Nos. 18-1584 & 18-1587

IN THE

Supreme Court of the United States

UNITED STATES FOREST SERVICE, ET AL.,
Petitioners,

AND

ATLANTIC COAST PIPELINE, LLC,
Petitioner,

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION, ET AL.,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Whether the United States Forest Service has statutory authority under the Mineral Leasing Act to grant a gas pipeline right-of-way across the Appalachian National Scenic Trail.

RULE 29.6 STATEMENTS

Pursuant to Rule 29.6 of the Rules of this Court, respondents Cowpasture River Preservation Association, Highlanders for Responsible Development, Shenandoah Valley Battlefields Foundation, Shenandoah Valley Network, Sierra Club, Virginia Wilderness Committee, and Wild Virginia, Inc. state the following:

None of the respondents is a publicly held entity; none of the respondents has a parent company; and none of the respondents has issued stock to any publicly held company.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES AND REGULATIONS

LEGISLATIVE MATERIALS

ADMINISTRATIVE MATERIALS

Nat'l Park Service:

OTHER MATERIALS

INTRODUCTION

It is common ground that if the Appalachian National Scenic Trail is among the "lands in the National Park System," 30 U.S.C. § 185(b)(1), then neither the Forest Service ("USFS") nor any other federal agency can grant an oil or gas pipeline right-of-way that crosses the Trail on federal land. The Mineral Leasing Act says precisely that, and both petitioners acknowledge the point. USFS Br. 3; Atlantic Br. 10.

It is also common ground that the entire Appalachian Trail is "administered . . . by the Secretary of the Interior," 16 U.S.C. § 1244(a)(1), who delegated that duty to the National Park Service ("Park Service," "Service," or "NPS"). The National Trails System Act ("Trails Act") says precisely that, and both petitioners grudgingly acknowledge the point. USFS Br. 26; Atlantic Br. 6-7.

Finally, it is common ground that "any area of land . . . administered by the Secretary [of the Interior], acting through the [Park Service] Director, for park, monument, historic, parkway, recreational, or other purposes," 54 U.S.C. § 100501, is among the "lands in the National Park System." The National Park Service Organic Act ("Organic Act") says precisely that, and both petitioners, somewhat obliquely, acknowledge the point. USFS Br. 45-46; Atlantic Br. 38.

The issue, then, is whether the Appalachian Trail is "land" within the meaning of those acts. Both petitioners rest their case on the premise that the Trail is a footpath that "traverses" land, but is itself not land. USFS Br. 27-28; Atlantic Br. 36-37. Accordingly, they contend that, where the Trail traverses national forest, the Forest Service can grant a pipeline right-of-way because no "lands in the National Park System" are implicated.

Petitioners' argument is incorrect for three reasons. *First*, as the Park Service explained in the administrative record under review, the Appalachian Trail is a "protected corridor (*a swath of land* averaging about 1,000 feet in width . . .)." JA97 (emphasis added); *see id.* ("The [Service] administers the entire [Trail] and as such considers the entire Trail corridor to be a part of the [Trail] park unit."). The Park Service's Land Resources Division has done the math, confirming that the Trail corridor occupies nearly 240,000 acres.[1] The Forest Service's own Management Plan states that the "Trail is administered by the Secretary of the Interior" and that "about 9,000 acres" of the "Trail Corridor" are in the George Washington National Forest.[2] Acres of what? Obviously, acres of land.

Second, if the Appalachian Trail does not count as land, it cannot be a unit of the National Park System ("Park System" or "System"), because Congress has defined a Park "System unit" as "any area of land and water administered by" the Park Service. 54 U.S.C. §§ 100102(6), 100501. Yet the Trail clearly is such a unit. Every official source has listed the Trail as a unit of the Park System for nearly 50 years, and the Forest Service acknowledged as much in the record under review.

Third, petitioners mistakenly suggest that, because the Trails Act states that the Appalachian Trail "shall

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[1] *See* NPS, Land Resources Div., National Park Service Acreage Reports, Listing of Acreage at 1 (calendar year 2019) ("2019 Acreage Report"), https://www.nps.gov/subjects/lwcf/upload/NPS-Acreage-12-31-2019.pdf.

[2] U.S. Dep't of Agric., Revised Land and Resource Management Plan – George Washington National Forest 4-42 (Nov. 2014) ("GWNF Management Plan"), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd525098.pdf.

be administered primarily as a footpath," 16 U.S.C. § 1244(a)(1), the Act draws a "distinction" between the footpath and the land it traverses. USFS Br. 27; *see also* Atlantic Br. 36-37. That is a non sequitur. The "footpath" qualification, as the Forest Service concedes, means that the Trail is intended primarily for use by pedestrians, as opposed to mountain bikers or ATV drivers. A "footpath" is just land with a particular purpose. Neither the Trails Act nor the Organic Act distinguishes between "land" and "footpaths" any more than they distinguish between "land" and the various monuments, historic buildings, parkways, and recreational areas that are also units of the National Park System.

Land is what you walk on. The Appalachian Trail cannot be separated from the land that constitutes it. Petitioners' argument that it can is inconsistent with ordinary English usage, the language of three statutes, longstanding agency practice, and the solid reality of the Trail's existence as land upon which generations of hikers have walked, and their children and grandchildren will walk.

"The land was ours before we were the land's," wrote Robert Frost. This land, this Trail, belongs to the American people. Their representatives in Congress have directed that it shall be administered by the Park Service "in such manner and by such means as will leave [it] unimpaired for the enjoyment of future generations." 54 U.S.C. § 100101(a). Only Congress has the power to change that mandate.

STATEMENT OF THE CASE

A. The Appalachian National Scenic Trail and the National Park System

> None who has seen [the Appalachian Trail] has not marveled; none who has traveled it has not been moved.
>
> Stewart Udall
> Secretary of the Interior (1961-1969)

The National Park System has been called America's "crown jewels."[3] Among those jewels is the Appalachian Trail, which runs from Maine to Georgia. The landscapes through which the Trail passes have been revered for centuries as iconic parts of the Eastern Seaboard's natural heritage.

The Appalachian Trail was proposed in the 1920s and completed by volunteers in 1931. Since that time, the Trail has held a unique place as the nation's premier long-distance hiking trail. Groups began attempting through-hikes of the Trail's entire length almost immediately after it opened. These through-hikers have received national attention, including the first solo through-hiker in 1948,[4] and a 67-year-old grandmother who famously told her adult children in 1955 that she was "going for a walk" before proceeding to through-hike the Trail – a feat she repeated twice more.[5]

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[3] *See*, *e.g.*, Cecil Andrus, Secretary of the Interior, *Protecting the Crown Jewels*," 6 EPA J. 12, 13-14 (June 1979).

[4] *See* Earl V. Shaffer, *Walking with Spring: The First Thru-Hike of the Appalachian Trail* (1983).

[5] *See* Ben Montgomery, *Grandma Gatewood's Walk* (2014).

The Appalachian Trail and its environs have been celebrated in American nature writing from Henry David Thoreau's *The Maine Woods* through Bill Bryson's *A Walk in the Woods*. The Trail has been emulated internationally, with more than a dozen countries joining scenic hikes into an "International Appalachian Trail" tracing the eons-old mountain range of which the Appalachian Mountains were part.[6]

Congress recognized the Appalachian Trail in 1968 through the Trails Act. When the Trail was created in the 1930s, it was assembled by volunteers from federal, state, and private land. The Trails Act left ownership and day-to-day management of Trail lands with existing owners rather than condemning those lands for federal ownership. *See* 16 U.S.C. § 1244(a)(1). But Congress charged the Secretary of the Interior (the "Secretary") with the "administ[ration]" of the entire Trail, no matter who owns the land. *Id.* The Secretary in turn designated the Park Service as the Trail's "land administering bureau." 34 Fed. Reg. 14,337, 14,337 (Sept. 12, 1969).

That delegation makes the Appalachian Trail part of the Park System. The Organic Act that established the System in 1916[7] now defines it as "any area of land and water administered by the Secretary, acting through the [Park Service] Director, for park, monument, historic, parkway, recreational, or other purposes." 54 U.S.C. § 100501. Congress chose that definition carefully. Before 1970, the Service had a complex patchwork of responsibility for various lands,

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[6] *See* Int'l Appalachian Trail, "About Us," https://www.iat-sia.org/about.

[7] National Park Service Organic Act, ch. 408, 39 Stat. 535 (1916), codified as amended at 54 U.S.C. § 100101 *et seq*.

even when the lands were federally owned. *See* H.R. Rep. No. 91-1265, at 3 (1970) (describing existing statutory authorities as "almost devoid of uniformity"). To replace that patchwork, Congress created "one National Park System" that unambiguously includes every area the Park Service administers. 54 U.S.C. § 100101(b)(1)(B); *see id.* § 100101(b)(1)(D) (stating legislative "purpose . . . to include all these areas in the System and to clarify the authorities applicable to the System").

Lands administered by the Park Service are defined as Park "System unit[s]." *Id.* § 100102(6). The Service has repeatedly – including on the record in this case – designated the Appalachian Trail as a "System unit." JA131. Under the Organic Act,

> the fundamental purpose of the System units . . . is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

54 U.S.C. § 100101(a). The Park Service's authorities "shall be construed . . . in light of" and not "exercised in derogation of the values and purposes for which the System units have been established, except as directly and specifically provided by Congress." *Id.* § 100101(b)(2).

The Appalachian Trail System unit is a protected corridor, on average about 1,000 feet wide along the full length of the Trail, "a swath of land" totaling 240,000 acres. JA97. "The NPS administers the entire [Trail] and as such considers the entire Trail corridor to be a part of the [Trail] park unit." *Id.*

B. Pipelines Crossing Federal Lands

The Trails Act does not provide specific rules for easements and rights-of-way. Instead, it authorizes the designated administrator of a trail,

> [t]he Secretary of the Interior or the Secretary of Agriculture as the case may be, [to] grant easements and rights-of-way upon, over, under, across, or along any component of the national trails system in accordance with the laws applicable to the national park system and the national forest system, respectively . . . .

16 U.S.C. § 1248(a).

For oil-and-gas pipelines, the applicable law is the Mineral Leasing Act of 1920, codified as amended at 30 U.S.C. § 181 *et seq.* ("Leasing Act"). That Act authorizes the Secretary of the Interior or appropriate agency head to grant "[r]ights-of-way through any Federal lands" for "pipeline[s]" that "transport[] oil, natural gas, synthetic liquid or gaseous fuels." *Id.* § 185(a). The pipeline authorization in § 185 uses a special definition of "Federal lands" that carves out "lands in the National Park System" and certain other protected categories. *Id.* § 185(b)(1). Using separate authority under the Organic Act, the Secretary may grant rights-of-way "through a [Park] System unit" for power lines, telephone lines, and certain "canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits," 54 U.S.C. § 100902(a)(1) – but not for pipelines that carry oil or gas.

Because of the carve-out in the Leasing Act and the absence of Organic Act authority, oil-and-gas pipelines can obtain new rights-of-way across federal lands in the Park System only through case-by-case legislation. Congress has authorized pipeline rights-of-way crossing System units "at Denali National Park,

Glacier National Park, Great Smoky Mountains and Gateway National Recreation Area."[8]

Since the 1968 designation of the Appalachian Trail, Congress has never authorized any oil or gas pipeline to cross the Trail on federally owned land. To be clear, some pipelines do cross the Trail. Those pipelines were not authorized under the Leasing Act, but instead cross on state or private land (to which the Leasing Act does not apply) or on federal land using an easement that predates federal ownership. Several new pipeline projects have crossed the Trail using that approach in recent years. Today, respondents know of 55 pipeline crossings at 34 locations: 15 on non-federal land, and 19 on federal land in easements that predate either federal ownership or federal designation of the Trail as a Park System unit.[9] There are no crossings on any other federally owned lands. And no pipeline has been built across the Trail on a new right-of-way over federally owned land since its inclusion in the Park System.[10]

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[8] Statement of Timothy Spisak, Senior Advisor, Minerals and Realty Management, Bureau of Land Management, U.S. Dep't of Interior, Before the Subcomm. on Energy and Mineral Resources of the H. Comm. on Natural Resources, on H.R. 2295, 114th Cong. (May 20, 2015), https://www.doi.gov/ocl/hearings/114/hr2295_052015.

