described in each trail's feasibility study and evaluated in the trail's CMP so that all affected agencies agree to their location and extent. From then on, all possible management measures should be taken to ensure the long-term protection of those trail sites and segments.

Land Acquisition

The NTSA was primarily passed to protect two well-known hiking trails, the Appalachian and Pacific Crest NSTs. In fact, the most comprehensive land protection program associated with the Act has been carried out along the Appalachian NST. Generally, Federal land acquisition has been limited to NSTs, although almost all the NHTs have had access to willing seller authority (see below) since 1983. Funds for land protection have come from both the Federal and state

sides of the Land and Water Conservation Fund. Between 1980 and 2009, seven trails were restricted by the NTSA where no Federal funds could be use for land acquisition. That restriction was abolished in 2009 by P.L. 111-11.

There are a variety of NTSA authorities to help Federal agencies and others protect national trail corridors and the resources that give them enduring value. Section 7(d) of the Act provides the basic structure of methods that may be used to acquire lands for trail protection:

> *Within the exterior boundaries of areas under their administration that are included in the right-of-way selected for a national recreation, national scenic, or national historic trail, the heads of Federal agencies may use lands for trail purposes and may acquire lands or interests in lands by written cooperative agreement, donation, purchase with donated or appropriated funds or exchange.*

Section 7(e) expands on this with authority for cooperative agreements and acquisition of lands and interests in lands. The agency charged with trail administration shall encourage states and local governments to:

1. Enter into written agreements with landowners, private organizations, and individuals to provide for the necessary use of the trail right-of-way, or
2. Acquire such lands as are needed for the trail right-of-way.

Should states and local governments fail to act, Section 7(e) also provides Federal authority to:

3. Enter into written agreements with landowners, private organizations, and individuals to provide for the necessary use of the trail right-of-way, or
4. Acquire such lands as are needed for the trail right-of-way.

In addition, section 7(e) includes two important caveats:

- The land should be acquired in fee if other methods of public control are not sufficient to assure their intended use, and
- Land may be acquired from local governments only with the consent of such entities.

Section 7(f) provides authority to convey any Federally owned property in a given state -- and classified as suitable for disposal -- in exchange for any non-Federal property within the trail right-of-way. This section also provides authority to acquire whole tracts with the consent of the landowner, even though portions of the tracts may lie outside the area of trail acquisition. The excess lands may be used for exchange or sale, with the funds from such a conveyance being returned to the appropriation bearing the land-acquisition costs for that trail.

Section 7(g) provides authority to use eminent domain proceedings to acquire lands (or interests in lands) without the consent of the owner. This authority should be used only when all reasonable efforts to acquire the land through negotiation have failed. In such cases, the Secretary may acquire only such title as is reasonably necessary to provide passage across such lands. Further, the Secretary may not use such proceedings to acquire more than an average of 125 acres per mile. This section also limits direct Federal acquisition on NHTs to areas identified in the study report or comprehensive management plan as high-potential route segments or sites.

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Others important land protection authorities in the NTSA, by section, include:

- 7(h)(2) Federal rights-of-way (ROWs) may be reserved for national trails
- 7(k) Donations of lands are considered a conservation tax credit.
- 9(a) Easements and ROWs may be granted across Federal trail lands, with conditions related to the purposes of the Act.
- 9(b) Other agencies with Federally-owned linear corridors shall make them available for components of the National Trails System.
- 9(c) Federally ceded railroad grants, when abandoned, will revert to U.S. ownership, unless used for a public highway within one year .
- 9(d) Retained ROWS, both inside and outside Federal boundaries, may be used for national trails.
- 9(e) Rules are outlined for releasing abandoned Federal ROWs.

In short, the NTSA land protection authorities can be summarized as:

Land acquisition authority which authorizes Federal Government agencies to acquire national trail lands. Land acquisition can be carried out through easement, full-fee, exchange, or donation. The appropriate Secretary may acquire local government lands with owner consent (willing seller).

Exchanges are allowed for non-Federal property within a right-of-way. Any property that the Secretary of the Interior deems suitable for disposal may be used for exchange.

(Non-financial) cooperative agreements with States to encourage them to use state authorities to acquire land to protect national trails.

Federal financial assistance agreements with partners, local jurisdictions, organizations, and landowners to support and stimulate protection of national trail corridors.

Disposal can occur if a national trail right-of-way is relocated. The former owner must be informed and have first rights to re-acquiring the land.

