
Nos. 18-1584 and 18-1587

In the Supreme Court of the United States

U.S. FOREST SERVICE, *et al.*,
Petitioners,

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION,
et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

**BRIEF OF *AMICUS CURIAE* THE APPALACHIAN
TRAIL CONSERVANCY IN SUPPORT OF NONE
OF THE PARTIES**

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INTEREST OF THE *AMICUS CURIAE*¹

The Appalachian National Scenic Trail (the “Trail”) is a national treasure, the longest hiking-only footpath in the world, stretching 2,193 miles from Maine to Georgia, across richly varied ecosystems and geological domains. Hiking the Appalachian Trail, in whole or in part, has been a seminal life experience for millions of Americans.

The Appalachian Trail Conservancy (“ATC” or “Conservancy”)² is the primary private-sector steward of the Trail. Founded in 1925 to facilitate construction of the Trail, the ATC oversees the Trail’s maintenance, development, and protection, through a unique cooperative management system with federal and state agencies. The Conservancy organizes and supports the 31 local, state, and regional Trail Maintaining Clubs, through which most volunteers—“the soul of the Appalachian Trail”³—do the work to maintain the Trail. The Conservancy’s mission is to ensure that the natural beauty of the Trail is protected, forever and for all, through public

¹ No counsel for a party authored this brief in whole or in part, and no person or entity, other than *amicus curiae*, its members, and their counsel, made a monetary contribution to its preparation or submission. All parties have consented in writing to this filing.

² The Appalachian Trail Conference became the Appalachian Trail Conservancy in 2005.

³ Nat’l Park Serv., U.S. Dep’t of Interior, *Appalachian National Scenic Trail 2015 Business Plan*, at 17 (2015), https://www.nps.gov/appa/getinvolved/upload/APPA_2015_Business_Plan_page_version.pdf (2015 *Business Plan*).

engagement, broader landscape protection, and sound management and maintenance.

This case could substantially affect that mission. The U.S. Forest Service (“Forest Service”) granted an easement (under the Mineral Leasing Act, 30 U.S.C. § 185(a)) for a gas pipeline to cross under a portion of the Trail that runs through Forest Service land. The U.S. Court of Appeals for the Fourth Circuit ruled the Forest Service lacked authority for the easement because the relevant provision excludes “lands in the National Park System,” which the court held includes the Trail.

This case thus involves the management of the Appalachian Trail, the Conservancy’s central mission. The Conservancy believes it is essential that the Court understand how the Trail is administered—and how the Conservancy, with Trail Maintaining Clubs, carries out its mission in partnership with federal, state, and local government bodies. The cooperative management system has been effective in preserving and developing the Trail. The Conservancy asks the Court to assure—regardless how it decides the question presented—the continued vitality and effectiveness of that system.

The Conservancy has an equally strong interest in helping the Court appreciate what the Trail truly is. “A realm and not merely a trail marks the full aim of our efforts,” said the visionary who conceived the Trail,⁴ and the National Trails System

⁴ Larry Anderson, *Benton MacKaye: Conservationist Planner, and Creator of the Appalachian Trail*, at 226 (Johns Hopkins Univ. Press 2002) (quoting MacKaye’s message to 1931 ATC meeting) (*MacKaye Message*).

Act (“Trails Act”) embodies that vision. Pipelines crossing the Trail must not undermine the purposes and values of the Act—“the conservation and enjoyment of the nationally significant scenic, historic, natural, [and] cultural qualities of the areas through which” the path passes.⁵ The Conservancy hopes the Court will make clear, whatever its decision, that pipelines and other infrastructure must respect and preserve the Trail in full.

The question presented is whether the Mineral Leasing Act authorizes an easement for a gas pipeline under the Trail. The Conservancy does not take a position on that question, or on whether the particular pipeline at issue should go forward. The Conservancy’s paramount interest is the protection and enhancement of the Trail itself.

As the principal private-sector steward of the Trail, the Conservancy is uniquely placed to inform the Court about the nature of the Trail and how it is managed under the Trails Act.

SUMMARY OF THE ARGUMENT

From the beginning, the ATC has worked closely with the Forest Service and the National Park Service (“Park Service”), both in planning and in day-to-day practical operations. These three primary partners (with myriad other government partners and Trail Clubs) collaborated to advance values that were then embodied in the 1968 Trails Act. Through those working relationships, formalized after the Act in agreements establishing the cooperative

⁵ See 16 U.S.C. § 1242(a)(2).

management system, the ATC manages important federal interests in the Trail—including those of both the Park and Forest Services. The Conservancy and the Clubs, in turn, coordinate the efforts of approximately 6,000 volunteers, a critical resource for managing and maintaining the Trail.⁶ This unique management system is part of what makes it possible to have something that seems improbable: a 2,000-plus-mile-long experience of nature within a day’s drive of half the country’s population. To preserve the Trail—and its value as recognized in the Trails Act—the management system, which the Act also endorsed, must be maintained.

The court below did not detail the history of the Trail or the Act, or discuss the cooperative management system. Yet these topics are central to the case. The Park Service’s Organic Act defines the National Park System to “include any area of land and water administered by the [Park Service]”;⁷ while the Trails Act instructs the Park Service to “administer[]” the Appalachian Trail “primarily as a footpath.”⁸ Words like “administer” and “manage” have many meanings, depending on context.⁹ To administer the Appalachian Trail, the Park Service

⁶ *2015 Business Plan*, at 17. Volunteers contribute about 240,000 hours of labor annually, worth over \$5 million. *Id.*

⁷ 54 U.S.C. § 100501.

⁸ 16 U.S.C. § 1644(a)(1).