[9] Letter from Southern Environmental Law Center to Forest Service (June 24, 2019), https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14779685. As Atlantic notes (at 5), the Appalachian Trail crosses hundreds of miles of non-federal lands throughout the Trail corridor – approximately 24% of land in the park unit. *See* 2019 Acreage Report, Listing of Acreage at 1.

[10] A 2013 decision by the Forest Service authorized a pipeline to proceed alongside a preexisting pipeline right-of-way over the Appalachian Trail on federal land. *See* Forest Serv., Decision

C. The Atlantic Coast Pipeline Application

In September 2015, petitioner Atlantic Coast Pipeline, LLC ("Atlantic") applied to the Federal Energy Regulatory Commission ("FERC") for permission to construct a 604-mile natural-gas pipeline (the "Pipeline") from West Virginia to North Carolina. App. 2a.[11] Atlantic's planned route for the Pipeline includes 21 miles of land in the George Washington National Forest and the Monongahela National Forest (together, the "Forests"). App. 2a-3a. That route crosses the Appalachian Trail near Reed's Gap, Virginia, along a ridgeline where Augusta and Nelson Counties meet. JA60.

Atlantic plans to clear-cut a 125-foot right-of-way for most of the Pipeline's distance, including lands visible from the Appalachian Trail. App. 3a; C.A.App.1822. Atlantic will blast and flatten Forest mountain ridgelines to make room to work, and will dig or blast a (typically) eight-foot trench to lay its pipe. C.A.App.1522-23. After the Pipeline is laid, Atlantic will continue to maintain a 50-foot cleared right-of-way for most of its length. C.A.App.10.

Atlantic plans to cross the Forests in areas with steep slopes, C.A.App.1605, 1611, 1629; high potential

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Notice, Columbia Gas, Giles County, Virginia (Nov. 22, 2013), https://www.fs.usda.gov/nfs/11558/www/nepa/93590_FSPLT3_1462661.pdf. The Trail was rerouted before new pipeline construction began. No new crossing occurred on federal land. *See* Appalachian Trail Conservancy, *Major Section of the Appalachian Trail in Southwest Virginia Permanently Protected* (Apr. 9, 2014), http://www.appalachiantrail.org/home/community/news/2014/04/09/major-section-of-the-appalachian-trail-in-southwest-virginia-permanently-protected.

[11] Citations to "App. __a" are to the appendix in No. 18-1584; citations to "C.A.App.__" are to the Fourth Circuit appendix.

for erosion, C.A.App.1619-20; low potential for revegetation, C.A.App.1625; high rainfall, increasing landslide risks, C.A.App.1708-09; and sensitive karst terrain, C.A.App.1575, 1610, 1615.[12] Atlantic also plans to cross 57 rivers, streams, and lakes within the Forests – 30 for the Pipeline and 27 for access roads. C.A.App.1659.

Where the Pipeline crosses the Appalachian Trail, Atlantic plans to use horizontal drilling to make a borehole one mile long and three-and-a-half feet wide. Drilling will require Atlantic to run heavy machinery, like drilling rigs, mud pumps, cranes, backhoes, and engine-driven light plants, around the clock for more than a year, on either side of the Trail. C.A.App.44, 1810-11. Construction noise will affect Trail use, and 24-hour lighting of Atlantic's machinery will dim the stars visible from the Trail. JA79-80. The success of the mile-long horizontal drill is not at all certain. Atlantic's contingency plan is to use the "direct pipe" method further up the mountainside, "which is expected to intensify the disruptive effects of the pipeline." *Sierra Club v. United States Dep't of Interior*, 899 F.3d 260, 294 (4th Cir. 2018).

D. The Agency Proceedings

FERC took the role of lead agency for purposes of issuing an Environmental Impact Statement ("Statement") concerning Atlantic's applications. The Forest Service provided comments during the process and ultimately adopted FERC's final Statement. The administrative record shows that the Pipeline would cross ecologically important areas of the Forests;

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[12] "Karst" is terrain with features such as sinkholes and caves formed by the action of groundwater on soluble rocks such as limestone; in such terrain, groundwater contamination can spread in unexpected ways. C.A.App.1322, 1324.

increase soil erosion and sedimentation; risk landslides, debris flows, slope failures, and contamination of groundwater and soil; and displace wildlife habitat, some of which could take "50 years or longer" to recover. C.A.App.1468-70, 1604, 1611, 1630, 1682-83. FERC's Statement also observed that the Park Service is "the lead federal agency for the administration of the entire [Trail]," which "is a 'unit' of the national park system." JA87.

Respondents are a group of environmental organizations whose members regularly visit, hike, and fish in the Forest areas that the Pipeline would affect, and intend to continue doing so in the future. Resp. C.A. Br. 3-5. They submitted comments arguing that the Pipeline created serious environmental risks to the Forests, including impacts associated with the Appalachian Trail crossing; that the record was inadequate to assess or effectively mitigate those risks; and that Atlantic had improperly refused to evaluate route alternatives that would avoid crossing the Trail on federal land.

After notice of a draft decision and administrative objections by respondents, on November 17, 2017, the Forest Service granted the right-of-way under the Leasing Act. C.A.App.1-63.[13]

E. The Fourth Circuit's Decision

Respondents sought review in the Fourth Circuit. A unanimous panel of the Fourth Circuit reversed and remanded on four independent bases.

First, Atlantic's Pipeline proposal did not comply with mandatory standards for protecting soil, water

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[13] Mountain Valley Pipeline, LLC, one of petitioners' *amici*, also received Forest Service approval for a right-of-way to cross the Appalachian Trail in the Jefferson National Forest in 2017, shortly before Atlantic got its approval.

quality, and wildlife in the management plans for the two Forests. The Forest Service had amended those plans to "weaken existing environmental standards in order to accommodate the [Pipeline]." App. 21a. But the agency erroneously disclaimed any need to test those amendments against the minimum requirements of its Forest Planning Rule, 36 C.F.R. § 219.13. App. 16a-29a.

Second, the Forest Service rejected alternative routes that would avoid national forests without the analysis required by the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(C)(iii). Forest plan standards, binding under the National Forest Management Act of 1976, 16 U.S.C. § 1604(i), prohibit pipelines across the forest if alternative routes are feasible. At least three such routes[14] were summarily dismissed without evaluation. App. 34a-42a.

Third, the Forest Service failed to take the requisite hard look at landslide, erosion, and water-quality degradation risks, including a required "detailed statement" of mitigation to reduce those risks. The Service conceded that the magnitude of those risks was "unknown" and that Atlantic's mitigation proposals were "unreliable," but adopted those proposals without change. App. 44a-45a.

Remand proceedings for those three issues are underway, and petitioners have not sought review of the decision below so far as it remands on those grounds.

In its final holding, the Fourth Circuit concluded that "the Forest Service does not have statutory

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[14] *See* C.A.App.3469-71 (potential crossing on private land); Appalachian National Scenic Trail Resource Management Plan I-26 (Sept. 2008) ("Trail Management Plan") (confirming the Trail crosses "two state land holdings" in Virginia), https://www.nps.gov/appa/learn/nature/upload/AT_Resource_Management_Plan_Ch_1.pdf.

authority to grant pipeline rights of way across the [Appalachian Trail] pursuant [to] the [Leasing Act]." App. 59a. The Fourth Circuit reasoned that – as "the parties agree" – the Trail is a "unit" of the Park System, and thus is outside the scope of the Leasing Act.

Petitioners sought rehearing en banc from the Fourth Circuit. After no judge requested a poll, the Fourth Circuit denied the petitions. App. 241a-242a. This Court granted certiorari.

SUMMARY OF ARGUMENT

The result in this case is governed by the plain text of three interconnecting statutes. The Mineral Leasing Act allows pipeline rights-of-way across federally owned lands "except lands in the National Park System." 30 U.S.C. § 185(b)(1). The National Park Service Organic Act defines that System to include "any area of land . . . administered by the Secretary [of the Interior], acting through" the Park Service. 54 U.S.C. § 100501. The National Trails System Act states that "[t]he Appalachian Trail shall be administered . . . by the Secretary of the Interior," 16 U.S.C. § 1244(a)(1), who delegated that duty to the Park Service. Accordingly, the Appalachian Trail is among the "lands in the National Park System" administered by the Park Service, and the Forest Service lacks authority under the Leasing Act to grant a pipeline right-of-way across the Trail on federally owned lands.

All of petitioners' arguments to the contrary rely on a fiction that attempts to divorce the Appalachian Trail from the land it encompasses. The Park Service administers the former, they argue, but not the latter. That elusively metaphysical distinction is inconsistent with the relevant statutes and multiple federal regulations, and contradicts the government's own longstanding approach to administering the Trail.

ARGUMENT

I. THE FOREST SERVICE LACKS AUTHORITY TO GRANT A PIPELINE RIGHT-OF-WAY BECAUSE THE APPALACHIAN TRAIL IS LAND IN THE NATIONAL PARK SYSTEM

A. Plain Statutory Text Places the Trail in the Park System and Precludes Agency Approval of Oil-and-Gas Pipelines

The only source of authority on which the government relies to allow a pipeline crossing the Appalachian Trail is the Mineral Leasing Act. That statute enables "the Secretary of the Interior or appropriate agency head" to grant pipeline rights-of-way "through any Federal lands." 30 U.S.C. § 185(a). "Federal lands" for this purpose include "all lands owned by the United States *except* lands in the National Park System," *id.* § 185(b) (emphasis added), and two other exceptions. Because the Trail is "land[] in the National Park System," the Forest Service cannot grant a right-of-way across it. Congress has reserved that decision for itself alone.

The Appalachian Trail is land in the National Park System under the plain language of the National Park Service Organic Act. That statute defines the "term 'National Park System,'" 54 U.S.C. § 100102(2), to "include any area of land and water administered by the Secretary [of the Interior], acting through the [Park Service] Director, for park, monument, historic, parkway, recreational, or other purposes." *Id.* § 100501. That inclusion is comprehensive: whether land or water, "any area . . . administered" by the Secretary through the Park Service, for any purpose, becomes part of the System.

The National Trails System Act, as enacted in 1968 and in force today, directs that "[t]he Appalachian Trail shall be administered . . . by the Secretary of the Interior." 16 U.S.C. § 1244(a)(1). Shortly after the enactment of the Trails Act, the Secretary assigned the "National Park Service" to act as the "land administering bureau" for the "Appalachian Trail." 34 Fed. Reg. at 14,337. Because the Secretary administers the Trail through the Park Service, the Trail is in the Park System as a matter of law.

There is no ambiguity here. No agency head can authorize a pipeline over federal land in the Park System; land is in that System if it is administered by the Secretary through the Park Service; and the Secretary administers the Appalachian Trail through the Service. Accordingly, the Trail is "land[] in the National Park System," and the pipeline right-of-way Atlantic seeks is prohibited unless Congress changes the law.

B. Statutory History Confirms That the Appalachian Trail Is in the Park System and Carved out of the Leasing Act

1. The 1970 General Authorities Act

The history of the 1970 General Authorities Act ("Authorities Act") confirms that Congress intended to place all land administered by the National Park Service – including the Appalachian Trail – in the National Park System.

When Congress designated the Appalachian Trail in 1968, existing law provided that the Park System included "all federally owned or controlled lands" administered by the Park Service for defined purposes. Act of Aug. 8, 1953, ch. 384, § 2(a), 67 Stat. 495, 496, formerly codified at 16 U.S.C. § 1c(a) (repealed 2014). But other arrangements created confusion, such as lands managed for recreation and situations in

which lands "supervis[ed]" by the Service pursuant to cooperative agreements were still "under the administrative jurisdiction" of other agencies. *Id.* § 2(b), 67 Stat. 496, formerly codified at 16 U.S.C. § 1c(b) (repealed 2014). Those lands were defined as non-System "miscellaneous areas." *Id.*

Congress eliminated that ambiguity with the Authorities Act, which removed the "miscellaneous areas" classification entirely and placed those areas and any other "area of land and water . . . administered by" the Park Service into the Park System. Pub. L. No. 91-383, § 2(a), 84 Stat. 825, 826 (current 54 U.S.C. § 100501). In the Act, Congress observed that the System had grown to include areas "distinct in character" but united by common purpose into "one national park system," and it declared its intent "to include all such areas in the System." *Id.* § 1, 84 Stat. 825 (current 54 U.S.C. § 100101(b)(1)(B), (D)). The Act also identified "various authorities" available for "administration and protection" of the new, unified system, including the authority related to "rights-of-way" now codified at § 100902, *see id.* § 2(b), 84 Stat. 826 (citing former 16 U.S.C. § 5 (repealed 2014)) – which does not include oil-and-gas pipelines.