<u>Markers and Logos</u>

A variety of NTSA authorities frame Federal involvement with trail markers, logos, and signs – both for trail specific logos (Section 7(c)) and a systemwide logo (Section 3(a). (A systemwide logo has never been developed to date). The general authority in 7(c) states:

> *The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker, including thereon an appropriate and distinctive symbol for each national recreation, national scenic, and national historic trail. Where the trails cross lands administered by Federal agencies such markers shall be erected at appropriate points along the trails and maintained by the Federal agency administering the trail in accordance with standards established by the appropriate Secretary and where the trails cross non-Federal lands, in accordance with written cooperative agreements, the appropriate Secretary shall provide such uniform markers to cooperating agencies and shall require such agencies to erect and maintain them in accordance with the standards established.*

This has been largely carried out, with the design of each trail marker logo usually occurring at the time of the trail's comprehensive management plan. In recent years, a set of guidelines has been developed to assure consistent lettering, sizing, and proportions so that two or more National Trails System signs can harmonize when shown together. NTSA section 5(f) for requires that NHT comprehensive management plans outline how these marking requirements will be implemented for specific trails. And Section 8(e), under *State and Metropolitan Area Trails*, allows Federal agencies to mark rail-trails and other trails relating to this section as part of the National Trails System. In fact, this authority has been used to provide a generic National Recreation Trail (NRT) logo for trails recognized as NRTs under Section 4 authorities.

NST, NHT, and NRT trail markers have significant symbolic value. It is often very difficult to develop a graphic for the center which fully captures the spirit and character and uniqueness a specific trail. However, once a graphic is found that people like, it may endure for years. These graphics should be simple and bold so that they will show up well on highway signs and other forms of public display. As Federal insignia, they are protected against unauthorized uses by Federal law (18 USC 701), especially if public notice has been made through the *Federal Register*. It has been the practice of Federal agencies that control and policing of a trail logo is the responsibility of each trail's administration office, with assistance, as requested, from that agency's Washington Office.

Regulations

Section 7(i) of the NTSA gives trail administering agencies broad powers to issue regulations "governing use, protection, management, development, and administration" of national trails. These should be developed in close consultation with State, local, and nonprofit partners. Even authorities pertaining to units of the National Park System and National Forest System can be used. However, to date, a minimum number of these regulations have been formally adopted. Three have been published in the *Code of Federal Regulations* (CFR):

36 CFR 7:100 – Use restrictions for the Appalachian NST (NPS)
36 CFR 212.21 – Use restrictions for the Pacific Crest NST (FS)
43 CFR 8351.1-1 – Prohibitions and exceptions for motorized vehicles on NSTs (BLM)

Rights-of-Way

This section of the NTSA (Section 9, *Rights-of-Way and Other Properties*) includes permitting crossings of trail rights-of-way and converting abandoned railroad corridors to recreational trails (usually not by Federal agencies). This section offers some very helpful authorities summarized below, by subsection:

9(a) – trail administering agencies may grant easements and ROWs along NSTs, NHTs, and NRTs with certain conditions.
9(b) – DOD, DOT, ICC, FCC, and FPC and other Federal agencies shall cooperate with trail agencies to provide properties or information about properties useful to the National Trails System.
9(c to e) – Abandoned railroad grants may be retained for trails, unless used for a highway within one year, with certain conditions.
9(f) – The terms "conservation system unit" and "public lands" are defined for this section.

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Volunteers

The NTSA was first crafted with the Appalachian Trail as its model. Volunteers have been key to the success and longevity of that Trail since the 1920s. However, the vibrant culture of volunteerism which characterized the Appalachian NST was not part of the original NTSA in 1968, but a provision was added in 1983 (as NTSA Section 11) acknowledging volunteer trail assistance and authorizing participation in planning, development, maintenance, and management. Since volunteers had already shown they could carry out myriad functions necessary to operate a trail successfully this was an appropriate Congressional action.

These volunteer authorities were some of the broadest in any Federal statute and also incorporated by reference are the Volunteers in the Parks Act of 1969 and the Volunteers in the Forest Act of 1972. These authorities are not limited to components of the National Trails System but also are available, where appropriate, for trails that could qualify for designation.

Section 11 also outlines the many functions volunteers can carry out, including research, education and training, planning, construction, and maintenance. Federal facilities, equipment, tools, and technical assistance can all be made available to support such volunteer work.

Willing Seller

When the NTSA was first passed in 1968 it initially established two trails – the Appalachian and Pacific Crest NSTs. As a result, section 7(g) was made applicable to both trails and authorized the use of eminent domain as a last resort when all other means of trail corridor protection has failed. This was one of the most controversial aspects of the Act during Congressional hearings when it was being considered in 1967. The issue raised its head 10 years later when a new wave of trails was being considered for addition in the Act, and as things turned out, most of the trails added in 1978 and 1980 were not only prohibited from using this eminent domain authority, they were denied use of any federal funds at all to protect the trail corridor (with one minor exception).