⁹ *Cf. Gen. Dynamics Land Sys. v. Cline*, 540 U.S. 581, 595-96 (2004) (“The presumption of uniform usage thus relents when a word used has several commonly understood meanings among which a speaker can alternate in the course of an ordinary conversation . . .”).

coordinates and oversees (in partnership with the Conservancy) the efforts of a complex network of land agencies and Trail Clubs administering local segments of Trail. The Park Service's role could fairly be called, administering, managing, coordinating, or many other terms. The same is true for what both the Park and Forest Services do for Trail-related land. To answer the question presented, the Court will need to step beyond mere labels to understand in more detail how the Trail is managed.

At the same time, the Appalachian Trail is more than just a 2,000-mile strip of blazed trail. Without the forests, mountains, rivers, and other environments that surround the path—the “realm”—the beaten track alone would not be the Appalachian Trail. Without the historical and cultural contexts through which it runs, the Trail would not be the same. Without the legacy of campsites and shelters built up and down the country to aid hikers, the Trail would not function in the way it was intended. The Trails Act recognizes all these aspects of the Trail; the Park and Forest Services, and the Conservancy, have long endeavored to protect them.

The cooperative management system resulted from decades of careful negotiation among federal, state, and non-profit partners, and from mutual respect among them. The Trails Act was meant to foster these relationships, by cutting through agency-jurisdictional boundaries to enable effective management of a resource spanning 14 states, thousands of miles, and multiple landowners (public and private). Each agency, each Trail Club, and the ATC takes responsibility for preserving the Trail.

Construing the Trails Act without taking into account these complexities could impair the effective implementation of the Act—with unfortunate consequences for the Appalachian Trail and the public lands it traverses, and similarly for other national trails. The Conservancy urges the Court to respect, preserve, and confirm the roles and authorities of the Forest and Park Services to manage, cooperatively, the Trail segments entrusted to their care.

ARGUMENT

Part I of this brief reviews the Trail’s history, and Part II describes the cooperative management system. Both demonstrate that the Trail, as a fully conceived “realm” offering experiences of nature, and the cooperative management system have been tightly linked all along. Part III presents standards that all pipeline crossings should satisfy.

I. THE TRAIL IS MORE THAN JUST A LONG, NARROW STRIP OF LAND.

A. The Trail was conceived as a “realm” of natural experience.

The original idea for an Appalachian Trail was that of Benton MacKaye, who proposed a unified trail system running the length of the Appalachian Mountains.¹⁰ In various localities, hikers had

¹⁰ Benton MacKaye, “An Appalachian Trail: A Project in Regional Planning,” *J. of the Am. Inst. of Architects* 9 (October 1921):325-30. The Conservancy is, in a separate letter, asking permission under Rule 32.3 to lodge with the Clerk a copy of this and other materials cited herein.

established recreational trails in places such as the Palisades region of New York. MacKaye proposed linking those trails and extending them nationwide, enabling every American to experience nature directly, and for as long as needed.¹¹ The Trail was intended to connect the national forests and other public lands that had been established (and more yet to come), each managed locally and maintained to Trail-wide standards.¹²

Building the Trail would require substantial planning and organization. In 1925, representatives from numerous hiking and trail organizations convened in Washington, D.C., along with federal and state representatives, to agree on basic principles. The non-government participants organized the ATC as a forum to develop plans and establish unified standards and to supervise the myriad local organizations and volunteers who would do the actual work.¹³ For example, the ATC developed the diamond marker (and later the white blazes) that makes the Trail recognizable along the length of the Appalachians.¹⁴

The “full aim” of MacKaye’s vision, and of the effort undertaken by the ATC and the Clubs, and later

¹¹ *Id.* at 328.

¹² *Id.* at 326, 328.

¹³ U.S. Dep’t of Interior, Nat’l Park Serv., *Trails for America: Report on the Nationwide Trail Study* 33 (1966), <https://www.nps.gov/noco/learn/management/upload/trails-for-america-1966.pdf> (*Trails for America*).

¹⁴ APPALACHIAN TRAIL AT MAINE TO GEORGIA, Registration No. 1037991 (filed July 29, 1974) (identifying first date of trademark use in 1925).

by government agencies, was “a realm,” accomplished by creating more public forests and parks along the central and unifying Trail.¹⁵ Thus, while in some areas the Trail used previously cleared treadway, the path would be blazed newly where no trails existed. It was also understood, from early on, that accommodations to existing management structures would have to be made on public lands without cleared trail, and also on undesignated sections of yet unprotected lands.

B. Creating the Trail

Developing the Trail meant much more than just clearing and marking the path.

An important task was to get permission from landowners for volunteers to cut the trail, and for hikers and other visitors to use it. It was impossible in the 1930s, and remains impossible today, for the Trail to run its whole length entirely on public land. Where it crossed private land, Trail Clubs and local forest or park officials obtained the necessary permissions from private landholders.¹⁶

For public land, the ATC negotiated permissions with relevant land-management agencies. At the federal level, those included the Forest Service (such as for the White Mountain National Forest in New Hampshire) and the Park

¹⁵ *MacKaye Message*, *supra* n.4.

¹⁶ See, e.g., Appalachian Trail Conference, *Sample Property Easement (1938)*, Appalachian Trail Histories, <http://appalachiantrailhistory.org/items/show/652>.

Service (which was developing the Great Smoky Mountains National Park).¹⁷

By the late 1930s the Trail had a continuous path,¹⁸ and the ATC turned to securing active support from government agencies for preserving the Trail as a functioning trailway where hikers, birders, anglers, and others could experience the natural landscape. These negotiations culminated in a 1938 agreement with the Forest and Park Services and a comprehensive agreement in 1939 with those agencies and land agencies from multiple states (the 1938 and 1939 “Trailway Agreements”).¹⁹ Recognizing that the Trail is not simply a right-of-way on a three-foot-wide strip, the participating agencies agreed to designate a quarter-mile zone on each side, within which there would be no new roads paralleling the Trail and no developments incompatible with the Trail.²⁰

The agencies also agreed to develop campsites and shelters along the Trail, each agency in the

¹⁷ The ATC later negotiated additional permissions as new federal reserves, such as the Fish and Wildlife Service’s Cherry Valley National Wildlife Refuge, were designated in areas where the Trail was already located.

