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Natural Resources Committee
February 11, 2010

[LB1010 LB1011 LB1019]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 11, 2010, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1019, LB1010, and LB1011. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: none. [LB1019]

SENATOR LANGEMEIER: It is 1:30 and we're going to get started because we have to end early today. So we're going to get started. My name is Chris Langemeier and welcome to the Natural Resources Committee. I am the Chair of the Natural Resources Committee. We'd like to welcome everybody here in the crowd here today, as well as those that are watching on our close-captioned television feed and those that are watching it online on the Internet. I'm going to...our committee is, as we know, we're in hearing stage, so we have committee members in other hearings giving their testimony. I'm going to start by introducing who will be here, I guess, but to my far left we have Senator Beau McCoy from Elkhorn, Nebraska. Then we have a spot there for Senator Haar who has already moved into the testifier's table. Then we have Senator Ken Schilz, he'll be with us momentarily from Ogallala, Nebraska. Then we have the Vice Chair of the Committee, Annette Dubas will be joining us shortly. Then we have Laurie Lage who is the legal counsel for the committee. To my far right we have Barb Koehlmoos, who is the committee clerk for the Natural Resources Committee. Then we have Tanya Cook who is from Omaha and she'll be joining us shortly. Then we have Senator Tom Carlson from Holdrege, Nebraska. And then we have Senator Deb Fischer will be joining us shortly as well from Valentine, Nebraska. We have two pages that are helping us in the Natural Resources Committee this year. We have Tony Pastrana from Loveland, Colorado, who is a freshman at Union College. And we have Kiana Mathew who is from Omaha and is a sophomore at UNL. Today as you come up to testify, you'll see in the corner of the room there's a green sheet and we ask that as you come up to testify that you fill one of these green sheets out, and when you come up to testify if you'd give it to Barb before you start. If you're here today and we're going...this is going to be a little more important today, but, also if you're here today and you want to be on the record in support or opposition to a bill, we would ask that you...but you don't care to testify, we'd ask that you fill out one...your name and information, whether you support or oppose, on this grid sheet in the corner of the room. Then you'll go in the record of having had been here and had an opinion on a particular bill without testifying. We are going to take the bills in order. We have, as they were posted out on the door, we're going to take LB1019, introduced by Senator Haar. Then we're going to take LB1010 by Senator Pankonin and then LB1011 introduced by Senator Pankonin. And so with that, we ask that...(whispered instructions) getting there, thanks, as you come up to testify, we ask that you state and spell your name; it helps us keep a better record. No matter how simple your name is, we ask that before you start you state it and spell it. We also

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ask that if you have things to hand out, that you have 12 copies. If you know right now you don't have 12, just raise your hand and the pages will come help you. The other thing is, if you hand it out for us to look at it, we are going to keep it. So if it's something you want us to see, just...personal picture or something like that, we ask that you hold it at the table and let us look at it. The senators can look at it after the hearing if they choose to look at it in more detail. But if you do give it to us, we are going to make it part of the official record and we will keep it. We do use the light system in front of us. We allow five minutes of testimony so you will see the green light come on; it will be green for four minutes. The yellow light will come on for one minute and then you'll get a red light and we'll ask you to stop. We then open yourself up for questions. With that, we will get started. At this time we'd ask that you turn your cell phones off so we don't interrupt the testifier. And with that, Senator Haar, you're recognized to open on LB1019.
[LB1019]

SENATOR HAAR: (Exhibit 1) Chairman Langemeier and members of the committee, my name is Senator Ken Haar, K-e-n H-a-a-r. We're here today to talk about my bill which would require everyone who uses the trail system to wear helmet. No, that's a joke. We've been dealing with helmets for how many days now. Bad joke, I'm sorry. I want to preface this by saying that Senator Pankonin and I have been working on this for some time and at the end of the bill I'll tell you the relationship, I think, of this to his bill. But I'd just like to go through this quickly. My procedure described in LB1019, again, was to deal with a situation in which there was a lot of objection to the route of a trail being planned in Cass County. And at one point the county board got involved as well. And so my approach, as we tried to look for a search for a solution that would allow eminent domain to remain in place, yet put an escalation process in place if there were problems. And mine approaches it from the county board level. And basically, it's modeled after, as I put at the bottom of the page I handed out to you, the NRD, DNR, Interrelated Water Review Board, which is a board that I don't believe has ever convened, but it's a process set up if the NRDs and the DNR disagree. And so it's copied after that. It would begin with the county board having concerns over the trails, the trail route in their county and then they could call on what we're calling a trails dispute board. This would be a board that would be set up and it would have two members appointed by the NRD, two appointed by the county board, and three selected by the Governor from a list provided by the State Highway Commission. Then there would be a process of picking a mediator. The mediation would have to occur and if the mediation was unsuccessful, then this special board, the trails dispute board, would meet and would come to a decision. That's the broad outline of this bill. Again, having seen now what Senator Pankonin has come up with, frankly, I like his approach better. His approach, instead of escalating from individual to county board to NRD, sort of thing, the NRD would be directly dealing with individuals and the upgrading process, if there's a dispute, would go to the court system. There are a few details in his bill that I think I would like to see worked out. But again, overall, I think his approach is a better approach and so you might say, what you and I have talked about, and not actually

