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FOR IMMEDIATE RELEASE

Local Property Owners File Legal Complaint Over Sleeping Bear Heritage Trail

Cedar, Michigan – In federal court today, Leelanau County property owners filed a legal complaint against the National Park Service (“NPS”) requesting compliance with the National Environmental Policy Act (“NEPA”) in regards to construction of the last segment of the multi-use recreational Sleeping Bear Heritage Trail.

The complaint refers to NPS’s failure to meet several of its procedural and administrative duties as required by NEPA. The complaint highlights several errors and omissions contained in the Environmental Assessment (“EA”) for Segment 9, which begins at CR 669 and continues along M-22/Traverse Lake Road to CR 651.

“The local landowners are asking the NPS to complete a thorough Environmental Impact Statement (“EIS”) on the final Segment 9 route,” stated Thad Morgan, plaintiff’s legal counsel at Fraser Trebilcock. “The plaintiffs believe NPS also has a responsibility to evaluate other feasible alternatives that would have significantly less human and environmental impacts.”

The complaint, filed by Little Traverse Lake Property Owners Association and other local private property owners over whose property the trail will be constructed, highlights a number of misleading statements that understates the real impact:

- The EA assigns a “topography” score of **“0-Negligible slope”** for Segment 9, while failing to acknowledge that Segment 9 along Traverse Lake Road calls for a construction through **critical dunes**, which are more than 50 feet in height, have a slope **greater than 1:3 and** are protected under Michigan’s Natural Resources and Environmental Protection Act.
- The EA also indicates a score of “0” for “wetlands, streams and soils” despite the fact that Segment 9 **will cross both wetlands and a creek.**
- The complaint claims the EA misled the public as to the real project cost. The EA assigned a score of “0” under “cost” with a projected budget of \$18,225 for 2.43 miles of trail along Traverse Lake Road. **The real costs will be dramatically higher** with construction of wetland and creek crossings, excavation of dunes and erection of retaining walls, and significant tree removal.
- The EA did not address or evaluate **the significant human impact upon private property, a residential neighborhood or the township park.**

- The FONSI states: “no trail way development would occur on private lands.” Yet, Segment 9 of the Heritage Trail calls for NPS construction of a **minimum 10-foot wide path directly on, over or adjacent to private property, crossing residential front yards and as close as 5 feet from a garage.**
- **NPS’ General Management Plan**, detailing the proposed development of the Trail, states that “high use zoning does not imply the acquisition of private lands for the hike/bike trail” yet Segment 9 is proposed to **cross private property** instead of using Park owned property.

NEPA requires an agency to “study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts” and “rigorously explore and objectively evaluate all reasonable alternatives.”

- **NPS has not analyzed a proposed alternative which routes the Trail north of M-22 on CR 669 and ends at Good Harbor Bay in an area with facilities and beaches.**
- The Trail could also continue east and west adjacent to Michigan Road along the lakeshore in an area already designated as a recreational zone in the Master Plan of the National Lakeshore,
- This provides a superior user experience with scenic views of Lake Michigan.

The plaintiffs claim that the alternative route:

- **Meets the goals of the Trail**
- **Uses existing land owned by NPS**
- **Avoids sensitive ecological areas**
- **Significantly reduces the number of trees to be removed**
- **Eliminates excavating critical dunes**
- **Avoids private homes and residential neighborhoods.**

The trail would provide more than 25 miles of multi-use recreational opportunities stretching from Empire to beautiful Good Harbor Bay.

The EA does not discuss why such an alternative was not considered, considering that **seventy percent (70%)** of **ALL** written comments received during the NPS public comment period on the Heritage Trail Environmental Assessment were comments opposed to the Segment 9 routing of the trail on or along Traverse Lake Road.

BACKGROUND INFORMATION

August 1, 2015

Local property owners file legal complaint over Sleeping Bear Heritage Trail

Leelanau County property owners filed a legal complaint in federal court against the National Park Service ("NPS") requesting compliance with the National Environmental Policy Act ("NEPA") in regards the last segment of the Sleeping Bear Heritage Trail, Segment 9.

The complaint puts forth NPS's failure to follow administrative and procedural requirements of NEPA. The plaintiffs are asking NPS to complete an accurate and thorough Environmental Impact Statement on the final Segment 9 route, which was never done. The complaint also requests NPS, in accordance with NEPA, to also evaluate other feasible alternatives that would have significantly less human and environmental impacts.

The plaintiffs include Little Traverse Lake Property Owners Association and other local private property owners over whose property the trail is proposed to be constructed. Segment 9 is proposed to begin at the corner of M-22 and CR 669 and then continue along M-22/Traverse Lake Road to CR 651.

