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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

concerned with the rights of the landowner. In cases of conflict, the onus fell on the Trail to "meander" around.

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

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

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

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

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

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

4. NPS staff relied on an outside environmental group, the Appalachian Trail Conference (ATC), to undertake advocacy actions and pressure tacticts that would have been inappropriate for the NPS, but clearly

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

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

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

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

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

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

Sincerely,

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