¹⁸ *Trails for America*, at 33.

¹⁹ Mem. of Agreement for the Promotion of the Appalachian Trailway (1938); Mem. of Agreement for the Promotion of the Appalachian Trailway (1939) (*1939 Trailway Agreement*).

²⁰ *1939 Trailway Agreement*, § I. Originally the Trail was not exactly that long. The route has changed somewhat over the years, most significantly in a shift away from the Blue Ridge Parkway when it was built some years after the Trail. The current length is 2,193 miles.

sections it managed; and to provide funds for maintaining those facilities and the Trail overall.²¹ The Forest Service (with the Conservation Corps) then built an extensive system of shelters and huts. Trail Club volunteers later expanded those efforts, to enable hikers to find rudimentary shelter every 10 miles or so. These shelters are typically consistent with the ATC's "lean-to" design guideline issued in 1939.²²

The shelters remain an integral part of Trail culture. Hikers sleep and stop to eat at them, and also meet other hikers with whom to socialize and share the Trail experience. Many hikers have made new friends at shelters and then traveled some distance together on the Trail.

The agencies also committed to enlarging public landholdings along the Trail.²³ Recognizing that significant lengths would remain in private hands, they agreed to encourage legal developments—from acquisition of easements to changes in zoning regulations—to "protect[] the scenic and recreational values" of the Trail.²⁴

²¹ *Id.* § IV.

²² *Id.*

²³ *Id.* § V.

²⁴ *Id.* § VI.

C. The Trails Act continued and enhanced the cooperation among multiple agencies and the ATC.

Despite these successes, the Appalachian Trail remained vulnerable.

The Trail's popularity was growing rapidly,²⁵ and the increased traffic strained relations with some private landowners. Only 40% of the Trail was on public land. Private landowners might obstruct or hinder use of the Trail, and the limited permissions landowners provided were hardly adequate to ensure access on a large scale.

Moreover, post-World War II development on privately owned land threatened the Trail's scenic and natural values. The ATC itself was not in a position to compensate landowners for restricting development to the degree necessary—such as the quarter-mile buffer zone to which public land agencies had committed—to preserve those values along the full length of the Trail.

Public land acquisitions were therefore an ongoing priority. While agencies had committed to that effort in the Trailway Agreements, acquisitions were slow and sporadic without continued, dedicated public funding.

Meanwhile, the Agreements could be terminated at six months' notice. And the commitments of the participating agencies necessarily remained vulnerable to changes in

²⁵ “2.5 million people from around the world visited the trail” in 2013. *2015 Business Plan*, at 3.

priorities, in funding, and in their legal mandates.²⁶ An agency might find it necessary to depart from its commitment to restrict land usage, especially with respect to roadbuilding near the path of the Trail.

The Blue Ridge Parkway brought those problems to the fore. The federal government built a scenic road on an eastern ridge of the Appalachian Mountains, running parallel in some areas to the already-established Trail. For decades the ATC and its government partners debated the route of the Parkway and the impacts on the Trail. Eventually the ATC relocated a large section of the Trail away from the Parkway. The experience demonstrated that the Trailway Agreements alone were inadequate protection; and other roads proposed over the years also threatened the Trail's integrity.

In the 1960s, the nation acted to preserve the Appalachian Trail and develop more trails like it by establishing federal status for "national" trails. The new system was modeled on the ATC's special arrangements with government partners.

President Johnson led the call for a national trails system in his 1965 Natural Beauty Message.²⁷ "The forgotten outdoorsmen of today," he said, "are those who like to walk, hike, ride horseback or

²⁶ See *Trails for America*, at 42 ("These contractual agreements do not have the strength of Federal law and it has not always been possible for the signatory entities to adhere strictly to them.").

²⁷ *Public Papers of the Presidents of the United States: Lyndon B. Johnson, 1965*. Volume I, entry 54, pp. 155-165. Washington, D.C.: Government Printing Office, 1966.

bicycle,” and “[f]or them we must have trails.”²⁸ The President instructed the Secretary of the Interior to “recommend to me a cooperative program to encourage a national system of trails,” through which the country could “copy the great Appalachian Trail in all parts of America.”²⁹

Secretary Stewart Udall responded by commissioning the pathmarking “*Trails for America*” study. Prepared by the Interior Department’s Bureau of Outdoor Recreation, *Trails for America* surveyed existing trails to recommend governance models and legislation to strengthen and expand the national trails system.³⁰ The Appalachian Trail was the exemplar, and it illustrated how a “standard of excellence in the routing, construction, maintenance, and marking consistent with each trail’s character and purpose should distinguish all national scenic trails.”³¹

The report recognized that in the administration of national trails, a primary challenge arises from “the linear nature of the trails and the complex pattern of land ownership along them,” as trails “cross some lands that are administered by Federal, State, and local public agencies, and other lands that are privately owned.”³² It recommended a

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Trails for America*, at 5.

³¹ *Id.* at 25.