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doing so much hearing on my bill, but just going and combining the hearing with his bill. [LB1019]

SENATOR LANGEMEIER: So you would request that those that are going to testify on your bill just move over and testify on LB1010? [LB1019]

SENATOR HAAR: Yes. [LB1019]

SENATOR LANGEMEIER: And then not advance yours. [LB1019]

SENATOR HAAR: Yeah. [LB1019]

SENATOR LANGEMEIER: Okay. [LB1019]

SENATOR HAAR: And, you know, if they...one of the things Senator Pankonin and I have talked about, and this is really the way it should work when you're negotiating, we decided to hear both bills because we might get some new ideas. And so if somebody has some ideas one way or the other on my bill, we would also just appreciate those comments because, again, we may come up with a better idea. [LB1019]

SENATOR LANGEMEIER: So as they testify on LB1010, they could say, but I like this chunk that was in Senator Haar's bill. [LB1019]

SENATOR HAAR: That sort of thing. [LB1019]

SENATOR LANGEMEIER: I see. [LB1019]

SENATOR HAAR: I think it's the way to go. So I would be open to any questions you might have. [LB1019]

SENATOR LANGEMEIER: Very good. Are there any questions for Senator Haar? Senator Carlson. [LB1019]

SENATOR CARLSON: Thank you, Senator Langemeier. Senator Haar, so to understand this correctly then,... [LB1019]

SENATOR HAAR: Yes. [LB1019]

SENATOR CARLSON: ...we'll listen to Senator Pankonin's bill, because I was going to ask you a technical question on this, but maybe I'll wait then. If we're not going to deal with this anyway, really. [LB1019]

SENATOR HAAR: Yeah, that would be good. [LB1019]

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SENATOR CARLSON: Okay. Okay. Thank you. [LB1019]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much. [LB1019]

SENATOR HAAR: Thank you very much. [LB1019]

SENATOR LANGEMEIER: You have heard the opening on LB1019 and we talked a little bit about your testimony, moving it to the next one, but we'll still offer it if there are people that would like to testify in support of LB1019? Good afternoon. [LB1019]

RON NOLTE: Good afternoon. Members of the legislative Natural Resources Committee, I am Ron Nolte and that is spelled N-o-l-t-e. I was elected to the Cass County Board of Commissioners in 2004 and reelected in 2008. I served three consecutive years as chairman of the board. I'm here to testify in a supportive capacity on LB1019. Before I begin, I want to thank Senator Haar for his hard work in preparing such a creative and thoughtful proposal. As you know, there has been an ongoing disagreement between the Cass County Board and the Lower Platte South NRD over a proposed trail extension. You also know that there has been related disputes between the NRD and a large number of private landowners whose property was subject to be taken by eminent domain to be used in the development of the trail extension. Before the Legislature adjourned last year, a moratorium was put in place with three requirements. The third requirement asked that the Cass County Board and the NRD to work together on an identified alternate route for the proposed trail extension. Since June of last year, I have been one of the county board members who has worked with the district board on the third requirement. The memorandum of understanding will be presented to the county board by the district board next week. If the memorandum passes, the agreement between the county board and the district board will allow us to go forward to work with a consulting firm and the Nebraska Department of Roads on plans for the alternate trail route between Elmwood and South Bend. Since I have been an active participant in the attempts to resolve the dispute between the Cass County Board and the Lower Platte South NRD, I can tell you that an established process by which to accomplish this task would be most welcome. Therefore, I want to say that I believe that LB1019 offers some very interesting ideas, but I have a number of questions and concerns about how the proposed process might work in the real world. I will share some thoughts for the committee to consider. After the interim study hearing last fall, I know that Senator Haar had an idea for a dispute resolution process and shared it with Senator Pankonin's office. Senator Pankonin asked me to review the idea and told me it was based, to some extent, on a process to resolve water disputes. I assumed that the Water Review Board was the model for the idea. If this is accurate, my review of the requirements for the Water Review Board revealed a couple of differences between the water dispute process and the process that is proposed in