Identical House and Senate reports explained that the bill incorporated "all existing areas administered by the National Park Service and all conceivable additions" into "one National Park System," H.R. Rep. No. 91-1265, at 4, 10; S. Rep. No. 91-1014, at 3, 8-9 (1970); and that the Secretary of the Interior supported expanding the Park System to include recreation areas and "areas[] administered pursuant to cooperative

agreement" with other agencies. H.R. Rep. No. 91-1265, at 8; S. Rep. No. 91-1014, at 6 (same).[15]

2. The 1973 Leasing Act Amendments

Congress understood that the Appalachian Trail was part of the Park System when it amended the Leasing Act in 1973 to carve out federal "lands in the National Park System," 30 U.S.C. § 185(b), from gas-pipeline rights-of-way authority. Before that time, Leasing Act authority for rights-of-way had been limited to "public lands," Act of Feb. 25, 1920, ch. 85, § 28, 41 Stat. 437, 449, a term of art referring to certain federally owned lands that had never been owned by any state or private individual.[16] The pre-1973 version of the Leasing Act also incorporated a general exclusion from mineral leases for "national parks and monuments"[17] – an example of the old terminology that Congress clarified in the Authorities Act.

The 1973 amendments used the new terminology. Congress expanded pipeline authority from "public lands" to "all lands owned by the United States." Act of Nov. 16, 1973, Pub. L. No. 93-153, § 101, 87 Stat. 576, 577. Congress constrained that expanded authority, however, by adding several exceptions.

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[15] *See also Hearing on H.R. 14114 Before the Subcomm. on Nat'l Parks and Recreation of the H. Comm. on Interior and Insular Affairs*, 91st Cong. 64 (1969) (Park Service Director: "miscellaneous areas" outside the "definition of the system in 1953" are "now included in the system" by the 1970 amendment).

[16] *See Wallis v. Pan Am. Petroleum Corp.*, 384 U.S. 63, 65 & n.2 (1966) (distinguishing "public domain lands" from "acquired lands").

[17] Act of Aug. 8, 1946, ch. 916, § 1, 60 Stat. 950, 950; *see also* Act of Aug. 7, 1947, ch. 513, § 3, 61 Stat. 913, 914 (similar leasing exclusion for acquired lands).

Under those exceptions, no agency has any authority to permit pipelines through three categories of protected federal "lands": those "in the National Park System," those "held in trust for an Indian or Indian tribe," and those "on the Outer Continental Shelf." *Id.*[18] Congress knew the significance of excluding "lands in the National Park System," as it had defined that phrase and expanded the System three years earlier in the Authorities Act. *See Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1890 (2019) ("Congress legislates against the backdrop of existing law."). The Senate report confirms that the drafters had before them the particular statutory provisions amended by that Act.[19]

Together, the Organic Act (as amended by the Authorities Act) and the Leasing Act leave no doubt. "[A]ny area of land and water administered by" the Park Service is in the Park System. The Appalachian Trail is one such area – as Congress knew when it excluded all federal land "in the National Park System" from the Leasing Act in 1973.

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[18] Congress similarly clarified after the Authorities Act that other mining laws excluded the entire "National Park System." *See*, *e.g.*, 54 U.S.C. § 100731(1) (application of mining laws to "System units" conflicts with "purposes for which the System units were established"); 30 U.S.C. § 1272(e)(1) (prohibiting surface coal mining on "lands within the boundaries of units of the National Park System").

[19] *See* S. Rep. No. 93-207, at 30 (1973) (citing "16 U.S.C. §§ 1 *et seq*.").

C. A Half-Century of Agency Interpretation Acknowledges That the Appalachian Trail Is "in the National Park System"

For almost 50 years, the Park Service has acknowledged that the Appalachian Trail is in the Park System and that the Authorities Act made it so. In 1972, two years after the Authorities Act, the Park Service identified the Trail as a "recreational area[]" that it "administered."[20] In 1981, the Park Service issued a "Comprehensive Plan" – also adopted by the Forest Service – stating that "responsibility for overall Trail administration lies with the National Park Service."[21] In 2005, a Park Service history stated that the Trail was "brought into the National Park System" by the Trails Act and that, with the Trail's "inclusion in the system, the [Service] became responsible for its protection and maintenance within federally administered areas."[22] More recent Park Service guidance

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[20] NPS, *National Parks & Landmarks* 89 (capitalization omitted), http://npshistory.com/publications/index-1972.pdf.

[21] NPS, Comprehensive Plan for the Protection, Management, Development and Use of the Appalachian National Scenic Trail 12 (Sept. 1981) ("Comprehensive Plan"), http://appalachiantrailhistory.org/files/original/1a8be2dcf229787c95929fa49206a8d0.pdf. The Plan further states that "land-managing agencies retain their authority on lands under their jurisdiction" and that "the National Park Service (with the Forest Service and the [Appalachian Trail] Conference)" will use "authority granted in the [Trails Act]" to "ensure that adequate management procedures are being followed." *Id.* at 12-13. That mirrors the Trails Act's directive that Interior "administer[]" the Trail "in consultation" with Agriculture, 16 U.S.C. § 1244(a)(1), leaving some management responsibilities to other partners. *See infra* pp. 34-37.

[22] NPS, *The National Parks: Shaping the System* 77 (2005), https://go.usa.gov/xpRWS.

confirms that the Authorities Act linked "administration of national trails and other national park areas."[23] The Service has also confirmed to States and conservation groups that it has "overall responsibility for administration of" the Trail.[24]

The Park Service continues to identify the Appalachian Trail as a unit of the Park System in official publications even now. The Service's latest index of the Park System still lists the Trail as "a unit of th[at] . . . System."[25] Its current Compendium of regulations for the Trail, issued in October 2019, cites the Authorities Act as having "brought all areas administered by the NPS into one National Park System."[26] Its budget justification to Congress for 2020 identifies the Trail as a "Park Base Unit[]" and as a "park[] that resides in multiple regions" of the United States.[27]

The Park Service took the same position in this case, reaffirming that it administers the entire trail as a "unit" of the Park System. FERC's draft Environmental Impact Statement incorrectly asserted that the

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[23] NPS, Director's Order #45, § 2.2 (May 24, 2013), https://www.nps.gov/policy/DOrders/DO_45.pdf.

[24] *E.g.*, Memorandum of Understanding for the Appalachian National Scenic Trail in the State of Connecticut (June 1, 2012), https://www.appalachiantrail.org/docs/local-management-planning-guide/2012-ct-at-mou.PDF?sfvrsn=6ae80d31_0.

[25] NPS, *The National Parks: Index 2012-2016*, at 142 (2016), https://www.nps.gov/aboutus/upload/NPIndex2012-2016.pdf.

[26] NPS, Appalachian Trail Superintendent's Compendium 2 (Oct. 1, 2019), https://www.nps.gov/appa/learn/management/upload/APPA-October-2019-Compendium-of-Orders.pdf.

[27] U.S. Dep't of Interior, *Budget Justifications and Performance Information – Fiscal Year 2020: National Park Service*, at Overview-16, ONPS-89, https://www.doi.gov/sites/doi.gov/files/fy2020-nps-justification.pdf.

Trail is "not . . . part of . . . the National Park system" where it crosses the national forest. The Park Service corrected FERC:

> The [Appalachian Trail] is one of three national trails administered by the NPS that are considered to be units of the National Park System. . . . The NPS *administers the entire [Trail]* and as such considers the *entire Trail corridor* to be a part of the [Trail] park unit.

JA97 (emphases added). The Forest Service agreed, stating that the Park Service "is the lead federal administrator agency for the *entire [Appalachian Trail]*, regardless of land ownership." JA126 (emphasis added). And FERC's final Statement (which the Forest Service adopted) recognized that the Park Service administers "the entire [Trail]." JA77.

Those statements were correct. Administration, not ownership, is what matters here. *See Sturgeon v. Frost*, 139 S. Ct. 1066, 1076 (2019) ("Those statutory grants of power [to the Park Service] make no distinctions based on the ownership of either lands or waters . . . ."). As the Forest Service agrees (at 21-22 n.6), federal land is owned by the United States, not by individual agencies. Any federal land administered by the Park Service is part of the Park System. This Court should accordingly reject the government's new position that the Appalachian Trail is outside the System.

II. PETITIONERS CANNOT SEPARATE THE "TRAIL" FROM THE FEDERAL "LANDS" DEDICATED TO THE TRAIL

In administering the Appalachian Trail, the Park Service exercises jurisdiction over a particular, defined area of land. The Service's Land Resources Division publishes "official acreage data for all units of the National Park System."[28] The agency identifies the area of land protected for the Trails System unit down to a hundredth of an acre: 239,844.32 acres of land. *See* 2019 Acreage Report, Listing of Acreage at 1. The Forest Service similarly describes "about 9,000 acres" of land in the George Washington National Forest as part of the "Trail Corridor" and acknowledges that the "Trail is administered by the Secretary of the Interior." GWNF Management Plan 4-42.

Nevertheless, petitioners now claim that the 240,000 acres that make up the Appalachian Trail Park System unit are not "land";[29] or, relatedly, that the land Atlantic's Pipeline would cross is under the exclusive jurisdiction of the Forest Service rather than part of the Park System. Neither argument is tenable.

A. Common Usage, Statutory Text, and Agency Practice Confirm That the Trail Is an Area of Land

1. The Word "Trail" Ordinarily Refers to an Area of Land

The Forest Service's argument begins (at 26-27) by misapplying the dictionary definition of "trail" – contending that, because a trail, track, or path can be

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[28] NPS, Land Resources Div., National Park Service Acreage Reports, https://www.nps.gov/subjects/lwcf/acreagereports.htm.

[29] Petitioners raised their argument that the Trail is not "land" for the first time in this Court.

defined as going "'across,' 'over,' or 'through' a region of land," a trail cannot itself be land. Those prepositions will not do the work the government's argument requires. It is common to describe one feature of the land as going across, over, or through another. Taking examples from the Appalachian Trail and its surroundings, anyone might say that the Great Smoky Mountains stretch *across* the border between Tennessee and North Carolina; that the Franconia Ridge runs *over* Mount Lincoln; and that the Delaware Water Gap goes *through* a ridge of the Appalachians. Yet no one would say that the Mountains, Ridge, or Gap are not themselves land.[30]

The definition of "trail" quoted by the Forest Service (at 26, a "blazed or otherwise marked path") is entirely consistent with common definitions of "land" – whether defined generally as "[a]ny portion of the surface of the earth" or, in a legal context, as "[a]ny ground, soil, or earth whatsoever, regarded as the subject of ownership . . . and everything annexed to it, whether by nature . . . or by man."[31] Under either definition, the Appalachian Trail is "land": a part of the earth's surface defined by a worn, marked path. The Trail's corridor, over which the Park Service asserts administrative jurisdiction, is likewise "land"

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[30] A "parkway" likewise goes across, over, or through a particular region. But there is no dispute that parkways are areas of land in the Park System. *See infra* pp. 43-46 (discussing the example of the Blue Ridge Parkway).

[31] *Webster's New International Dictionary* 1388 (2d ed. 1950) ("*Webster's Second*"); *see Webster's Third New International Dictionary* 1268 (2002) ("*Webster's Third*") (similar); *see also Black's Law Dictionary* 1019 (4th rev. ed. 1968) ("*Black's Fourth*") ("any ground, soil, or earth whatsoever" and "also things of a permanent nature affixed thereto or found therein").

in this ordinary sense, and is "regarded as the subject of ownership" by its owner – the United States.

Outside this litigation, the government frequently refers to the Appalachian Trail as land. The Trail's 1981 Comprehensive Plan states that "[t]he body of the Trail is provided by the lands it traverses."[32] The Park Service's Acreage Reports measure the Trails System unit in "acres" – a measurement of land. *See supra* pp. 2, 22. And in January 2019 the Service issued a Reference Manual describing "[t]he Appalachian Trail" as "a unique land protection project."[33] Even the government's Fourth Circuit brief referred to "Trail lands," USFS C.A. Br. 52, though denying Park Service jurisdiction over them. Those examples show that the government's strained trail-land distinction has nothing to do with ordinary English.