³² *Id.*

strategy that became central to the concept of national scenic trails:

[T]he management of national scenic trails should be shared by several Federal and State agencies. Single-agency management, as with a National Forest or a National Park trail appears impractical. The land management agency having jurisdiction of the land on which any particular segment of the trail lies, should be responsible for management.³³

The report distinguished two layers of responsibility. First, “[o]wnership, construction, maintenance, and management . . . should be shared by the several Federal, State and local agencies, and private organizations and individuals that own or control land along each trail route, as well as by private organizations . . . that may have entered into appropriate agreements to further the purposes of the trail.”³⁴ Second, “[p]rimary administrative authority to insure continuity of each national scenic trail and to coordinate the efforts of the participating agencies should be assigned to either the Secretary of the Interior or the Secretary of Agriculture.”³⁵

The report suggested roles for the administering agency, such as “locat[ing] and designat[ing] the route and width of right-of-way of each trail” and “establish[ing] construction and

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

maintenance standards including standards for related facilities that will adequately protect trail values and provide for optimum public use.”³⁶ In addition, “[t]he Secretary having primary administrative responsibility” for a trail would “enter into cooperative agreements with the States, local governments, and private organizations and individuals concerned to achieve the necessary protection.”³⁷

The report emphasized the need for continued land acquisitions, to be the responsibility of the various agencies with existing landholdings along a trail. “Within the exterior boundaries of areas under their administration, the heads of Federal agencies should be able to acquire lands or interests in lands for trails.”³⁸ For example, at the time of the report, 25% of the Trail was within National Forests. The report noted that in those areas, the Forest Service and the ATC “share[d] responsibility for construction and maintenance.”³⁹ For trail segments “outside the exterior boundaries of Federal areas,” the administering Secretary would “encourage State and local public agencies to acquire, develop, and manage” the surrounding land or “enter into cooperative agreements with the private owners to achieve the necessary protection.”⁴⁰

³⁶ *Id.* at 27.

³⁷ *Id.* at 26.

³⁸ *Id.*

³⁹ *Id.* at 42.

⁴⁰ *Id.* at 26.

Trails for America reflected the concept that had motivated the Appalachian Trailway Agreements. “The natural and scenic qualities and historic features along and near national scenic trails must be protected.”⁴¹ Thus, along each trail, “sufficient land area on both sides to safeguard adequately and preserve its character . . . should be protected . . .”⁴² Beyond simply a lane for foot traffic, the right-of-way “should be wide enough to protect adequately the natural and scenic character of the lands through which the trail passes and the historic features along and near along the trail, and to provide campsites, shelters, and related public-use facilities as necessary.”⁴³

Consistent with the Appalachian Trail partnership model, the report recommended “[p]articipation in trail management by responsible private, nonprofit, trail organizations.” “Contractual agreements should be concluded . . . between public agencies which acquire the right-of-way and private groups which agree to accept the responsibility to construct, operate, and maintain the trail,” such as the ATC.⁴⁴

Three years later, the Trails Act effectuated the *Trails for America* recommendations—particularly the concept of shared responsibility for

⁴¹ *Id.* at 27.

⁴² *Id.* at 26.

⁴³ *Id.* at 27.

⁴⁴ *Id.* at 26.

Trail administration.⁴⁵ The Act established the National Trails System, comprising recreation trails, scenic trails, historic trails, and connecting or side trails.⁴⁶ The management system for trails was modeled (as *Trails for America* had suggested) on the pre-existing system for the Appalachian Trail:⁴⁷ a cooperative partnership arrangement, as existed under the Trailway Agreements, with each trail under the overall supervision of either the Interior or Agriculture Secretary and other landholding agencies responsible for their segments of trail.

The administering Secretary for each trail was charged with many of the responsibilities that *Trails for America* suggested should be part of that coordinating role, such as “select[ing] the rights-of-way”; encouraging state and local governments to acquire lands within a trail’s right-of-way in areas outside of “the exterior boundaries of federally administered areas”; “provid[ing] for the development and maintenance of such trails”; “provid[ing] for trail interpretation sites . . . to present information to the public about the trail”; and “issu[ing] regulations . . .

⁴⁵ Pub. L. No. 90-543, 82 Stat. 919 (1968) (codified as 16 U.S.C. ch. 27). See H.R. Rep. No. 90-1631, 90th Cong. 2d Sess., at 7 (1968) (noting that “[Trails for America]’ formed the basis for the recommended legislation”).

⁴⁶ 16 U.S.C. § 1242(a).

⁴⁷ “H.R. 4865 . . . is designed to determine whether it is feasible to extend to other areas of the Nation the principles which have already made the Appalachian Trail an outstanding outdoor recreation resource.” H.R. Rep. No. 90-1631, at 9.

governing the use, protection, management, development, and administration” of the trail.⁴⁸

The Act assigned the Appalachian Trail to the Park Service. Uniquely among the trail designations, the statute said the Trail would be “administered primarily as a footpath.”⁴⁹ This phrase does not mean the Trail is, unlike other national trails, administered as a strip of land. It just means the Trail is meant mainly for foot traffic.⁵⁰

The Trails Act did not establish the Trail as a “unit” of the Park System. The Park Service applied that label on its own, an administrative decision it could freely make because “unit” status, in itself, had fairly little legal consequence.⁵¹ The current term “System unit,” in 54 U.S.C. § 100102, did not exist until a general revision of the Park Service’s Organic Act in 2014.⁵² Until then there was no statutory

⁴⁸ 16 U.S.C. § 1246.

⁴⁹ Compare 16 U.S.C. § 1244(a)(1) with *id.* § 1244(a)(2) *et seq.*

⁵⁰ See H.R. Rep. No. 90-1631, at 10 (noting that “primarily as a footpath” meant the Trail “primarily” for hikers but might be appropriate for travel such as horseback riding where such uses were “accepted and customary”).

⁵¹ See Nat’l Park Serv. Reference Manual 45, § 3.3 (Jan. 2019), https://www.nps.gov/policy/Reference_Manual_45.pdf (describing consequences of “unit” status: a separate line item on the Park Service’s budget request, access to professional program services, and designation of a “superintendent”).