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LB1019 for trails disputes. It appears that the Water Review Board would exist to resolve disputes between NRDs which are entities with similar types of authority. LB1019 would create the trail dispute board to address a dispute between two already existing entities, a county board and a district board that have totally different scopes of authority. The operating procedures for the Water Review Board do not include the requirement of the use of mediation. I'm not sure if this is good to require mediation, which is a process that is usually voluntary and is unlikely to succeed if one or the other participants is unwilling to make concessions or is negotiating from a clearly more powerful position. I'm not sure why the trail dispute board should be created first and then require only the county and the district representatives on the dispute board to participate in mediation. LB1019 says that if the mediation is successful, the resulting agreement shall be implemented by the county board and the district board. Why should the dispute board be in place for the first round of mediation to take place? The bill says that the trail dispute board shall be appointed appropriate staff to assist the board. Who is to pay for the staff and are the new hires for how long and who will they be employed by? The solution options available to the trail dispute board do not prohibit the use of eminent domain as an alternate route selected by the trail dispute board. Over 50 counties with three-person boards of commissioners, if two of the three members of these county boards meet as part of the trail dispute board, would the county board in question be required to post a public meeting notice? I believe it would. LB1019 calls for expenses that are incurred by the trails dispute board to be shared by county board and district board. My experience tells me that transferring funds from one political subdivision to another might cause problems from the state auditor's perspective. I see my red light is on and time is up. I want to thank the senators for my five minutes before you. [LB1019]

SENATOR LANGEMEIER: Very good. Senator Haar has a question. [LB1019]

SENATOR HAAR: Well, thank you very much for coming and for participating in this process. And I think your original intent of all of this is to get people talking together. [LB1019]

RON NOLTE: Yes. [LB1019]

SENATOR HAAR: And it sounds like that has been useful. So again, thank you and your comments are well placed. It's a bit of a strange critter that we created. [LB1019]

RON NOLTE: That's right and we're right in the middle of it. [LB1019]

SENATOR HAAR: Yes. [LB1019]

RON NOLTE: We're trying to working through this dilemma that we have in Cass County. [LB1019]

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SENATOR HAAR: So, thank you very much. [LB1019]

RON NOLTE: Uh-huh. Thank you. [LB1019]

SENATOR LANGEMEIER: Very good. Thank you for your testimony. Further testimony in support of LB1019. Seeing none, is there any...oh, got to be quick, we're moving on. We got to be done by 3:00 so we got to... [LB1019]

KEN WINSTON: (Exhibit 2) Okay, all right. Well then I'll just deliver a very brief statement. [LB1019]

SENATOR LANGEMEIER: Welcome. [LB1019]

KEN WINSTON: Thank you. Good afternoon, Chairman Langemeier, members of the Natural Resources Committee. My name is Ken Winston, K-e-n W-i-n-s-t-o-n appearing on behalf of the Nebraska Chapter of the Sierra Club in support of LB1019. And we're just supporting efforts to resolve disputes related to this issue in a constructive manner. [LB1019]

SENATOR LANGEMEIER: Very good. Are you going to testify in support of all three bills? [LB1019]

KEN WINSTON: No. [LB1019]

SENATOR LANGEMEIER: Oh, okay. Then I'll wait to listen to the rest. Are there any questions for Mr. Winston? Seeing none, thank you very much. [LB1019]

KEN WINSTON: Thank you. [LB1019]

SENATOR LANGEMEIER: Further testimony in support? Testimony in opposition? Opposition? Welcome to the committee. [LB1019]

SADIE NICHOLSON: (Exhibit 3) I'm Sadie Nicholson, S-a-d-i-e N-i-c-h-o-l-s-o-n. The trail laws are codified in National Trail System Act, Title 16, Chapter 27, Section 1240 - 1251 specifying who has the legal rights to decide what happens to property rights versus trails. The Constitution, the founders wrote in it and gave all power and authority to the landowners and none to the nonowners for fear they'd seize the land and divide it. The law covers everything concerning trail acquisition and development. A recreation trail is not needed. There is criteria on acquisition and development of trails in this bill. If it is a historic trail, it must be visible remnants of the history; if scenic, it must be extraordinary. If any doesn't understand it, they should educate themselves in the law. The landowners have the first and the last word on whether a trail goes through their