Starting in 1983, newly established NSTs and NHTs enjoyed (but seldom used) a compromise authority called the "willing seller" clause. Although there are variations, the basic language in each trail's establishment clause stated, *No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the United States for the trail except with the consent of the owner of the land or interest in land.*

Almost all of the trails added to the Trails System since 1983 have had some variation of this language. However, some of the 1978-1983 trails were stuck without even access to funds, with a minor exception "one trail interpretive site per trail per state." (This exception was actually used in several cases to purchase parcels used for visitor centers and interpretive sites.) Starting in 1999, advocates for the Trails System worked long and hard with members of Congress to bring these unfunded trails at least into a parallel status as the "willing seller" trails. That finally occurred in Section 5301 of the Public Lands Omnibus Act of 2009 (PL 111-11). Now all the national scenic and historic trail components of the National Trails System have access to willing seller authority.

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CONCLUSION

The NTSA has enabled several Federal agencies – in close partnership with many partners – to establish and operate a truly nationwide system of trails – of many types – that bring recreational, heritage, health, and economic benefits to many Americans (and international visitors). Its emphasis on partnerships and the significant roles for volunteers has been landmark among the Federal land-managing agencies.

One test of the solidity of Federal law is legal challenge. Only two authorities of the National Trails System Act have resulted in court cases: the use of eminent domain along the Appalachian NST and railbanking. Of 29 cases that appeared in the Federal appellate courts between 1985 and 2008, five related to the Appalachian NST and the rest concerned railbanking. One case, *Presault vs. Interstate Commerce Commission*, went to the Supreme Court where the NTSA railbanking powers were upheld unanimously.

Some people have commented that the National Trails System authorities are too often an "empty bag" of tools compared, for example, to highway law or even the development of pipelines and publicly-supported utility infrastructure. The fact that eminent domain can only be used as a last resort and on very few trails makes all the other trails that much more vulnerable to threats and interruptions. For many years section 10(c) prohibited Federal funds from being used on specified trails – fortunately that prohibition was abolished in 2009. In fact, the evolution of the implementation of the National Trails System Act and its many amendments accurately reflects changes in public and political trends across the United States.

The National Trails System Act was an experiment when it was first passed. In those days, the concept of "trail" meant largely a backcountry hiking or horseback experience. Later, the concept of historic trails was added onto the Act, and today, NHTs form the greatest mileage of the various types of trails created by the Act. The NTSA is an evolving law. It was been amended 37 times since first passed in 1968 (averaging almost once a year). With public input, Congress will continue to refine and reshape it to suit the changing needs of operating this far-flung system of many types of trails and trail uses.

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Index to the National Trails System Act (as of September, 2010)

This index is divided into two lists: General Terms & Authorities or Individual Trails.

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Great Western Trail	5(c)(45)
Ice Age NST	5(a)(10), 10(c)
Iditarod NHT	5(a)(7), 5(c)(12), 5(d), 10(c)
Illinois Trail	5(c)(26)
Indian Nations Trail	5(c)(20)
Jedediah Smith Trail	5(c)(27)
Juan Buatista de Anza NHT	5(a)(17), 5(c)(24)
Kittanning Trail	5(c)(7)
Lewis and Clark NHT	5(a)(6), 5(c)(4), 10(c)
Long Trail	5(c)(10)
Long Walk, The	5(c)(42)
Metacomet-Monadnock-Mattabessett Trail	5(c)(41), 5(a)(27)
Mormon Battalion Trail	5(c)(13)
Mormon Pioneer NHT	5(a)(4), 5(c)(11), 5(g), 10(c)
Natchez Trace NST	5(a)(12), 5(c)(5), 10(c)(2)
New England NST	5 (a)(27), 5(c) (41)
Nez Perce NHT	5(a)(14), 5(c)(21)
North Country NST	5(a)(8), 5(c)(6), 5(e), 5(f), 10(c)
Old Cattle Trails of the Southwest	5(c)(3)
Old Spanish NHT	5(a)(23), 5(c)(38)
Oregon NHT	5(a)(3), 5(c)(8), 5(g), 10(c)
Overmountain Victory NHT	5(a)(9), 5(c)(23)
Pacific Crest NST	5(a)(2), 5(e), 10(a)(1)
Pacific Northwest NST	5 (a)(30), 5(c)(22)
Pony Express NHT	5(a)(19), 5(c)(30), 5(g)
Potomac Heritage NST	5(a)(11), 5(c)(2)
Santa Fe NHT	5(a)(15), 5(c)(9)
Selma to Montgomery NHT	5(a)(20), 5(c)(33)
Star-Spangled Banner NHT	5(c)(40), 5(a)(26)
Trail of Tears NHT	5(a)(16), 5(c)(25)
Washington-Rochambeau Revolutionary Route NHT	5 (a)(29)