⁵² See Pub. L. No. 113-287, § 3, 128 Stat. 3094 (2014) (enacting Title 54 as positive law); H.R. Rep. No. 113-44, 113th Cong. 1st Sess., at 21 (2013) (noting no prior source for section 100102); compare, *e.g.*, 54 U.S.C. § 100101(a) (management principles of “System units”), with 16 U.S.C. § 1(a) (predecessor provision not using the term “System unit”).

definition for the term “unit.”⁵³ And the Trail is not a “square park,” a term used for an area with statutorily delineated metes and bounds, fully within the control of the Park Service. The Park Service’s administrative designation of the Trail as a “unit” is, the Conservancy believes, not informative for the statutory question presented in this case. More important is what constitutes the “Appalachian Trail” under the Trails Act and what trail and land management the Act mandated.

Consistent with the pre-existing arrangements for the Appalachian Trail and with *Trails for America*, federal agencies retained their management authority over segments of the Trail entrusted to their care. For example, “[w]here the trails cross lands administered by Federal agencies,” trail markers “shall be erected . . . and maintained by the Federal agency administering the trail” (i.e. the agency in charge of the land being crossed) “in accordance with standards established by the appropriate Secretary” (the agency administering the trail as a whole).⁵⁴ “Within the exterior boundaries of areas under their administration that are included in the right-of-way selected for a . . . trail, the heads of Federal agencies may use lands for trail purposes.”⁵⁵

⁵³ A Congressional Research Service report says a 1970 revision to the Park Service’s Organic Act defined “units of the National Park System”; but that statement is erroneous. *Compare* Cong. Research Serv., “National Park Service Affiliated Areas: An Overview,” p.1 (Aug. 5, 2019), <https://fas.org/sgp/crs/misc/IF11281.pdf>, *with* Pub. L. No. 91-383, § 2, 84 Stat. 825, 826 (1970) (defining “national park system” but not “unit”).

⁵⁴ 16 U.S.C. § 1246(c).

⁵⁵ *Id.* § 1246(d).

Conversely, the Secretary with overall responsibility for a trail may determine “[t]he location and width of . . . rights-of-way across Federal lands under the jurisdiction of another Federal agency” only “by agreement [with] the head of that agency.”⁵⁶ Meanwhile, “[d]evelopment and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land.”⁵⁷

To preserve the ATC’s management role, and enable such arrangements for other trails, the Act authorized a trail-administering agency to enter into “cooperative agreements” with organizations and individuals “to operate, develop, and maintain any portion[]” of the trail.⁵⁸

The Trails Act also perpetuated the Trailway Agreements principle that to preserve a scenic trail, the surrounding areas must be protected from developments that would detract from the trail experience. By definition, a national scenic trail is “so located as to provide for . . . the conservation and enjoyment of the national[ly] significant scenic, historic, natural, or cultural qualities of the areas

⁵⁶ *Id.* § 1246(a)(2). “Trails may be located within any federally administered area, with the consent of the agency having jurisdiction over the lands involved. . . . [U]nless otherwise agreed, the land management agency shall operate and maintain that segment of the trail which passes through its lands.” H.R. Rep. No. 90-1631, at 10.

⁵⁷ 16 U.S.C. § 1246(a)(2).

⁵⁸ *Id.* § 1246(h)(1).

through which [the] trail[] may pass.”⁵⁹ For the Appalachian Trail in particular, the right-of-way should “include lands protected for it under agreements in effect as of . . . October 2, 1968[], to which Federal agencies and States were parties”⁶⁰—chief of which were the Trailway Agreements, with the quarter-mile protective buffer zones.

II. THE COOPERATIVE MANAGEMENT SYSTEM IN PLACE TODAY IS THE PRODUCT OF EXTENSIVE NEGOTIATION.

A. Federal agencies and the ATC preserved the pre-1968 management model, adjusted to conform to the Trails Act.

Though the Trails Act was modeled on and preserved the concept of the Appalachian Trail and its management model, certain changes were inevitable with the transition to formal federal oversight. The Act established the Park Service as the administering agency for the Trail but left important responsibilities with the agencies holding the land over which the Trail crosses. The Act altered the role of the ATC as the leader of Trail preservation, adding the Park Service as the ultimate guarantor of the Trail’s trust and resources and the values that earned it statutory commendation. The Act encouraged the Park Service to continue the ATC-government partnership that had been (and continues to be) so successful.

⁵⁹ *Id.* § 1242(a)(2).

⁶⁰ *Id.* § 1244(a)(1).

The Forest and Park Services quickly developed an initial understanding of their respective functions. In a 1970 Memorandum of Agreement replacing the 1938 Trailway Agreement, they recognized that “significant portions of the Appalachian National Scenic Trail traverse lands under the separate administrative jurisdictions of the National Park Service and the Forest Service.”⁶¹ They also realized that, under the Act, the Forest Service would be acquiring land “for Trail purposes.”⁶² The 1970 Agreement committed the Forest Service to report those acquisitions (including “interests in lands”) to the Park Service.⁶³

The agencies would coordinate their “interpretive activities” regarding the Trail. But the Park Service would “be responsible for developing and publishing any needed maps, brochures, press releases, etc., of a general nature for the entire Trail.”⁶⁴ (In the cooperative partnership, the ATC actually publishes the official guides and hiking maps for the Trail.)

⁶¹ See Mem. of Agreement between the Nat’l Park Serv., U.S. Dep’t of Interior and the U.S. Dep’t of Agric., Forest Service Concerning Appalachian National Scenic Trail, at 1-2 (1970), <https://go.usa.gov/xpNru> (*1970 Agreement*).

⁶² *Id.* at 2.

⁶³ Pub. L. No. 90-543, § 10, 82 Stat. 919, 926 (1968). The Park Service, as the trail-administering agency, took responsibility for recording the expenditures of all agencies for such acquisitions, to accumulate them against statutory caps. *1970 Agreement*, at 10, § 1.