2. The Trails Act and the Organic Act Confirm That the Park Service Administers the Trail as an Area of Land

a. The language and structure of the Trails Act reinforce the common-sense point that national trails are areas of land. It directs that the "right-of-way" for the Appalachian Trail shall, "[i]nsofar as practicable,"

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[32] Comprehensive Plan, Addendum (page 3 of PDF file). The Forest Service (at 27-28) also cites the Plan but does not address the text above. Instead, the agency asserts that the Plan "distinguish[es] the 'Trail' from the trail 'corridor' and 'Trailway.'" The term "Trail" can be and is used to refer interchangeably to the narrower area of land on which hikers tread or to the broader corridor area that the Park Service administers. *See supra* Part I.C (examples). That said, the distinction makes no difference. Even in its narrowest sense, the "Trail" is still an area of land with a length and a width.

[33] NPS, *National Trails System: Reference Manual 45*, at 221 (Jan. 2019) ("Reference Manual"), https://www.nps.gov/policy/Reference_Manual_45.pdf.

be as defined in specific maps, and shall "*include lands* protected for it" by federal agencies. 16 U.S.C. § 1244(a)(1) (emphasis added). Other parts of the Act refer to "federally administered *lands* [that] are components of the National Trails System," *id.* § 1246(a)(1)(A) (emphasis added), and acquisition of "*lands* or interests therein to be utilized as [trail] segments," *id.* § 1246(e) (same). Those references to "lands" as trail segments or trail system components would make no sense if the Trail and its land were mutually exclusive.

Separating national trails from the lands they cross would also undermine the Trails Act's stated aims. Congress declared the objectives of establishing national trails to include "promot[ing] the preservation of . . . the open-air, outdoor areas and historic resources of the Nation," *id.* § 1241(a), and directed that national scenic trails "provide for . . . the conservation . . . of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which [they] pass," *id.* § 1242(a)(2). To do those things, Congress gave the responsible agencies mandates to protect national trails not only as abstract constructs, but also as lands, each with a unique character.

The Trails Act's use of the term "right-of-way" further supports the point. "[R]ight-of-way" can have either of two meanings: "[a] right of passage over another person's ground" or the "strip of land" over which passage is permitted.[34] *Webster's Second* gives examples (at 2148) including "[t]he land . . . occupied by a railroad for its tracks"; "the strip of land over which a public road is built"; and "the strip over which

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[34] *Webster's Second* 2148; *see also Webster's Third* 1956. Atlantic (at 24) ignores the second of these definitions entirely.

an electric power transmission line passes." Decisions of this Court have explained and applied that second definition of "right-of-way";[35] and, when Congress passed the Trails Act, the then-current edition of *Black's Law Dictionary* described that definition as "often used."[36]

The Trails Act uses this second definition of "right-of-way," encompassing not just a hiker's intangible right to cross land, but the tangible area of land that the hiker may cross. Only using that definition can the Act intelligibly refer to trail rights-of-way that "include lands," 16 U.S.C. §§ 1244(a)(1), 1246(e); "lands involved" in a right-of-way or right-of-way relocation, *id.* §§ 1244(b), 1246(b); "areas . . . included" in a right-of-way, *id.* § 1246(d); "property within" a right-of-way, *id.* § 1246(f)(1); and "the surface estate of any portion of any right-of-way," *id.* § 1248(e)(1).[37]

Petitioners err in relying on the statement in § 1246(a)(2) concerning trail rights-of-way that "run

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[35] *See*, *e.g.*, *ICC v. New York, N.H. & H.R.R. Co.*, 287 U.S. 178, 203 (1932) (Cardozo, J.) ("The rights of way . . . in view are those that . . . result in the possession of the land itself . . . ."); *Territory of New Mexico v. United States Tr. Co. of New York*, 172 U.S. 171, 182 (1898) (discussing both definitions); *see also United States v. Union Pac. R.R. Co.*, 353 U.S. 112, 123 (1957) (Frankfurter, J., dissenting) (quoting *U.S. Trust Co.*).

[36] *Black's Fourth* 1489 ("'Right of way' has a twofold significance, being sometimes used to mean the mere intangible right to cross . . . and often used to otherwise indicate that strip of land which a railroad appropriates to its own use . . . .").

[37] Even if the Trails Act were using the intangible-legal-right definition of "right-of-way," the term "land" embraces such "[a]n interest or estate in land." *Webster's Second* 1388; *Webster's Third* 1268; *see Black's Fourth* 1019 ("'Land' may include any estate or interest in lands, either legal or equitable, easements, incorporeal hereditaments.").

'across Federal lands under the jurisdiction of another Federal agency.'" USFS Br. 30 (emphasis omitted); *see* Atlantic Br. 6, 24, 32. That language refers to the process by which "the appropriate Secretary *shall select* the rights-of-way for national scenic and national historic trails." 16 U.S.C. § 1246(a)(2) (emphasis added). It does not imply that the second agency continues to administer lands in the right-of-way after that selection.[38]

As the Forest Service concedes (at 30), the Park Service's authority as Appalachian Trail administrator touches all federal lands dedicated to the Trail. For example, the trail administrator decides which "uses along the trail" are permitted, including whether to "designate[]" a trail on "Federal lands" as being "closed" to "motorized vehicles," 16 U.S.C. § 1246(c); "provide[s] for the development and maintenance" of trails "within federally administered areas," *id.* § 1246(h)(1); and regulates the "protection, management, development, and administration of trails," *id.* § 1246(i). Each of these authorities applies to all federal land dedicated to the Trail.

It would be strange if, as petitioners would have it, the agency charged with determining whether "uses" will "substantially interfere with the nature and purposes of the [T]rail," *id.* § 1246(c), had no role in deciding whether boring a pipeline through Trail lands, with viewshed and other impacts, would cause

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[38] Atlantic goes so far as to characterize (at 36) the § 1246(a)(2) process as the Park Service "obtaining a right-of-way from the Forest Service." But the United States owns the lands and does not need a right-of-way (in the intangible-legal-right sense) from itself. Like the other right-of-way provisions cited in text, § 1246(a)(2) makes sense only if "right-of-way" means the area of federal land over which trail users will be authorized to cross.

such substantial interference. To the contrary, the Trails Act confirms that "[t]he Secretary charged with the administration of each respective trail," *id.* § 1244(d), makes decisions about rights-of-way across the trail. When the Park Service is the designated administrator, as it is for the Appalachian Trail, it can grant "rights-of-way" across a trail, but only "in accordance with the laws applicable to the national park system," *id.* § 1248(a), which do not extend to gas pipelines. *See supra* pp. 7-8, 14-15.[39]

Contrary to petitioners' suggestions, *see* USFS Br. 27; Atlantic Br. 23, Congress's directive that the Trail "be administered primarily as a footpath," 16 U.S.C. § 1244(a)(1), is consistent with the Trail's character as an area of land. As the government concedes (at 27), this statement of purpose simply indicates that the Trail is set aside for pedestrians, as opposed

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[39] Section 1248(a) refers to "[t]he Secretary of the Interior or the Secretary of Agriculture as the case may be." That phrase means the trail administrator because those are the two agency heads given administrative authority in § 1243 and § 1244. If that phrase instead meant the agency with jurisdiction over surrounding lands, as petitioners' reading would require, it would have to mention other agencies such as the Smithsonian Institution, the TVA, and the Army Corps of Engineers. *See* NPS, *Natural Resource Monitoring along the Appalachian NST* ("The Appalachian National Scenic Trail . . . crosses through . . . three Tennessee Valley Authority properties [and] one Smithsonian Institute property . . . ."), https://www.nps.gov/im/netn/appa.htm; U.S. Army Corps of Engineers, *U.S. Army Corps of Engineers' trails designated as National Recreation Trails*, https://www.usace.army.mil/Media/News-Releases/News-Release-Article-View/Article/475454/us-army-corps-of-engineers-trails-designated-as-national-recreation-trails/.

to mountain bikers or motorized vehicles. *See* Trail Management Plan I-4.[40]

Similarly, petitioners fail to show that § 1244(d)(1) distinguishes between national trails and the land they occupy. *E.g.*, USFS Br. 34. That provision creates a temporary "advisory council" for each trail, including representatives from "Federal department[s] . . . administering lands through which the trail route passes." 16 U.S.C. § 1244(d)(1). The phrase "through which the trail route passes" refers not to the land of the trail itself, but to the land of the surrounding region. Context makes that clear: Congress also saved seats at the table for "each State through which [a] trail passes," *id.* § 1244(d)(2), and for nonprofits from "the various sections of the country through which the Appalachian Trail passes," *id.* § 1244(d)(3).[41] Thus, the parts of the Trail at issue "pass[]" simultaneously "through" the Forests, "through" Virginia, and "through" the mid-Atlantic region. None

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[40] Petitioners' "footpath" argument has another problem: Congress used that word only in reference to the Appalachian Trail. *See* 16 U.S.C. § 1244(a)(1). Accordingly, if the phrase "as a footpath" made a difference, then the Trail would be the only national trail distinct from the land it occupies. Petitioners offer no reason Congress would have created such a discrepancy.

[41] The same is true of several other Trails Act provisions Atlantic cites. *See*, *e.g.*, Atlantic Br. 25-26 (citing 16 U.S.C. §§ 1244(b), 1244(e), 1246(b)). Each provision refers to another agency administering lands a proposed trail may pass through in the future and that will surround the trail after it is created or relocated. Similarly, a provision of the Blue Ridge Parkway Act, 16 U.S.C. § 460a-7(3), cited by Atlantic (at 31), which authorizes relocation of the Appalachian Trail to locations "upon national forest lands," does not tacitly suggest Forest Service jurisdiction over lands dedicated to the Trail; rather, it refers to possible *future* locations of the Trail.

of that conflicts with the Park Service's administrative jurisdiction over Trail lands.

b. Neither can petitioners' contention be squared with the Park Service's Organic Act. That Act places within the "Park System" only "area[s] of land and water," 54 U.S.C. § 100501, administered by the Park Service. Accordingly, the Trail must be an "area of land," or it cannot be part of the statutorily defined System – contrary to the Park Service's acknowledgments that the Trail is a Park System "unit." *See supra* pp. 19-21. Similarly, if the Trail were not an "area of land," the Secretary of the Interior would not have identified the Park Service as the "land administering bureau" for the Trail. 34 Fed. Reg. at 14,337.

The statutory definition of a Park "System unit," codified in 2014, reinforces the point. Congress defined "System unit" as "one of the areas" of "land and water" encompassed by § 100501, replacing less inclusive terms throughout the Code. 54 U.S.C. § 100102(6). The Forest Service now dismisses (at 45-46) the long-established classification of the Trail as a System unit as an "administrative listing" that predated the statutory definition. To the contrary, the 2014 definition of "System unit" codified[42] a term used in park-related legislation for more than 60 years.[43]

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[42] *See* Act of Dec. 19, 2014, Pub. L. No. 113-287, § 2(b), 128 Stat. 3094, 3094 (declaring an "intent . . . to conform to the understood policy, intent, and purpose of Congress in the original enactments").

[43] *See*, *e.g.*, Act of July 11, 1956, ch. 568, § 1, 70 Stat. 527, 527 (combining a park and a monument "in a single national park unit"); Act of July 20, 1956, ch. 653, § 1, 70 Stat. 592, 592 (identifying an area "dedicated and set apart as a unit of the National Park System"); Act of Oct. 27, 1972, Pub. L. No. 92-589, § 4(a),

Congress even used the same term when it originally discussed the Authorities Act. *See* H.R. Rep. No. 91-1265, at 2 (describing that Act's "basic purpose" as "updat[ing] and clarify[ing] the law with respect to the various units of the national park system"). Further, the Park Service made no changes after the 2014 codification and still classifies the entire Trail as a "unit of the National Park System." *See supra* pp. 20-21. And Congress continues to refer to "units of the National Park System" to this day.[44]

The United States has also invoked Organic Act authority to recover for damage to an Appalachian Trail resource. *See* Compl. ¶ 1, *United States v. Reed*, No. 1:05-cv-00010-GMW-PMS (W.D. Va. Feb. 7, 2005) ("*Reed* Compl."). The statute in *Reed* allowed recovery for damages to resources "within the boundaries of a unit of the National Park System," 16 U.S.C. § 19jj(d) (repealed 2014), and the United States alleged that the Trail was such a unit. *Reed* Compl. ¶ 7. The Trail segment at issue in *Reed* is collocated with the Virginia Creeper Trail, which is managed by the

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86 Stat. 1299, 1302 (directing that certain areas be "distinct and identifiable units of the national park system"); Act of July 27, 1990, Pub. L. No. 101-337, § 4, 104 Stat. 379, 380 (authorizing civil suits to recover for damaged "resource[s] located within a unit of the National Park System").

