

Amendment 3964 – Requires that citizens within a National Heritage Area are informed of the designation and that government officials must receive permission to enter private property

More and more private property is being designated as part of a National Heritage Area (NHA) by Congress, usually with little debate or public knowledge or input.

This amendment requires that each of the citizens who live within a NHA are notified of the designation. It also requires written consent from property owners before a National Park service or NHA managing entity representative may enter private property located in a National Heritage Area.

This combination of notification and consent serves to advance the public awareness of NHA designations.

More And More National Heritage Area Designations Are Being Made With Little Public Knowledge

Over the past two decades, Congress has established 37 National Heritage Areas (NHAs). National Heritage Areas are partnerships between the National Park Service (NPS) and local entities which manage the areas intended to conserve areas that include natural, historic, and cultural resources. The NPS supports the National Heritage Areas through federal recognition, funding, and technical assistance.¹

S. 2483 establishes three new NHAs and extends the authorization, funding, and study of several existing NHAs.

There is no requirement for the federal government to notify each individual within an area of the designation or its meaning.

¹ Vincent, Carol Hardy and David Whiteman, [Heritage Areas: Background, Proposals, and Current Issues](#), Congressional Research Service, December 27, 2007.

The official announcement of a National Heritage Area designation is typically buried with the pages of a local newspaper, which it could be easily overlooked or never be seen by those who will be affected by the decision.

Furthermore, the Senate—which determines NHA designation—does not even consider such decisions important enough to debate. The NHAs established by S. 2483 were all intended to be “hotlined,” approved by the Senate without discussion or a vote, except a lone Senator objected and demanded a full and open debate on the matter.

National Heritage Area Designation Can Greatly Compromise Land Owners' Use Of Their Own Private Property

The establishment of National Heritage Areas can have real impacts on communities and private property.

The potential consequences of these areas include restrictive zoning laws, government oversight of private property management, and even federal acquisition of land. There are also costs to manage the NHA.

When the National Park Service and local managing entities are given authority over land, the first action is often the enactment of restrictive zoning laws. Although a private citizen may still own the land within a National Heritage Area, the ability to decide how to use the land may be compromised. Landowners could, for example, be forbidden from making basic decisions, such as whether or not trees can be cut down or whether certain crops may be planted.

More restrictions on land owners' use of their own private property, ultimately, is the goal for many of the public organizations that manage National Heritage Areas. The ability to “coordinate” local land use is one of the foremost goals of NHAs.

The Blackstone River Valley National Heritage Corridor Management Plan states that, to achieve “better land use,” the “commission will be a strong voice for local land use planning and regulatory measures.”

Furthermore, it commits to work “to enact ordinances that preserve open spaces.”²

The National Heritage Area Comprehensive Plan for the city of Wheeling, West Virginia also illustrates the use of zoning and regulation by NHAs:

“Key recommendations of the plan include...the institution of a viable historic conservation strategy to preserve the essence of the City’s historic heritage (as described and adopted in the Wheeling National Heritage Area Plan). This strategy should include expanded use of historic zoning districts that include measures to regulate building renovation and demolition as well as the design characteristics of new development.”³

Clearly, the strategy of some National Heritage Areas include greater regulation of land use within a community and that regulation is the result of a few unelected individuals rather than the consensus of those living within the community.

Citizens Deserve To Know That Their Homes And Communities Will Be Affected By A National Heritage Area Designation

Advocates claim the proposed National Heritage Areas are supported by the local citizens who are most affected by the land designations. These advocates, led by the public officials and managing entities which create and control the National Heritage Areas, allege they are representing the interests of the people by designating their formerly private land as public domain.

This claim appears to be based more on a lack of public protest than actual public interest to demonstrate support for the National Heritage Area designations.

² http://www.nps.gov/history/history/online_books/blac/chlm.pdf p. 62

³ Wheeling Comprehensive Plan - 1997 Update, p. 2

The NHA designations in S. 2483, in fact, are not unanimously supported. At least one Congressman whose district is affected by a proposed National Heritage Area, for example, opposes that designation.

The lack of public protest over NHA designations almost always indicates an absence of public knowledge rather than a presence of public support.

For example, only after an Arizona citizen noticed government officials marking his land was he informed for the first time that the area was slated to be designated as the Yuma Crossing National Heritage Area. When he contacted the local Farm Bureau, a meeting was set up for all affected landowners. At that meeting, only one person of the approximately 600 present responded in the affirmative when asked if they were aware of the future designation.⁴

One NHA executive director stated, “We are driven by local interest to the degree if we were told to go away, we would.”⁵

Taxpayers should not have to tell uninvited intruders to “go away.” They should, rather, be the ones to determine if an NHA designation is invited into their community in the first place.