⁶⁴ *1970 Agreement*, at 11, § 9.

Under the new legal regime, the ATC's first arrangements were with the Park Service, as overall Trail administrator. (The ATC later formed a separate agreement with the Forest Service, which remains an essential partner because it manages Trail segments in national forest areas.) Their 1970 agreement continued much of the pre-Act relationship, but it shifted final decisionmaking authority to the Park Service. For example, "mapping of the Trail and the selection of rights-of-way . . . shall continue to be a cooperative venture" involving ATC's member Clubs with landholding agencies and the Park Service. For Trail relocations "affect[ing] segments of the Trail within national forest boundaries or lands under the administration of another agency," the ATC was tasked to work with that other agency (such as the Forest Service) to reach tentative agreement on the revised route.⁶⁵ But unlike the pre-Act process, ATC would submit that "recommendation[]" for Park Service approval.⁶⁶

Despite these changes, all parties maintained their previous understanding of the nature of the Trail itself. The Forest and Park Services continued their commitment to maintain buffer zones protecting the Trail—each of them "for segments of the Trail which traverse areas under their separate administration."⁶⁷ Decisions about how wide the zone

⁶⁵ Mem. of Agreement between the National Park Service, U.S. Dep't of Interior and the Appalachian Trail Conference Concerning Appalachian National Scenic Trail, § 2 (1970) (*1970 ATC Agreement*).

⁶⁶ *Id.*

⁶⁷ *1970 Agreement* at 10, § 2.

should be in a given area would “take into account variations in terrain, land cover, land management, scenic and historic points of interests [sic], natural features, cultural qualities, recreational values and other factors that may affect . . . the Trail.”⁶⁸

B. The three primary partners developed a common vision of the Trail.

By 1981, the agencies responsible for the Appalachian Trail, together with the ATC and other private-sector stewards, worked out the details of their respective roles and responsibilities. The shared understanding is memorialized in a 1981 master plan prepared by the Appalachian Trail Park Office, and adopted by the Park and Forest Services.⁶⁹ The 1981 plan was prepared at Congress’s instruction, and the Park Service provided the plan to the appropriate congressional committees.⁷⁰

The management of the Appalachian Trail revolves around development, maintenance and protection of the “Trailway,” “a ‘zone of concern’ in which consideration of the effects of land uses on the Trail experience is important.”⁷¹ The “zone” is more than just the Trailway Agreements’ quarter-mile buffer; it is “[a] general term describing the

⁶⁸ *Id.*

⁶⁹ *Comprehensive Plan for the Protection, Management, Development and Use of the Appalachian National Scenic Trail* (1981), <https://www.nps.gov/appa/getinvolved/upload/AT-Comprehensive-Plan-1981-Part1.pdf> (1981 *Plan*).

⁷⁰ Pub. L. No. 95-625, § 511(e)(2), 92 Stat. 3467, 3511 (1978).

⁷¹ 1981 *Plan* at 2.

environment of the Trail.”⁷² While in some places the “zone” comprises entirely public, Trail-dedicated land, in others, the Trailway might include “private lands adjacent to the corridor” and multiple-use public lands, “on which consideration of the Trail is sought on a cooperative basis.”⁷³

Major goals of Trail management are “to assure that the Trail will be continuous, in a desirable location, and that it will be adequately buffered from incompatible developments, to the extent that objective is achievable”—in other words, that the Trailway is protected.⁷⁴ Agencies managing the underlying land achieve this through varying methods, such as “specify[ing] a corridor of certain width . . . where no detrimental management actions will occur” or by establishing “zone[s] of consultation” where “actions [that] might have adverse impact on the hiking experience” will be the subject of discussion with volunteer clubs.⁷⁵

It is not only the quality of the landscape and visible land uses which affect the Appalachian Trail experience, however. Noise pollution, degradation of air quality, and that intangible, the human community along the Trail, all affect the enjoyment of Trail users. Even where the Trail seems securely enveloped in National Parks, National Forests, and

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 23.

⁷⁵ *Id.*

state park and forest land, activities on lands adjacent to or within these units may adversely affect the Trail. . . . The Trail values to be perpetuated include more than a narrow footpath, and the scheme for protecting these values must thus be broader than simple ownership of land.⁷⁶

C. Local management of the Trail is critical to the cooperative system.

The means for achieving all this is the decentralized cooperative management system.

“[L]and-managing agencies retain their authority on lands under their jurisdiction.”⁷⁷ This authority is devolved down to the appropriate local or regional level within a given federal agency—the particular national forest, park, or other unit of the federal estate.⁷⁸ For example, the Trail passes through lands of the White Mountain National Forest, and the regional officials responsible for that National Forest handle Trail management for the segments within their territory. The Trail passes through the Delaware Water Gap National

⁷⁶ *Id.* at 25, 27.

⁷⁷ *Id.* at 12-13; *see also* Mem. of Understanding (Appalachian National Scenic Trail), § 3(c) (1987) (agreement on common principles regarding the Trail among 4 federal land-managing agencies, 16 state land-managing agencies, and ATC) (“Federal and state lands so designated will continue to be managed for multiple use.”).

⁷⁸ Currently, the Trail cover lands managed by, in addition to the Forest and Park Services, the Tennessee Valley Authority, the Fish & Wildlife Services, and the Smithsonian Institution.