[44] *See*, *e.g.*, John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub. L. No. 116-9, §§ 2301-2303, 133 Stat. 580, 743-46 (2019) (designating three "New Units of the National Park System"); Act of Dec. 19, 2014, Pub. L. No. 113-291, § 3031(c)(1), 128 Stat. 3292, 3768 (establishing "a unit of the National Park System," wholly on non-federal land, on same date that Congress codified term "System unit").

Forest Service[45] – putting it on all fours with Trail segments that cross national forests.

The Forest Service fails to solve its problem by pointing (at 45) to trails the Park Service does not count as System units. To be sure, the Park Service's assertion of discretion to choose which trails are System units is arguably in tension with the statute. But on the reading the government now advances, *no* national trail could *ever* be a unit of the Park System. That would create a square conflict between both the pre-2014 and current versions of the Organic Act and the agency's longstanding practice – a good reason for this Court to reject it.[46]

c. Atlantic's overwrought characterization (at 43) of the Trails Act and the Organic Act as effecting a "massive land swap" is inaccurate. The Trails Act does not "swap" anything, but instead adds Park Service administrative authority and Park System protections over lands made components of the Trails System. In the Authorities Act, Congress unambiguously incorporated the Appalachian Trail – including segments for which other agencies have some management responsibility (previously called non-System "miscellaneous areas") – into "one National Park System." *See supra* pp. 16-17. One consequence of that

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[45] *See Virginia Creeper Trail* (stating that the land underlying the trail is either "private" or "owned and administered by the Mount Rogers National Recreation Area," a subdivision of the Forest Service), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5348037.pdf. Strictly speaking, of course, the land is owned by the United States.

[46] As the Forest Service acknowledges (at 46 n.12), the legislative testimony on which it relies includes a statement by the Park Service's Deputy Director that "the long-distance trails administered by the National Park Service are, by law, part of the National Park System."

choice is bringing additional lands within the Leasing Act's exception from pipeline rights-of-way.

It is not uncommon for the Park Service to administer park units that include land over which another agency exercises some form of jurisdiction. The Service's annual Acreage Reports divide the "Federal Acres" in the Park System into "NPS Fee Acres," "NPS Less than Fee Acres" (federal easements and the like), and "Other Federal Fee Acres." Although not defined, this last category appears to indicate land that the Service administers for one System-related purpose (such as historical or recreational purpose) and another agency simultaneously administers for another, non-System purpose. Examples include the Manhattan Project National Historical Park, for which the Park Service shares administration with the Department of Energy, *see* 16 U.S.C. § 410uuu; 2019 Acreage Report, Listing of Acreage at 9 (113.61 "Other Federal Fee" acres); and the Port Chicago Naval Magazine National Memorial, for which the Park Service shares administrative responsibility with the Department of Defense, *see* Port Chicago National Memorial Act of 1992, Pub. L. No. 102-562, tit. II, 106 Stat. 4234, 4235; 2019 Acreage Report, Listing of Acreage at 12 (5 "Other Federal Fee" acres"). The Acreage Reports list at least 67 Park Service units that contain at least some "Other Federal Fee Acres." Examples include Acadia, Channel Islands, Gates of the Arctic, and Grand Teton National Parks, and many others. Petitioners' current position implies that all those established Park units are wholly or partly outside the Park System – recreating the very patchwork that Congress sought to abolish in 1970 by creating "one National Park System" with the Authorities Act.

Further, more than 10 System units exist entirely on non-federal land, including a park on land leased from American Samoa, *see* 16 U.S.C. § 410qq-2, and a park on city-owned land in New Orleans, *see id.* § 410bbb. Such System units are less clearly federal "land" than the Appalachian Trail, and yet the Park Service recognizes them as "System unit[s]" and asserts administrative authority over them, explaining that the Authorities Act "brought all areas administered by the NPS into one National Park System."[47] If "area of land" is interpreted as petitioners now urge, none of these undisputed System units would be land in the Park System or be subject to the Park Service's Organic Act authority.

B. Neither the 1983 Trails Act Amendments nor the 1911 Weeks Act Excludes the Trail from the Park System

1. The 1983 Amendments Do Not Affect the Park Service's Administration of the Trail

In 1983, Congress amended the Trails Act to provide that "[n]othing contained in this Act" – as codified, "this chapter" – "shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System." National Trails System Act Amendments of 1983, Pub. L. No. 98-11, tit. II, § 207(a)(2),

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[47] *See*, *e.g.*, NPS, National Park of American Samoa Superintendent's Compendium (Sept. 4, 2014) (listing applicable regulations under 36 C.F.R. pts. 1-7), https://www.nps.gov/npsa/learn/management/superintendent-s-compendium.htm; NPS, New Orleans Jazz National Historical Park Superintendent's Orders (Dec. 10, 2019) (same), https://www.nps.gov/jazz/learn/management/upload/2019-2020-Signed-Superintendents-Orders-12102019.pdf.

97 Stat. 42, 45 (codified at 16 U.S.C. § 1246(a)(1)(A)). Petitioners rely heavily on § 1246(a)(1)(A). *E.g.*, USFS Br. 19, 25, 29, 40-42; Atlantic Br. 23, 26, 32, 36. It will not bear the weight they place on it.

As an initial matter, § 1246(a)(1)(A) wipes out petitioners' key textual distinction by clarifying that the "components of the National Trails System" – which include the Appalachian Trail itself, *see* 16 U.S.C. § 1241(b) – "are," themselves, "lands." So much for the (implausible) contention that the Trail is not land.

Moreover, nothing in § 1246(a)(1)(A) excludes the lands that make up the Trail from the Park System. Section 1246(a)(1)(A) draws a line between the "overall administration of a trail," which rests with one designated federal agency, and day-to-day "management responsibilities," which can be divided among federal agencies, as § 1246(a)(1)(B) contemplates, but also with States, *see id.* § 1244(a)(10) (State of Wisconsin), or private volunteers, *see id.* § 1250. The trailwide authority to "administer[]" a trail, conveyed by § 1244(a)(1), includes the authority to determine permitted uses, provide for development and maintenance, and issue trailwide regulations. *See supra* p. 27 (citing § 1246(c), (h)(1), (i)).

This difference between "administration" and "management" matters because the Organic Act defines the Park System as "land . . . administered by the Secretary, acting through the [Park Service] Director," 54 U.S.C. § 100501 – not "managed" by the Secretary. That is not because Congress forgot the word "management" in the Organic Act.[48] It is

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[48] *Cf.*, *e.g.*, 54 U.S.C. § 100502 (requiring "[g]eneral management plans" for System units); *id.* § 100507(c)(4)(B) (directing

because Congress uses "administration," in particular, to convey the kind of agency jurisdiction over land that defines the Park System and limits of the Leasing Act.[49]

The Park Service itself recognizes the difference between "administration" and "management." Its guidance for the Trails System defines "[a]dministration" to include, in part, responsibility for "resource preservation and protection," "Federal funding and staffing necessary to operate [a] trail," and "exercising trailwide authorities." Reference Manual § 1.4.1. That same guidance, defining "[m]anagement," explains that "[m]any government and private entities own or manage lands and waters along each national trail," with responsibilities including "local visitor services" and "managing visitor use." *Id.*; *see also id.* § 3.1 ("Trail administration is distinguished from on-the-ground trail management . . . ."); Director's Order #45, § 3.6 (making a similar distinction).

Congress was careful not to disrupt the authority of the Trail administrator, or its jurisdiction over federal land, when it amended the Trails Act in 1983. If Congress had wanted to remove the Appalachian Trail from the Park System in 1983, it would have stated that the Trails Act does not transfer "administrative"

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consideration of whether "direct [Park] Service management or alternative protection" is appropriate for proposed units); *id.* § 100706 (concerning the use of "scientific study for System unit management decisions").

[49] *See*, *e.g.*, 16 U.S.C. § 460a-2 (directing Park Service to "administer[]" national forest segments committed to Blue Ridge Parkway); *id.* § 521 (providing Weeks Act lands are "administered" as national forests); *id.* § 1281(c) (Wild and Scenic Rivers Act providing authorities to Interior for "administration" of national rivers); 43 U.S.C. § 1702(e) (defining "public lands" as land "administered" by Bureau of Land Management).

authority between agencies, instead of preserving only "management responsibilities." As alternatives, Congress could have "deemed" national trails to be outside the Park System, as it has done in other contexts, *e.g.*, *Sturgeon*, 139 S. Ct. at 1081; or, as with some national rivers, Congress could have allowed the agencies to decide among themselves which should be administrator, *see* 16 U.S.C. § 1274(a)(5). But Congress would not have used a savings clause about "management responsibilities" to achieve that result.

Petitioners' reading of § 1246(a)(1)(A) has two other fatal flaws. *First*, that provision rules out only "transfer[s] among Federal agencies" of "management responsibilities." Even if pipeline right-of-way authority were a "management responsibilit[y]," as Atlantic incorrectly argues (at 26), there is no "transfer" here of that authority "among Federal agencies." Instead, that authority is gone entirely – because, as all agree, under the Leasing Act no agency can grant pipeline rights-of-way through federal "land[] in the National Park System." *See* USFS Br. 3; Atlantic Br. 10. To the extent that authority now exists anywhere in the federal government, it belongs to Congress.

Second, § 1246(a)(1)(A) is a rule of construction solely for provisions "contained in this chapter" – that is, the Trails Act. That Act does not itself either place the Appalachian Trail within the Park System or revoke gas-pipeline authority. Those results occurred only after other events: the Secretary's assignment of administrative authority to the Park Service; the Organic Act's incorporation of all Service-administered areas into a unified System; and the Leasing Act's carve-out for System lands in § 185(b)(1). *See supra* pp. 14-18. Section 1246(a)(1)(A) does not speak to the construction of the Organic Act or the Leasing Act.

The relevant statutes all can be read in harmony. The federal land Congress dedicated to the Appalachian Trail within the boundaries of national forests is administered by the Park Service and consequently is federal land in the Park System, carved out of Leasing Act authority. The Forest Service retains management responsibilities for Trail segments within the Forests, consistent with its authority to use land "for trail purposes," 16 U.S.C. § 1246(d), including important matters such as "local visitor services, managing visitor use, law enforcement, inventorying and mapping of resources, planning and development of trail segments or sites, site-specific compliance, providing appropriate public access, site interpretation, trail maintenance, marking, resource preservation and protection, and viewshed protection." Reference Manual § 1.4.1. That reservation of management responsibilities, however, does not remove Trail land administered by the Park Service from the Park System. Nor does it authorize the Forest Service to grant a gas-pipeline right-of-way under the Leasing Act as though that statute did not exclude such lands.

2. The Weeks Act Does Not Affect the Park Service's Administration of the Trail

Years before the founding of the Park Service, the creation of the Park System, or the Authorities Act, the Weeks Act of 1911 funded the purchase of forest land by the Secretary of Agriculture to protect navigable streams. *See* Ch. 186, 36 Stat. 961. One section of that statute provides that purchased forest lands "shall be permanently reserved, held, and administered as national forest lands." 16 U.S.C. § 521. Pointing to this section, petitioners erroneously argue that the George Washington National Forest is "permanently"

administered by the Secretary of Agriculture, including the federal land comprising the Appalachian Trail. USFS Br. 21-22; Atlantic Br. 26-27.