If citizens were alerted to the decision for a NHA designation in their neighborhoods, the community could voice its opinion and form a consensus regarding the decision.

This amendment ensures that the citizens who live within a National Heritage Area are notified of the NHA designation.

By requiring those living within a National Heritage Area are notified of the designation, every member of the public that could be affected will be better informed and provided an opportunity for input into the decisions that impact their homes, neighborhoods, and communities.

⁴ John J. Miller, “An Ugly Heritage,” *National Review*, January 28, 2008.

⁵ Howard Kittell, September 7, 2001, Executive Director, Shenandoah Valley Battlefields Foundation, at a meeting in Monterey, referring to the McDowell battlefield

While Well Intended, National Heritage Areas Can Compromise One Of The Liberties Upon Which This Nation Was Founded

Our nation's Founding Fathers had much to say about the importance of private property.

Perhaps the leading proponent of the virtues of private property was Thomas Jefferson, whose former estate Monticello happens to lie inside the bounds of the proposed Journey Through Hallowed Grounds National Heritage Area.

In a letter to his friend Samuel Kercheval in 1816, Jefferson wrote "The true foundation of republican government is the equal right of every citizen in his person and property and in their management."

The taking of private property by the government takes many forms. One of those is regulating how an owner can use private property, which is a stated goal of some National Heritage Areas.

Landowners do not have the ability to opt out of a National Heritage Area. If their land lies within the boundaries enacted, it automatically becomes a part of the Heritage Area. Thanks to the power of the federal government, citizens' right to manage their property may be threatened.

Congress should not, therefore, grant the power to a few unelected individuals to compromise the rights and liberties of those within a community, especially without the community's awareness.

According to the Washington Post, "one of the more controversial proposed heritage areas, the 'Journey Through Hallowed Ground' heritage area ... runs from Charlottesville to Gettysburg along Route 15, past many American Revolution and Civil War sites." Peyton Knight of the National Center for Public Policy Research notes that "We should never seek to honor the heroes of our nation's founding

by trampling the sacred principles for which they fought and died -- namely property rights and limited, local government.”⁶

Soliciting Local Support Can Defray The Costs Associated With The Notification Requirements

Some may argue that notifying each individual within a National Heritage Area could be costly to the NHA managing entity.

That is no excuse to withhold this information from the citizens affected by the designation who are likely to bear the costs of any new regulations generated as a result of the NHA.

The notification process proscribed in this amendment, actually, offers a tremendous opportunity for the managing entities to reach out to, and build support in, the community. The notification letters, in fact, present a fundraising opportunity as nothing in this amendment would prevent the managing entities from including a fundraising appeal with the notification.

If local citizens support the National Heritage Area designations, the notification presents an excellent fundraising opportunity. The proceeds from this fundraiser can go towards offsetting the costs associated with the notification process, and any extra revenue could support some of the managing costs of the new National Heritage Area.

Federal Agents Should Not Trespass On Private Property

Before the area may be designated as a National Heritage Area, a representative of the managing entity or the National Park service often enters the property to inspect and survey the land.

⁶ Paul Kane. “Heritage Areas vs. Property Rights; With Designations on Rise, Conservatives Sound Alarm,” Washington Post, November 30, 2007, Page A21.

According to this amendment, any such representative must obtain permission from the landowner prior to entering their land.

As the previously-mentioned Arizona case demonstrates⁷, landowners often are unaware of government and managing entity officials entering their land.

Federal agents should be respectful of private property.

This amendment ensures that federal agents do not trespass on private property by requiring written consent from landowners before a National Park service or NHA managing entity representative may enter private property located in a National Heritage Area.

This would ensure landowners are aware of government action within or related to their property.

Permission For Entrance Onto Private Property Protects Landowners And National Heritage Area Representatives

The written consent requirement acts as a protection for the landowners and representatives for the National Heritage Area.

Trespassing laws still apply prior to the designation of a National Heritage Area.

Furthermore, this consent requirement acts to protect NHA representatives from personal harm. In many areas of the country, unknown trespassers are not always kindly met by the owner and strangers may be unaware of hidden dangers that may exist on a property.

By gaining consent to enter the land, these representatives can be best assured of their personal security.

⁷ An Arizona citizen noticed government officials marking his land for an area that was slated to be designated as the Yuma Crossing National Heritage Area. He was unaware of the designation and was not notified or asked for permission for government officials to enter his property.

Americans Deserve To Know What Actions The Government Is Making Regarding Their Community, Homes And Property

There are two components of this amendment—notifying citizens within a National Heritage Area of the designation and requiring NHA representatives to receive permission from a landowner before entering private property—ensure those who are affected by the NHA are aware of important decisions regarding their communities, homes and property.