Recreation Area, and those local Park System officials do the same. Meanwhile, local Forest Service offices handle all normal land-management activities regarding any segments of the Trail located on Forest Service land, the same for other Forest Service land elsewhere, and Park Service offices do the same regarding Trail segments located on their land. Similarly, specific state park and forest units are directly responsible for managing their stretches of Trail and retain their management responsibilities for land the Trail crosses.⁷⁹

Local and regional Trail Clubs participate in managing the Trail in their areas, in partnership with the corresponding government units. Volunteer contributions are essential everywhere along the Trail,⁸⁰ but the balance between government and volunteer activity varies with locality. The tasks involved include maintaining the path itself; “monitoring newly-acquired corridor lands to assure their proper management”; providing information for hikers; communicating with adjacent landowners; responding to emergency situations; studying Trail usage; selecting routes when changes are needed; planning for the future; providing and maintaining adequate facilities, signage and structures; and more.⁸¹

Which of these tasks fall to the Trail Club or to the government unit is resolved at the local level. Indeed, exactly how and to what degree these tasks

⁷⁹ *1981 Plan* at 13.

⁸⁰ *See 2015 Business Plan* at 5.

⁸¹ *1981 Plan* at 11.

are carried out is determined locally. For example, the planning and monitoring needed to maintain the viewshed on the stretch of trail through the C&O Canal National Historical Park are different from those needed in remote areas of North Carolina. Facility needs and emergency response also vary along the Trail depending on the intensity of Trail usage, on the prevalence of day or long-distance hikers, and on arrangements made with state and local law enforcement agencies.

The local government units and their Trail Club partners are empowered to manage their Trail segments in accordance with “local problems and needs.”⁸² Each local Trail Club and its government partners jointly prepare a local management plan that assesses what work is needed and assigns responsibilities to the volunteer community and the government bodies.⁸³

The Park Service exercises overall oversight of this system to “ensure that adequate management procedures are being followed.”⁸⁴ The Park Service supports local management efforts, while deferring to local decisionmaking as much as possible, and serves as a clearinghouse for “Trailwide issues and information.”⁸⁵

The Conservancy, as the Park Service’s nationwide volunteer-side partner, fulfills significant

⁸² *Id.* at 12.

⁸³ *Id.* at 15.

⁸⁴ *Id.* at 13.

⁸⁵ *Id.* at 15.

responsibilities, just as local Trail Clubs do. The Conservancy develops standards for Trail management, such as its “Trail Design, Construction, and Maintenance” manual; and it provides technical assistance to local Clubs. It assigns Trail segments to the particular local Clubs that undertake management and maintenance under the decentralized model. And it coordinates planning by working with Clubs in the field to make sure “that each local plan covers the topics essential to adequate management for that section[] [and] that it is consistent with the basic goals for the Trail.”⁸⁶ The Conservancy reviews local management plans, as does the Park Service (and the Forest Service for segments passing through forest areas).⁸⁷

D. Congress has endorsed the current cooperative management system.

After receiving the 1981 Plan, Congress amended the Trails Act to ensure it enabled the Plan’s management approach.⁸⁸ Approving how local land agencies retained authority over their lands, the amendment stated that “[n]othing contained in [the Trails] Act shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally

⁸⁶ *Id.* at 17.

⁸⁷ *Id.*

⁸⁸ National Trails System Act Amendments of 1983, Pub. L. No. 98-11, § 202, 97 Stat. 42, 42 (1983) (adding to the Trails Act a statement that “it is further the purpose of this Act to encourage and assist volunteer citizen involvement in the planning, development, maintenance, and management, where appropriate, of trails”).

administered lands which are components of the National Trails System.”⁸⁹ Further, the amended Act says that the agency “responsible for the administration of any segment” of a national trail—the agency with local responsibility—shall “utilize authorities related to units of the national park system or the national forest system, as the case may be, in carrying out . . . administrative responsibilities for such component.”⁹⁰ In other words, consistent with the 1981 Plan, Forest Service offices run the trail segments running through national forest areas, and Park Service offices do the same for trail segments running through park areas.⁹¹

⁸⁹ *Id.* § 207(a)(1)(A), 97 Stat. 45, 45-46 (codified at 16 U.S.C. § 1246(a)(1)(A)). The amended Act facilitates efficient localized management by allowing the Forest and Park Services to transfer between them the management of particular trail segments. 16 U.S.C. § 1246(a)(1)(B). For example, in areas like central Virginia the Park Service has occasionally acquired for the Appalachian Trail Corridor parcels located between stretches of national forest—which it has then transferred to the Forest Service to manage. See Agreement between the USDA, Forest Service, and the Appalachian Trail Conference Concerning Certain Lands Along the Appalachian National Scenic Trail, § 3 (1984) (*1984 Agreement*).

⁹⁰ Pub. L. No. 98-11, § 207(h), 97 Stat. 47 (codified as 16 U.S.C. § 1246(i)).

⁹¹ The Park Service’s most recent order regarding the National Trails System illustrates the point: It states that the Park Service’s regulations “apply to trail corridors where the lands and water underlying such corridors are . . . administered by the NPS[;] . . . managed by another Federal agency, but administered by the NPS for trail purposes pursuant to a written agreement with the other Federal agency; or . . . administered by the NPS for trail purposes pursuant to an agreement with [a state, local, or private] landowner.” Nat’l Park Serv. Director’s Order No. 45, *National Trails System*, § 3.12 (2013),

The amendments also empowered trail-administering agencies to enter cooperative agreements with volunteer organizations and to provide “limited financial assistance to encourage participation in the acquisition, protection, operation, development, or maintenance of” national trails.⁹² To foster the cooperative management system on state lands, the amendments directed the Park Service to encourage state agencies to work with volunteer organizations on trail management.⁹³

The management and nature of the Trail remain today largely how the 1981 Plan described them, with one significant addition. As the Trails Act directed, the Park and Forest Services acquired substantial additional land for protecting the Trail. Both agencies now manage, in their respective areas, land acquired to preserve the Trail experience.⁹⁴ The newly-acquired lands are often outside the boundaries of existing national parks and forests. In 1984, both agencies expanded their cooperative

https://www.nps.gov/policy/DOorders/DO_45.pdf. The “written agreement” with another federal agency refers to the agreements authorized by the 1983 amendments for transferring management of particular trail segments. Thus, the Park Service views its regulations as applying only on Park Service segments of the Trail, while Forest Service regulations apply on national forest segments.