As an initial matter, the word "permanently" as used in § 521 does not mean the status of Weeks Act land cannot be changed by later statutes such as the Trails Act or the Authorities Act. That would violate the "principle . . . that one legislature cannot abridge the powers of a succeeding legislature." *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 135 (1810) (Marshall, C.J.). Further, the Weeks Act itself shows that the boundaries and administration of the national forests remain mutable. The Secretary of Agriculture is authorized to administratively "exchange . . . national forest land" for other land that then becomes part of the national forest. 16 U.S.C. § 516; *see id.* §§ 519a, 521c-521i.[50] The boundaries of the national forests have evolved greatly since 1911, as the Forest Service has acquired, transferred, or lost administrative authority over many tracts of land.[51]

In any event, the Trails Act and the Authorities Act speak clearly about Congress's intent in 1968 and 1970. The text of the Weeks Act confirms that Congress assigns agency jurisdiction for federal lands by declaring how they will be "administered." *Id.* § 521.

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[50] One provision bars the Secretary from selling "Federal lands within" the "National Trails System," 16 U.S.C. § 521i – further evidence that Trails System components within the forests are federal "lands."

[51] *See* U.S. Dep't of Agric., Forest Serv., Lands & Realty Mgmt. Staff, *Establishment and Modification of National Forest Boundaries and National Grasslands: A Chronological Record – 1891-2012* (2012), https://www.fs.fed.us/land/staff/Documents/Establishment%20and%20Modifications%20of%20National%20Forest%20Boundaries%20and%20National%20Grasslands%201891%20to%202012.pdf.

In 1968, Congress declared that "[t]he Appalachian Trail shall be administered . . . by the Secretary of the Interior," whose "administrative responsibilities" would be carried out using "authorities related to units of the national park system." *Id.* §§ 1244(a)(1), 1246(i). Those statements are unambiguous. Further, Congress's direction to perform such administration "in consultation with the Secretary of Agriculture," *id.* § 1244(a)(1), shows a specific decision that the role of the Secretary of Agriculture (and the Forest Service) should be consultation, not administration.

Section 1244(a)(1) is not only clear, but also much more specific than § 521 – dealing with the administration of a specific trail rather than with all federal lands held as national forests. The canon that "the specific governs the general," *e.g.*, *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (citation omitted), thus supports reading the Trails Act according to its terms. Petitioners' contrary reading would avoid making that Act superfluous only by giving it a strained reading in which the Appalachian Trail and its underlying lands would be subject to separate administrative regimes.

None of this is a disfavored "implied[] repeal" of § 521, as Atlantic contends (at 18). There is nothing implied about Congress's words in the Trails Act or the Authorities Act. But, even if there were, "the implications of a statute may be altered by the implications of a later statute," particularly "where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) (citation omitted). That is true even where the earlier statute "has not been expressly amended." *Id.* (citations and brackets omitted).

There is no tension between Congress declaring a large area to be "permanently . . . administered as national forest land[]," 16 U.S.C. § 521, and later designating a corridor of that land with special significance for more protective treatment as part of the Park System. Atlantic's contention that Congress could achieve that result only by specifically referring to and partially repealing § 521 cannot withstand scrutiny.

C. Petitioners' Other Statutory Arguments Fall Short

Roaming even farther from the plain language of the Trails, Organic, and Leasing Acts, petitioners offer comparisons to the Wild and Scenic Rivers Act, Pub. L. No. 90-542, § 6, 82 Stat. 906, 912 (1968) ("Rivers Act") (codified, as amended, at 16 U.S.C. § 1277), and several acts relating to the Blue Ridge Parkway. USFS Br. 22-23; Atlantic Br. 28-30. Neither comparison helps them.

1. The Rivers Act Does Not Support Petitioners' Reading of the Trails Act

Petitioners err in suggesting that this Court should read the Rivers Act as a guide to the meaning of the Trails Act. The Rivers Act provides that any national river "administered by the . . . Park Service shall become a part of the national park system," 16 U.S.C. § 1281(c), and that agencies with "administrative jurisdiction" over lands within the boundaries of such a river may "transfer to the appropriate secretary jurisdiction over such lands," *id.* § 1277(e). Other federal legislation contains similar language.[52] Pointing to

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[52] *E.g.*, Federal Water Project Recreation Act, Pub. L. No. 89-72, § 7(c), 79 Stat. 213, 217 (1965) (codified at 16 U.S.C.

those provisions, petitioners argue that Congress places federal land in the National Park System only with those words. USFS Br. 22-23; Atlantic Br. 28-30.

That argument rebuts a reading of the Trails Act that neither respondents nor the Fourth Circuit have advanced. There is no dispute that the Trails Act, standing alone, did not make the Appalachian Trail part of the Park System. Two additional steps were required: the Secretary of the Interior had to assign administration of the Trail to the Park Service, and Congress had to broaden the definition of the Park System (in the Authorities Act) to embrace all areas of land administered by the Park Service. *See supra* pp. 14-18. To be sure, that chain of three steps ultimately reached a result that Congress achieved immediately in the Rivers Act. But no canon of construction presumes that different statutory structures cannot reach similar endpoints. *Cf. United States v. Beasley*, 12 F.3d 280, 284 (1st Cir. 1993) (Breyer, C.J.) ("Congress can embody a similar scope-of-coverage intent in different ways in different statutes."). And, even if there were one, the Authorities Act would be clear enough to overcome it.

Other provisions of the Rivers Act, moreover, suggest that Congress meant it to function similarly to the Trails Act. Once the Park Service acquires administrative authority, the two statutes use near-identical language to empower the Service to exercise "authorities related to units of the national park system" in "carrying out . . . administrative responsibilities" for trails, 16 U.S.C. § 1246(i), and "in . . . administration" of rivers, *id.* § 1281(c). Similarly, nearly identical text authorizes the Park Service as administrator to issue

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§ 460*l*-18(c)) (authorizing "transfer [of] jurisdiction over project lands" to the Secretary of Agriculture").

"rights-of-way upon, over, under" a national trail or river "in accordance with the laws applicable to the national park system." *Id.* §§ 1248(a), 1284(g). If Congress had meant the statutes to work as differently as petitioners contend, those parallel provisions would not be there.

2. The Blue Ridge Parkway Acts Confirm the Trail Is Land in the Park System

Like the Appalachian Trail, the Blue Ridge Parkway is a linear strip of land administered by the Park Service; like the Trail, it includes lands originally acquired for national forests under the Weeks Act. Petitioners point to legislation concerning the Parkway in an attempt to show that Congress must use particular words to place lands in the Park System. USFS Br. 23; Atlantic Br. 30-31. The comparison in fact supports respondents.

Petitioners point to a 1968 Act authorizing a never-constructed extension of the Parkway into Georgia, now codified at 16 U.S.C. § 460a-6,[53] which authorized the Forest Service to "transfer" land to the Park Service for the extension. *E.g.*, USFS Br. 23. Petitioners say that shows national forest land can be in the Park System only if Congress "transfer[s]" it there. To the contrary, the initial 1936 and 1940 Acts that created the Parkway in Virginia and North Carolina, now codified at 16 U.S.C. § 460a-2,[54] state only that the Parkway "shall be administered" by the Secretary of the Interior through the Park Service and be "subject

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[53] Act of Oct. 9, 1968, Pub. L. No. 90-555, 82 Stat. 967.

[54] Act of June 30, 1936, ch. 883, 49 Stat. 2041; Act of June 8, 1940, ch. 277, 54 Stat. 249-50.

to" the Organic Act.[55] The segments of the Parkway authorized by those bills were constructed through national forests[56] without congressional direction to "transfer jurisdiction" or "land" between agencies. No party disputes that those segments of the Parkway are federal "lands in the National Park System." The Parkway Acts thus confirm that Congress views either form of words as sufficient – the assignment of "administ[ration]" creates Park Service jurisdiction over land in a national forest just as surely as the "transfer" of jurisdiction does.

Petitioners also err in relying on 16 U.S.C. § 460a-3, a provision authorizing "rights-of-way over, across, and upon parkway lands, or for the use of parkway lands by the owners or lessees of adjacent lands, for such purposes . . . as [the Secretary of the Interior] may determine to be not inconsistent with the use of such lands for parkway purposes." *See* Atlantic Br. 31-32; *see also* USFS Br. 37-39 (citing similar language in § 460a-8). Arguing that the Appalachian Trail and the Parkway are "parallel," Atlantic contends (at 32) that it would be "inconceivable," and the Forest Service (at 39) "anomalous," for Congress to have allowed oil-and-gas pipelines across one and not the other. That argument fails for three reasons.

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[55] As with the Rivers Act, the textual variation between the Parkway Act and the Trails Act does not show that Congress excluded the Appalachian Trail from the Park System when it assigned administration to the Secretary of the Interior without mandating subdelegation to the Park Service – only that the Trails Act alone did not place the Trail in that System in one step. *See supra* pp. 14-18, 42.

[56] *See* NPS, *National Park Or National Forest?* (explaining that "[t]he Parkway travels through four national forests in Virginia and North Carolina," including the "George Washington National Forest" and the "Jefferson National Forest"), https://www.nps.gov/blri/planyourvisit/np-versus-nf.htm.

First, petitioners get their timing wrong. The statutory language that became § 460a-3 was originally passed in 1940. *See* 54 Stat. 250. Congress would have needed more than usual foresight to contemplate the interaction of that Act with the Trails Act, the Organic Act, and the Leasing Act, three decades before any of them were passed. To be sure, § 460a-8 replicated similar language in 1968, shortly after the Trails Act. But there is no reason to think Congress meant to do more than extend existing § 460a-3 authority to the proposed southern Parkway segment. In any event, 1968 was still two years before the Organic Act brought the Appalachian Trail into the Park System and five years before the Leasing Act carved the System out of oil-and-gas pipeline authority.

Second, petitioners get their geography wrong. The Parkway and the Appalachian Trail do not stick together for their entire lengths. At points, these two linear park units are as much as 40 miles apart, and the space between them encompasses the cities of Roanoke, Virginia, and (most of) Asheville, North Carolina.[57] Residents of either city might use a right-of-way, or services provided using a right-of-way, that crosses the Parkway but not the Trail.

Third, the authority granted by § 460a-3 and § 460a-8 is not limited to (if it even includes at all) oil-and-gas pipelines.[58] It likely contemplates other

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[57] *See* NPS, Blue Ridge Parkway Maps, https://www.nps.gov/carto/app/#!/maps/alphacode/BLRI.

[58] Section 460a-3 is titled "[l]icenses or permits to owners of adjacent lands" and refers to "owners or lessees of adjacent lands" in its text. It is doubtful that such authority was meant to include interstate pipelines or that such pipelines are "not . . . inconsistent with parkway purposes."

rights-of-way such as roads, water pipes, and power or communication lines. Some rights-of-way in those categories are currently authorized in Park System units by § 100902, which did not exist in its current form when § 460a-3 was passed.[59]

D. Petitioners' Policy Arguments Are Irrelevant and Unfounded

The Fourth Circuit's conclusion that the Forest Service lacked authority to grant a pipeline right-of-way across the Appalachian Trail follows the plain language of the Trails Act, the Organic Act, and the Leasing Act. There is accordingly no need for this Court to weigh the policy concerns pressed by petitioners and their *amici*. *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) ("[W]here . . . the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'") (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)). In any event, those concerns are without basis.

1. Atlantic contends (at 41) that the Fourth Circuit's plain-language reading of the Trails Act and the Leasing Act amounts to a "massive uncompensated transfer of property rights." To be clear, Atlantic does not claim that its own property rights have been taken. Rather, it argues that classifying the Appalachian Trail as part of the "Park System" would preclude state and private owners of Trail lands from authorizing pipelines to traverse their property, *see id.*, which Atlantic thinks would be bad policy.

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[59] The pre-1936 predecessors to § 100902 were differently phrased and contained various limits. *See* Act of Feb. 15, 1901, ch. 372, 31 Stat. 790, formerly codified at 16 U.S.C. § 79 (repealed 2014); Act of Mar. 4, 1911, ch. 238, 36 Stat. 1253, formerly codified at 16 U.S.C. § 5 (repealed 2014). Congress could easily have felt the need to supplement them with a Parkway-specific provision for local landowners.

Atlantic misreads the Leasing Act, which governs decisions regarding "[r]ights-of-way through . . . Federal lands," 30 U.S.C. § 185(a), defined (with exceptions) as "lands *owned* by the United States," *id.* § 185(b)(1) (emphasis added). Neither the Leasing Act nor its exclusion for the Park System addresses the ability of a state or private landowner to grant a pipeline right-of-way. Rather, those landowners grant rights-of-way under state law – using the same state-law property rights that they or their predecessors employed to grant the United States an easement for the Appalachian Trail in the first place.