The complaint puts forth several errors and omissions in the Environmental Assessment which plaintiffs claim misleads the public in understanding the real impact. The EA assigns a "topography" score of "0-Negligible slope" while failing to acknowledge that Segment 9 along Traverse Lake Road calls for a construction of a minimum 14-foot wide corridor by excavating critical dunes which are more than 50 feet in height, have a slope greater than 1:3, and are protected under Michigan's Natural Resources and Environmental Protection Act. The EA also indicates a score of "0" for "wetlands, streams and soils" despite the fact that Segment 9 will cross wetlands and a creek.

The complaint claims the EA misleads the public as to the real project cost. The EA assigned a score of "0" under "cost" with a projected budget of \$18,225 for 2.43 miles of trail along Traverse Lake Road. The real costs will be drastically higher with the Trail proposed to be a 10 foot off-road asphalt path that will require extensive critical dune excavation with retaining walls, boardwalks over wetland areas, building a bridge over a creek and significant tree removal.

The Finding Of No Significant Impact ("FONSI") states that "[a] number of other options were considered by the Trailway Committee during the planning process, but were eliminated due to excessive grading issues, impacts to private property, steep topography, [and] potential impacts on proposed wilderness or safety." All of these reasons for abandoning other Trail route options exist in the Segment 9 route, yet NPS ignored these factors. If the factors in the EA were scored correctly, Segment 9 would have the greatest environmental impact of any segment along the entire Trail.

Pursuant to the NEPA regulations, NPS has adopted NEPA implementing procedures by way of "Director's Order No. 12" (DO-12) which has "the force of law." However, NPS has failed to comply with many of the requirements described in DO-12 to comply with NEPA implementation, including preparation of an EIS.

DO-12 directs that an EA should address the effect a project has upon the human environment so that potential significant impacts can be addressed by way of an EIS. NEPA's regulations define the "Human Environment" as the "natural and physical environment, and the relationship of people with that environment." The Environmental Assessment did not address or evaluate

the significant human impact upon private property, a residential neighborhood or the township park.

The FONSI falsely states that “no trailway development would occur on private lands.” However, Segment 9 of the Heritage Trail actually calls for NPS construction of a minimum 10-foot wide path directly on, over or adjacent to private property, crossing residential front yards and as close as 5 feet from a garage.

Congress established the Lakeshore in 1970 by way of legislation stating that “in developing the lakeshore the Secretary shall provide public uses areas in such places and manner as he determines will not diminish the value or enjoyment for the owner or occupant of any improved property located thereon.” Even the NPS’s General Management Plan, detailing the proposed development of the Trail, states that “high use zoning does not imply the acquisition of private lands for the hike/bike trail.” Instead of only utilizing property owned by NPS, Segment 9 of the trail is proposed to be constructed across private property, in violation of the Lakeshore’s policy.

According to the FONSI, long term adverse impacts will occur to topography, wetlands and water quality, vegetation and wildlife, Michigan state-listed species, soils, socioeconomics, and operations and maintenance.” Despite this statement, the NPS determined that there will be no significant impact because the Project would be built “almost exclusively in previously disturbed areas.” This statement is directly at odds with NPS’ statement in the FONSI that Alternative B “would be constructed in areas of very little previous disturbance”, including the critical deer habitat south of Bufka farm and north of Traverse Lake Road which will be dissected by Segment 9.

NEPA requires an agency to “study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts” and “rigorously explore and objectively evaluate all reasonable alternatives.” NPS has not analyzed the alternative of routing the Trail north of M-22 on CR 669 and ending at Good Harbor Bay in an area with facilities and beaches. The Trail could also continue east and west adjacent to Michigan Road along the lake shore in an area already designated as a recreational zone in the Master Plan of the National Lakeshore, providing a superior user experience with scenic views of Lake Michigan.

The plaintiffs claim the alternative CR 669 route meets the goals of the Trail, uses existing land owned by NPS, avoids sensitive ecological areas, significantly reduces the number of trees to be removed, eliminates excavating critical dunes and avoids private homes and residential neighborhoods. The trail would still provide more than 25 miles of multi-use recreational opportunities stretching from Empire to beautiful Good Harbor Bay.

The EA does not discuss why such an alternative was not considered, particularly when seventy percent (70%) of ALL written comments received during the NPS public comment period on the Heritage Trail Environmental Assessment were comments opposed to the Segment 9 routing of the trail on or along Traverse Lake Road.

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Little Traverse Lake Property Owners Association (“LTLPOA”) has spent considerable effort in communicating concerns with the proposed routing of the Multi-Use Recreational Trail (“MURT” or “Heritage Trail”) around Little Traverse Lake (Visit www.AlongTheShore.info). These historical efforts have included:

- Seventy Percent (70%) of ALL written comments received during the NPS public comment period on the Heritage Trail opposed the routing of the trail on or along Traverse Lake Road (Segment 9).
- Over 200 private petitions (representing 75% of TLR landowners) were submitted to NPS raising concerns of the NPS routing on or along Traverse Lake Road due to private property crossings, traffic impacts to residents, safety concerns, impact to township park, impact on designated 60’ critical dunes, wetlands, creek crossing, tree clearing, Bufka wildlife habitat, and on natural beauty of scenic Traverse Lake Road, as well as significantly increased costs associated with this route.
- The engineering firm Mansfield & Associates, Inc. completed an independent assessment of the proposed route and found numerous errors and flaws in the NPS Environmental Assessment (“EA”) and its Finding of No Significant Impact (“FONSI”). This detailed report was submitted to NPS, which did not respond.
- LTLPOA has advocated for the use of CR 669 to access Good Harbor Bay and for the trail to continue along the shore to CR 651 using historical roadways (and proposed an amendment to the wilderness legislation to utilize the historical roadways), if it is deemed absolutely essential to extend the trail to CR 651 versus ending the trail at CR 669. The alternative route going north on CR 669 and along the shore was supported 128-8 by a 2012 vote among LTLPOA members.
- The Cleveland Township Board unanimously approved two resolutions: 1) supporting the alternative route down CR 669 and along the shore; and 2) expressing concerns about the impact of the NPS proposal to route the trail on or along Traverse Lake Road.
- Lime Lake Association voted at its 2012 annual member meeting to support routing the Heritage Trail down CR 669 and along the shore of Lake Michigan and to help raise the concerns of the NPS Traverse Lake Road route.
- State Senator Booher and State Representative Franz have personally toured the Traverse Lake route and have communicated their concerns over the impact of the proposed TLR trail and supported the routing of the trail down 669 and along the shore instead.
- LTLPOA has identified and communicated significant impacts and concerns related to various proposed options of routing the multi-use trail on or along Traverse Lake Road.

LTLPOA has and continues to advocate for the routing and construction of the trail north along CR 669 to access the beach at Good Harbor Bay and the associated facilities (parking, toilets, picnic tables) – which would also minimize the trail impact upon the environment, neighborhood residents, private property and township park. Trail users would be able to travel 23+ miles from Empire to Good Harbor Bay. We believe that the Heritage Trail goals established by the community, NPS and Scenic Heritage Route Committee would be fulfilled. LTLPOA believes that a win-win solution can be achieved by routing the Heritage Trail along CR 669 to provide trail users access to the beach and facilities at Good Harbor Bay. If additional trail is desired, a beautiful lakeshore experience would result by routing in the recreational zone alongside Michigan Drive.

LTLPOA also believes that the environmental assessment for Segment 9 should be done correctly and completely, meeting all the requirements of the National Environmental Policy Act (“NEPA”). As documented by Mansfield & Associates, Inc. and LTLPOA’s legal counsel Fraser Trebilcock, there are numerous errors, omissions and flaws in the environmental assessment and Finding of No Significant Impact completed by NPS. After years of extensively communicating concerns (and LTLPOA membership discussing at several annual meetings), the LTLPOA Board voted to file a legal complaint against the National Park Service (NPS) in connection with the proposed Segment 9 of the Multi-Use Recreational Trail. A draft copy was sent to NPS fall of 2013 and 2014 seeking their comment prior to filing, which did not respond.

ALTERNATIVE ROUTE OPTION – HERITAGE TRAIL

PROPOSAL:

From the end of Segment 8 (Corner of M-22 and CR 669), continue the Heritage Trail north alongside CR 669 until the end at Good Harbor Bay. If it is desired to provide additional recreational trail opportunities, the Heritage Trail could be extended east and west by routing the trail in the recreational zone along Michigan Road and Harbor Drive. This option would provide an amazing user experience with beautiful scenic views of Lake Michigan, without the sights and sounds of busy M-22 traffic.



ADVANTAGES:

Same End Destination – The Heritage Trail would still end at Good Harbor Bay and all the goals and objectives of the Heritage Trail would still have been met with more than 23 miles of multi-use recreational trail opportunities from Empire to Good Harbor Bay.

Existing Facilities – CR 669 Beachhead and Michigan Road already have several parking areas, multiple picnic areas, several restroom locations and drinking water options.

Enhanced Opportunities – CR 669 and Michigan Road offers multiple recreational opportunities for a better user experience, including access to CR 669 Beachhead at Good Harbor Bay, Lakeshore scenic views along Michigan Road and other Lakeshore features, including hiking trails.

Designated Recreational Zone – This area is already designated as a recreational zone in the Park's master plan and is located outside of the Wilderness Area.

No Environmental Impact – The area alongside CR 669 is flat and already cleared of trees. Trail construction along CR 669 or Michigan Road would not require crossing wetlands, excavation of protected critical dunes or significant clearing of mature forests – unlike the current routing of Segment 9.

No Human Impact – This proposed CR 669 option does not cross private property and is not routed through a residential neighborhood (unlike CR 651 routing). This option is safer for the trail users, including strollers and wheelchair users, moving them away from residential traffic.

Lower Costs – Construction costs would be much less by avoiding large critical dunes, extensive wetland areas, significant tree clearing and extreme topography challenges that exist with the proposed CR 651 routing.