⁹² Pub. L. No. 98-11, § 207(g)(3), 97 Stat. 47 (codified at 16 U.S.C. § 1246(h)(1)).

⁹³ Pub. L. No. 98-11, § 207(g)(3)(B), 97 Stat. 47 (codified at 16 U.S.C. § 1246(h)(1)(B)) (“to encourage . . . the development and implementation by such entities of provisions for land practices, compatible with the purposes of this Act”).

⁹⁴ *See 1981 Plan*, at 22.

agreements with the ATC to permit the ATC to manage those lands.⁹⁵

III. ALL PARTNERS MUST STRIVE TO PRESERVE THE ESSENTIAL VALUES OF THE APPALACHIAN TRAIL.

Competing pressures to use land near the Trail for other purposes are a constant and growing concern. Preserving the Trail—in its full richness, the experience of nature and of the nation’s history and culture that hiking the Trail affords—is critical.

At the same time, given the location and length of the Trail, it is not always possible simply to foreclose any development or alternative use of land near the Trail. The original Trailway Agreements already took account of this fact by allowing a narrower buffer zone where the Trail “descends into the main valleys.”⁹⁶ From the beginning, the Trail has, in places, passed close to urban areas, and elsewhere it uses public infrastructure (such as the Bear Mountain Bridge over which the Trail crosses the Hudson River). The Conservancy has also long navigated the tension between the use and values of the Blue Ridge Parkway and those of the Trail. Meanwhile, more than 50 oil and gas pipelines currently cross the Trail in some way (none under the authority of the Mineral Leasing Act), and it is not likely those will be the only ones ever to do so.

⁹⁵ Amend. No. 8 to Cooperative Agreement, Mem. of Agreement between the Nat’l Park Serv. & the Appalachian Trail Conference (1984); *1984 Agreement*.

⁹⁶ *1939 Trailway Agreement*, at 1.

To help preserve the paramount values of the Appalachian Trail in light of those realities, the Conservancy developed criteria that any proposed pipeline crossing should satisfy.⁹⁷ “Crossing,” for these purposes, means not only a literal intersection of the geographical lines of Trail and pipeline; a pipeline or other infrastructure that invades the natural environment of the Trail Corridor can do significant damage to the Trail even if it never intersects the Trail’s path.

To be acceptable, a pipeline should, first, be “the only prudent and feasible alternative to meet an overriding public need.” Other alternatives must be considered, including alternative routes, expanding existing pipelines, or policies to reduce energy demand (such as through conservation or demand-side management).

Second, the pipeline should cross the Trail “at a point already subject to significant impact,” such as an existing infrastructure crossing (assuming the existing impact is compatible with Trail-preserving principles).

⁹⁷ Appalachian Trail Conservancy, *ATC Policy on Pipeline Crossing of the Appalachian Trail*, at 1-3 (2015), appalachiantrail.org/docs/default-source/trail-management-policies/external-threats/pipeline-crossings-2015.pdf?sfvrsn-dc4b4a0_4. Though adopted for pipelines in 2015, this policy was simply a refinement, specific to pipelines, of a policy on utility developments, adopted in 2000. Appalachian Trail Conservancy, *ATC Policy on Roads and Utility Developments* (Apr. 2000), appalachiantrail.org/docs/default-source/trail-management-policies/external-threats/roads-and-utilities-2000.pdf?sfvrsn=7f9a3764_4.

Third, the pipeline should use best practices to minimize its impact. For example, the route should minimize contact with the Trail Corridor and should cross only once, using the shortest possible path through the Corridor. Construction techniques should be chosen to produce minimal disturbance, such as by using horizontal drilling rather than more invasive techniques. There should be no or minimal new roads within the Trail landscape for building the pipeline.

Fourth, a pipeline must avoid areas especially unsuitable for infrastructure crossings. National Wilderness Areas are obvious examples, but it is also important to avoid certain ecological areas like old-growth forests and alpine areas even if they have no formal legal protection. A pipeline must also avoid shelters, campsites and highly-used Trail segments.

Fifth, plans should address the ongoing maintenance and operation of the pipeline and ensure those activities are done in a way that minimizes impact on the Trail.

Sixth, pipeline authorizations should require best practices to minimize methane leaks.

Seventh, authorizations should “clearly acknowledge the pipeline owner and operator’s affirmative duty to protect the environment and ensure the health and safety of [Trail] users and the communities in the vicinity of the Trail.” A pipeline can create risks, such as fires and release of toxic substances, environmental contamination, and damage to cultural and historic artifacts. The Conservancy expects pipeline operators to take

affirmative steps to minimize those risks and redress any harms that occur.

Eighth, pipeline authorizations should include mitigation for any loss of “the natural, cultural, scenic, and recreational values” of the Appalachian Trail. The Conservancy firmly maintains that infrastructure developments should lead to “no net loss of these values.”

The Conservancy vigorously opposes projects that do not fulfill these criteria.

CONCLUSION

The Appalachian Trail is a unique national resource—truly the “realm united by a trail” that Benton MacKaye imagined. Regardless how the Court decides the question presented, the Conservancy urges the Court to respect the values that the Trail embodies and the carefully constructed management system—painstakingly negotiated over decades, and functioning effectively for decades since. A hallmark of that system is the local ownership that agencies, volunteer Clubs, and communities feel regarding their Trail sections. And sharing of responsibility among the partners, under the Trails Act, has been central to fostering those relationships with the Trail. Altering this system could upend the National Trails System and subvert the very values that the Trails Act was meant to protect.

Respectfully submitted.

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