To be sure, the inclusion of the Appalachian Trail in the Park System gives the Park Service some authority (if it chooses to exercise it) over land the United States does not own; but that is nothing new or untoward. As this Court explained just last Term, the Park Service "has broad authority . . . to administer both lands and waters within all system units," and it sometimes "impose[s] major restrictions" on "non-federally owned lands" (frequently called "inholdings") "within [System unit] boundaries." *Sturgeon*, 139 S. Ct. at 1076. The Service's 2019 Acreage Report lists 338 Park System units that include at least some "Private" acres, for a total of 2.6 million such acres within the System. *See* Summary of Acreage at 1. Nor is this unique to the Park Service; nearly half of the lands in the eastern national forests are private inholdings.[60]

2. Atlantic also errs in suggesting (at 48-49) that the Fourth Circuit's reading would imperil the approximately 50 existing pipelines that currently cross the Appalachian Trail. Those pipelines cross on state-

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[60] *See* Forest Serv., *National Forests on the Edge* 3 n.1 (Aug. 2007), https://www.fs.fed.us/openspace/fote/GTR728.pdf.

owned or privately owned land, to which the Leasing Act does not apply, *see* 30 U.S.C. § 185(a); or where the federal government took ownership subject to a preexisting easement. *See supra* p. 8.

3. Both petitioners incorrectly argue that the Fourth Circuit's reading would lead to the "odd" result of preventing the construction of a pipeline under the Appalachian Trail, but allowing one beneath the Pacific Crest Trail – which passes through the Yosemite and Sequoia National Parks – because the Secretary of Agriculture administers that trail. Atlantic Br. 42-43; *see* USFS Br. 36-37. Petitioners are certainly right that the Secretary of Agriculture should not authorize a pipeline company to dig up the Pacific Crest Trail where it runs through Yosemite or Sequoia. But they are wrong for two reasons that such a scenario is plausible.

First, petitioners overlook the constraints placed on the Secretary of Agriculture by the Trails Act. That Act permits him to authorize only those land uses "which will not substantially interfere with the nature and purposes of the trail," and requires him "to avoid activities incompatible with the purposes for which such trails were established." 16 U.S.C. § 1246(c). Those constraints would not allow the Secretary to turn a national scenic trail into a pipeline route.

Second, as shown by Atlantic's current plans – which require 125-foot clear-cutting around the Pipeline path, *see supra* p. 9 – it would be impossible for a pipeline to follow the Pacific Crest Trail without crossing adjacent lands administered by the Park Service. And, even if theoretically possible, it would be highly impractical (and certainly not cost-effective) for a proposed pipeline to follow strictly all of the twists and turns of the Pacific Crest Trail.

4. Petitioners and their *amici* argue that the Fourth Circuit's decision should be reversed in service of energy independence, lower prices for consumers, and creating high-paying jobs. *E.g.*, Atlantic Br. 47-48. The record before the agencies contains strong responses to those self-serving assertions.[61] But, as it comes to this Court, this case is not about whether the Pipeline is a good idea. It is about the statutory protection Congress has afforded to land in the National Park System, including the iconic Appalachian Trail. When the Trails Act, the Organic Act, and the Leasing Act are given their plain meaning, they show that petitioners have directed their complaints to the wrong place. Congress, and Congress alone, can give Atlantic the permission it seeks to put its Pipeline across federal lands in the Park System.

CONCLUSION

The court of appeals' judgment should be affirmed.

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[61] *See* C.A.App. 1062-65, 1067-71 (Objection to USFS Draft Record of Decision); *see also* Order at 2-3, 6-8, *In re: Virginia Electric and Power Company's Integrated Resource Plan*, Case No. PUR-2018-00065 (Va. State Corp. Comm'n Dec. 7, 2018) (finding Dominion Energy has "consistently overstated" energy demand forecasts and rejecting the company's energy plan), http://www.scc.virginia.gov/docketsearch/DOCS/4d5g01!.PDF.

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ADDENDUM

TABLE OF CONTENTS

1. Section 28 of the Mineral Leasing Act, 30 U.S.C. § 185, provides in relevant part:

§ 185. Rights-of-way for pipelines through Federal lands

(a) Grant of authority

Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

(b) Definitions

(1) For the purposes of this section "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

(2) "Secretary" means the Secretary of the Interior.

(3) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

* * *

2. The National Park Service Organic Act, 54 U.S.C. § 100101, provides:

§ 100101. Promotion and regulation

(a) In General.—The Secretary, acting through the Director of the National Park Service, shall promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

(b) Declarations.—

(1) 1970 declarations.—Congress declares that —

(A) the National Park System, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States and its territories and possessions;

(B) these areas, though distinct in character, are united through their interrelated purposes and resources into one National Park System as cumulative expressions of a single national heritage;

(C) individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their inclusion jointly with each other in one System preserved and managed for the benefit

and inspiration of all the people of the United States; and

(D) it is the purpose of this division to include all these areas in the System and to clarify the authorities applicable to the System.

(2) 1978 reaffirmation.—Congress reaffirms, declares, and directs that the promotion and regulation of the various System units shall be consistent with and founded in the purpose established by subsection (a), to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of the System units shall be conducted in light of the high public value and integrity of the System and shall not be exercised in derogation of the values and purposes for which the System units have been established, except as directly and specifically provided by Congress.

3. The National Park Service Organic Act, 54 U.S.C. § 100102, provides:

§ 100102. Definitions

In this title:

(1) Director.—The term "Director" means the Director of the National Park Service.

(2) National park system.—The term "National Park System" means the areas of land and water described in section 100501 of this title.

(3) Secretary.—The term "Secretary" means the Secretary of the Interior.

(4) Service.—The term "Service" means the National Park Service.

(5) System.—The term "System" means the National Park System.

(6) System unit.—The term "System unit" means one of the areas described in section 100501 of this title.

4. The National Park Service Organic Act, 54 U.S.C. § 100501, provides:

§ 100501. Areas included in System

The System shall include any area of land and water administered by the Secretary, acting through the Director, for park, monument, historic, parkway, recreational, or other purposes.

5. Section 5 of the National Trails System Act, 16 U.S.C. § 1244, provides in relevant part:

§ 1244. National scenic and national historic trails

(a) Establishment and designation; administration

National scenic and national historic trails shall be authorized and designated only by Act of Congress. There are hereby established the following National Scenic and National Historic Trails:

(1) The Appalachian National Scenic Trail, a trail of approximately two thousand miles extending generally along the Appalachian Mountains from Mount Katahdin, Maine, to Springer Mountain, Georgia. Insofar as practicable, the right-of-way for such trail shall comprise the trail depicted on the maps identified as "Nationwide System of Trails,

Proposed Appalachian Trail, NST-AT-101-May 1967", which shall be on file and available for public inspection in the office of the Director of the National Park Service. Where practicable, such rights-of-way shall include lands protected for it under agreements in effect as of October 2, 1968, to which Federal agencies and States were parties. The Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture.

* * *

(d) Trail advisory councils; establishment and termination; term and compensation; membership; chairman

The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national historic trail to the System, and within sixty days of November 10, 1978, for the Appalachian and Pacific Crest National Scenic Trails, establish an advisory council for each such trail, each of which councils shall expire ten years from the date of its establishment, except that the Advisory Council established for the Iditarod Historic Trail shall expire twenty years from the date of its establishment. If the appropriate Secretary is unable to establish such an advisory council because of the lack of adequate public interest, the Secretary shall so advise the appropriate committees of the Congress. The appropriate Secretary shall consult with such council from time to time with respect to matters relating to the trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the trail, and the administration of the trail. The members of each

advisory council, which shall not exceed thirty-five in number, shall serve for a term of two years and without compensation as such, but the Secretary may pay, upon vouchers signed by the chairman of the council, the expenses reasonably incurred by the council and its members in carrying out their responsibilities under this section. Members of each council shall be appointed by the appropriate Secretary as follows:

(1) the head of each Federal department or independent agency administering lands through which the trail route passes, or his designee;

(2) a member appointed to represent each State through which the trail passes, and such appointments shall be made from recommendations of the Governors of such States;

(3) one or more members appointed to represent private organizations, including corporate and individual landowners and land users, which in the opinion of the Secretary, have an established and recognized interest in the trail, and such appointments shall be made from recommendations of the heads of such organizations: *Provided*, That the Appalachian Trail Conference shall be represented by a sufficient number of persons to represent the various sections of the country through which the Appalachian Trail passes; and

(4) the Secretary shall designate one member to be chairman and shall fill vacancies in the same manner as the original appointment.

* * *

6. Section 7 of the National Trails System Act, 16 U.S.C. § 1246, provides:

§ 1246. Administration and development of national trails system

(a) Consultation of Secretary with other agencies; transfer of management responsibilities; selection of rights-of-way; criteria for selection; notice; impact upon established uses

(1)(A) The Secretary charged with the overall administration of a trail pursuant to section 1244(a) of this title shall, in administering and managing the trail, consult with the heads of all other affected State and Federal agencies. Nothing contained in this chapter shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System. Any transfer of management responsibilities may be carried out between the Secretary of the Interior and the Secretary of Agriculture only as provided under subparagraph (B).

(B) The Secretary charged with the overall administration of any trail pursuant to section 1244(a) of this title may transfer management of any specified trail segment of such trail to the other appropriate Secretary pursuant to a joint memorandum of agreement containing such terms and conditions as the Secretaries consider most appropriate to accomplish the purposes of this chapter. During any period in which management responsibilities for any trail segment are transferred under such an agreement, the management of any such segment shall be subject to the laws, rules, and regulations of the Secretary provided with the management authority under the

agreement, except to such extent as the agreement may otherwise expressly provide.

(2) Pursuant to section 1244(a) of this title, the appropriate Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice of the availability of appropriate maps or descriptions in the Federal Register: *Provided*, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development 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. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary. In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned.

(b) Relocation of segment of national, scenic or historic, trail right-of-way; determination of necessity with official having jurisdiction; necessity for Act of Congress

After publication of notice of the availability of appropriate maps or descriptions in the Federal Register, the Secretary charged with the administration of a national scenic or national historic trail may relocate segments of a national scenic or national historic trail right-of-way, with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that: (i) such

a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles: *Provided*, That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.

(c) Facilities on national, scenic or historic, trails; permissible activities; use of motorized vehicles; trail markers; establishment of uniform marker; placement of uniform markers; trail interpretation sites

National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this chapter shall be construed as authorizing the use of motorized vehicles within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary: *Provided*, That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or

to enable adjacent landowners or land users to have reasonable access to their lands or timber rights: *Provided further*, That private lands included in the national recreation, national scenic, or national historic trails by cooperative agreement of a landowner shall not preclude such owner from using motorized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate Secretary. Where a national historic trail follows existing public roads, developed rights-of-way or waterways, and similar features of man's nonhistorically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where a national historic trail parallels an existing public road, such road may be marked to commemorate the historic route. Other uses along the historic trails and the Continental Divide National Scenic Trail, which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with the administration of the trail. 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. The appropriate Secretary may also provide for trail interpretation sites, which shall be located at historic sites along the route of any national scenic or national historic trail, in order to present information to the public about the trail, at the lowest possible cost, with emphasis on the portion of the trail passing through the State in which the site is located. Wherever possible, the sites shall be maintained by a State agency under a cooperative agreement between the appropriate Secretary and the State agency.

(d) Use and acquisition of lands within exterior boundaries of areas included within right-of-way

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.

(e) Right-of-way lands outside exterior boundaries of federally administered areas; cooperative agreements or acquisition; failure to agree or acquire; agreement or acquisition by Secretary concerned; right of first refusal for original owner upon disposal

Where the lands included in a national scenic or national historic trail right-of-way are outside of the exterior boundaries of federally administered areas,

the Secretary charged with the administration of such trail shall encourage the States or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the national scenic or national historic trail: *Provided*, That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein after notice of the selection of the right-of-way is published, the appropriate Secretary may (i) enter into such agreements with landowners, States, local governments, private organizations, and individuals for the use of lands for trail purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (f) of this section: *Provided further*, That the appropriate Secretary may acquire lands or interests therein from local governments or governmental corporations with the consent of such entities. The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purpose for which they are acquired: *Provided*, That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner, or his heirs or assigns, shall be offered, by notice given at the former owner's last known address, the right of first refusal at the fair market price.

(f) Exchange of property within the right-of-way by Secretary of the Interior; property subject to exchange; equalization of value of property; exchange of national forest lands by Secretary of Agriculture; tracts lying outside trail acquisition area

(1) The Secretary of the Interior, in the exercise of his exchange authority, may accept title to any non-Federal property within the right-of-way and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdiction which is located in the State wherein such property is located and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. The Secretary of Agriculture, in the exercise of his exchange authority, may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

(2) In acquiring lands or interests therein for a National Scenic or Historic Trail, the appropriate Secretary may, with consent of a landowner, acquire whole tracts notwithstanding that parts of such tracts may lie outside the area of trail acquisition. In furtherance of the purposes of this chapter, lands so acquired outside the area of trail acquisition may be exchanged for any non-Federal lands or interests therein within the trail right-of-way, or disposed of in accordance with such procedures or regulations as the appropriate Secretary shall prescribe, including: (i) provisions for conveyance of such acquired lands or interests therein at not less than fair market value to the highest bidder, and (ii) provisions for allowing the

last owners of record a right to purchase said acquired lands or interests therein upon payment or agreement to pay an amount equal to the highest bid price. For lands designated for exchange or disposal, the appropriate Secretary may convey these lands with any reservations or covenants deemed desirable to further the purposes of this chapter. The proceeds from any disposal shall be credited to the appropriation bearing the costs of land acquisition for the affected trail.

(g) Condemnation proceedings to acquire private lands; limitations; availability of funds for acquisition of lands or interests therein; acquisition of high potential, route segments or historic sites

The appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to provide passage across such lands: *Provided*, That condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than an average of one hundred and twenty-five acres per mile. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to appropriations from other sources, be available to Federal departments for the acquisition of lands or interests in lands for the purposes of this chapter. For national historic trails, direct Federal acquisition for trail purposes shall be limited to those areas indicated by the study report or by the comprehensive plan as high potential route segments or high potential historic sites. Except for

designated protected components of the trail, no land or site located along a designated national historic trail or along the Continental Divide National Scenic Trail shall be subject to the provisions of section 303 of title 49 unless such land or site is deemed to be of historical significance under appropriate historical site criteria such as those for the National Register of Historic Places.

(h) Development and maintenance of national, scenic or historic, trails; cooperation with States over portions located outside of federally administered areas; cooperative agreements; participation of volunteers; reservation of right-of-way for trails in conveyances by Secretary of the Interior

(1) The Secretary charged with the administration of a national recreation, national scenic, or national historic trail shall provide for the development and maintenance of such trails within federally administered areas and shall cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas. When deemed to be in the public interest, such Secretary may enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of such a trail either within or outside a federally administered area. Such agreements may include provisions for limited financial assistance to encourage participation in the acquisition, protection, operation, development, or maintenance of such trails, provisions providing volunteer in the park or volunteer in the forest status (in accordance with section 102301 of title 54 and the Volunteers in the Forests Act of 1972 [16 U.S.C. 558a et seq.]) to individuals, private

organizations, or landowners participating in such activities, or provisions of both types. The appropriate Secretary shall also initiate consultations with affected States and their political subdivisions to encourage—

(A) the development and implementation by such entities of appropriate measures to protect private landowners from trespass resulting from trail use and from unreasonable personal liability and property damage caused by trail use, and

(B) the development and implementation by such entities of provisions for land practices, compatible with the purposes of this chapter,

for property within or adjacent to trail rights-of-way. After consulting with States and their political subdivisions under the preceding sentence, the Secretary may provide assistance to such entities under appropriate cooperative agreements in the manner provided by this subsection.

(2) Whenever the Secretary of the Interior makes any conveyance of land under any of the public land laws, he may reserve a right-of-way for trails to the extent he deems necessary to carry out the purposes of this chapter.

(i) Regulations; issuance; concurrence and consultation; revision; publication; violations; penalties; utilization of national park or national forest authorities

The appropriate Secretary, with the concurrence of the heads of any other Federal agencies administering lands through which a national recreation, national scenic, or national historic trail passes, and after consultation with the States, local governments, and organizations concerned, may issue regulations, which may be revised from time to time, governing the use,

protection, management, development, and administration of trails of the national trails system. In order to maintain good conduct on and along the trails located within federally administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall prescribe and publish such uniform regulations as they deem necessary and any person who violates such regulations shall be guilty of a misdemeanor, and may be punished by a fine of not more than $500, or by imprisonment not exceeding six months, or by both such fine and imprisonment. The Secretary responsible for the administration of any segment of any component of the National Trails System (as determined in a manner consistent with subsection (a)(1) of this section) may also utilize authorities related to units of the national park system or the national forest system, as the case may be, in carrying out his administrative responsibilities for such component.

(j) Types of trail use allowed

Potential trail uses allowed on designated components of the national trails system may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and surface water and underwater activities. Vehicles which may be permitted on certain trails may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles. In addition, trail access for handicapped individuals may be provided. The provisions of this subsection shall not supersede any other provisions of this chapter or other Federal laws, or any State or local laws.

(k) Donations or other conveyances of qualified real property interests

For the conservation purpose of preserving or enhancing the recreational, scenic, natural, or historical values of components of the national trails system, and environs thereof as determined by the appropriate Secretary, landowners are authorized to donate or otherwise convey qualified real property interests to qualified organizations consistent with section 170(h)(3) of title 26, including, but not limited to, right-of-way, open space, scenic, or conservation easements, without regard to any limitation on the nature of the estate or interest otherwise transferable within the jurisdiction where the land is located. The conveyance of any such interest in land in accordance with this subsection shall be deemed to further a Federal conservation policy and yield a significant public benefit for purposes of section 6 of Public Law 96-541.

7. Section 9(a) of the National Trails System Act, 16 U.S.C. § 1248(a), provides:

§ 1248. Easements and rights-of-way

(a) Authorization; conditions

The Secretary of the Interior or the Secretary of Agriculture as the case may be, may grant easements and rights-of-way upon, over, under, across, or along any component of the national trails system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided*, That any conditions contained in such easements and rights-of-way shall be related to the policy and purposes of this chapter.

* * *

8. Section 11 of the Weeks Act, 16 U.S.C. § 521, provides:

§ 521. Lands acquired to be reserved, held, and administered as national forest lands; designation

Subject to the provisions of section 519 of this title the lands acquired under this Act shall be permanently reserved, held, and administered as national forest lands under the provisions of section 471 of this title and acts supplemental to and amendatory thereof. And the Secretary of Agriculture may from time to time divide the lands acquired under this Act into such specific national forests and so designate the same as he may deem best for administrative purposes.

9. Section 10 of the Wild and Scenic Rivers Act, 16 U.S.C. § 1281, provides:

§ 1281. Administration

(a) Public use and enjoyment of components; protection of features; management plans

Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

(b) Wilderness areas

Any portion of a component of the national wild and scenic rivers system that is within the national wilderness preservation system, as established by or pursuant to the Wilderness Act [16 U.S.C. 1131 et seq.], shall be subject to the provisions of both the Wilderness Act and this chapter with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of the Wilderness Act and this chapter the more restrictive provisions shall apply.

(c) Areas administered by National Park Service and Fish and Wildlife Service

Any component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system, and any such component that is administered by the Secretary through the Fish and Wildlife Service shall become a part of the national wildlife refuge system. The lands involved shall be subject to the provisions of this chapter and the Acts under which the national park system or national wildlife system, as the case may be, is administered, and in case of conflict between the provisions of this chapter and such Acts, the more restrictive provisions shall apply. The Secretary of the Interior, in his administration of any component of the national wild and scenic rivers system, may utilize such general statutory authorities relating to areas of the national park system and such general statutory authorities otherwise available to him for recreation and preservation purposes and for the conservation and management of natural resources as he deems appropriate to carry out the purposes of this chapter.

(d) Statutory authorities relating to national forests

The Secretary of Agriculture, in his administration of any component of the national wild and scenic rivers system area, may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of this chapter.

(e) Cooperative agreements with State and local governments

The Federal agency charged with the administration of any component of the national wild and scenic rivers system may enter into written cooperative agreements with the Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component. The States and their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the system which include or adjoin State- or county-owned lands.

10. 16 U.S.C. § 460a-2 provides:

§ 460a-2. Blue Ridge Parkway; establishment; administration and maintenance

All lands and easements heretofore or hereafter conveyed to the United States by the States of Virginia and North Carolina for the right-of-way for the projected parkway between the Shenandoah and Great Smoky Mountains National Parks, together with sites acquired or to be acquired for recreational areas in connection therewith, and a right-of-way for said parkway of a width sufficient to include the highway

and all bridges, ditches, cuts, and fills appurtenant thereto, but not exceeding a maximum of two hundred feet through Government-owned lands (except that where small parcels of Government-owned lands would otherwise be isolated, or where topographic conditions or scenic requirements are such that bridges, ditches, cuts, fills, parking overlooks, landscape development, recreational and other facilities requisite to public use of said parkway could not reasonably be confined to a width of two hundred feet, the said maximum may be increased to such width as may be necessary, with the written approval of the department or agency having jurisdiction over such lands) as designated on maps heretofore or hereafter approved by the Secretary of the Interior, shall be known as the Blue Ridge Parkway and shall be administered and maintained by the Secretary of the Interior through the National Park Service, subject to the provisions of the Act of Congress approved August 25, 1916 (39 Stat. 535), entitled "An Act to establish a National Park Service, and for other purposes", the provisions of which Act, as amended and supplemented, are extended over and made applicable to said parkway: *Provided*, That the Secretary of Agriculture is authorized, with the concurrence of the Secretary of the Interior, to connect with the parkway such roads and trails as may be necessary for the protection, administration, or utilization of adjacent and nearby national forests and the resources thereof: And *provided further*, That the Forest Service and the National Park Service shall, insofar as practicable, coordinate and correlate such recreational development as each may plan, construct, or permit to be constructed, on lands within their respective jurisdictions which, by mutual agreement, should be given special treatment for recreational purposes.

11. 16 U.S.C. § 460a-3 provides:

§ 460a-3. Licenses or permits to owners of adjacent lands

In the administration of the Blue Ridge Parkway, the Secretary of the Interior may issue revocable licenses or permits for rights-of-way over, across, and upon parkway lands, or for the use of parkway lands by the owners or lessees of adjacent lands, for such purposes and under such nondiscriminatory terms, regulations, and conditions as he may determine to be not inconsistent with the use of such lands for parkway purposes.

12. 16 U.S.C. § 460a-6 provides:

§ 460a-6. Blue Ridge Parkway extension; acceptance of lands; public use, administration, and maintenance areas; survey location of parkway extension crossing national forest land; transfer from Federal agency to administrative jurisdiction of Secretary of the Interior; national forest uses following transfer within national forest

The Secretary of the Interior is authorized to accept, on behalf of the United States, donations of land and interests in land in the States of North Carolina and Georgia, to construct thereon an extension of the Blue Ridge Parkway from the vicinity of Beech Gap, North Carolina, to the vicinity of Kennesaw Mountain National Battlefield Park north of Atlanta and Marietta, Georgia, and to provide public use, administration, and maintenance areas in connection therewith. The lands accepted for the parkway extension may vary in

width but shall average not more than one hundred and twenty-five acres per mile in fee simple plus not more than twenty-five acres per mile in scenic easements. The survey location and width of any portion of the parkway extension that crosses national forest land shall be jointly determined by the Secretary of the Interior and the Secretary of Agriculture. Where the parkway extension designated by the Secretary of the Interior traverses Federal lands, the head of the department or agency having jurisdiction over such lands is authorized to transfer to the Secretary of the Interior the part of the Federal lands mutually agreed upon as necessary for the construction, maintenance and administration of the parkway extension and public use thereof, without transfer of funds. Any such transfer within a national forest shall not preclude any national forest use that is compatible with parkway use and that is agreed upon by the Secretary of the Interior and the Secretary of Agriculture.

13. 16 U.S.C. § 460a-8 provides:

§ 460a-8. Licenses or permits for rights-of-way over parkway lands

The Secretary of the Interior may issue revocable licenses or permits for rights-of-way over, across, and upon parkway lands, or for the use of parkway lands by the owners or lessees of adjacent lands, or for such purposes and under such terms and conditions as he may determine to be consistent with the use of such lands for parkway purposes.