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land. That's their right, Constitution and some of the amendments. The law also states that the county commissioners who have jurisdiction over the land have the next right, and it is their obligation to make sure that all the criteria is followed for safety and as it's stated in Section 1243 of the National Trail System Act. The county has the jurisdiction and has the legal right to say no. After they make sure that it qualifies as a trail, does not violate any of the law, the county has the right to say no. There's no dispute. If the county feels that it is not...it should not be subject to a dispute board to affect building another trail. The law says that trails are to be built on federal land. And in Section 1251, no funds may be expended by federal agencies for the development of trails, related facilities, or for the acquisition of lands or interest in lands outside of the exterior boundaries of federal areas. Federal funds that were available for development were cancelled July 25, 2008. The Lower Platte South got \$4.6 million in federal funds to build the trail head at South Bend; illegal. They got federal funds for...to cut across Elwood city park with a trail; illegal. Noone mentions that the law says that it must be approved by the appropriate secretary with the consent of the state. The county is used to doing county business and not especially trained. But then I hear that Ron Nolte is for it. All members of a dispute board will be paid from tax funds. This is unnecessary waste of funds. Nowhere in the law, the federal law, does it say there will be any dispute boards after the landowner gives approval and he must give written consent. Then it's the duty of the county to make sure that the trail qualifies. The NRDs do not have the right to build a trail when and where they wish. It would violate the Constitution, federal laws and a Michigan Supreme Court decision, as well as wasting tax money. I ask the Legislature to not adopt this greedy request for power. It doesn't pass the smell test. Any questions? [LB1019]

SENATOR LANGEMEIER: Very good. Are there any questions? I do have one. So, as you cite the laws that say there needs to be...the protection is there, do you think that Nebraska has trumped the federal law by giving NRDs eminent domain? [LB1019]

SADIE NICHOLSON: Yes. [LB1019]

SENATOR LANGEMEIER: Do you think that's in violation of the federal laws. [LB1019]

SADIE NICHOLSON: Yes. The federal laws in 40,...section 3110 through 3118, I believe it is, is the federal eminent domain laws. Eminent domain laws were...are only for the necessary public safety and public health. Nothing else. [LB1019]

SENATOR LANGEMEIER: That's where I thought you were going, I just want to make it clear. Are there any other questions? Seeing none, thank you very much. Did a great job. Further testimony in opposition to LB1019? Seeing none. Any testimony in neutral capacity? Welcome. [LB1019]

JON EDWARDS: Senator Langemeier, members of the committee, my name is Jon

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Edwards, J-o-n E-d-w-a-r-d-s. I'm here today representing the Nebraska Association of County Officials and I'll just be very brief due to how we've decided to arrange the bills today and Senator Haar's previous comments. I felt it prudent that we go on the record on LB1019 in a neutral capacity in that county boards are specifically named as an integral part of that process and our board took a position of neutrality, kind of negative neutral on the bill, just based on, you know, as I went through it the first couple times, much like some of the issues that Mr. Nolte brought forward. There's probably a list of about 15 things within that procedure that looked to be relatively problematic as I look at it and as our board looked at it. So, with that, I think as a general principle from the county perspective, we really believe that while we can appreciate the difficulty of this given situation, we think that disputes like this, in this particular case, are best left to try to be resolved, if at all possible, between the parties that are directly involved with the issue. And so I think from our perspective, we kind of believe that Senator Pankonin's bills really speak to that more directly. While I would tell you, we really don't have a position on those bills, I thought that we probably should register our neutrality on this particular bill. So with that, I won't take any unnecessary time of the committee and finish. [LB1019]

SENATOR LANGEMEIER: Very good. Senator Haar has a question. [LB1019]

SENATOR HAAR: Are you saying, perhaps, that your officials don't need more problems? [LB1019]

JON EDWARDS: (Laugh) [LB1019]

SENATOR HAAR: I'll take that as a yes. [LB1019]

JON EDWARDS: They're always right around the corner, aren't they? [LB1019]

SENATOR HAAR: Thank you. [LB1019]

JON EDWARDS: Sure. [LB1019]

SENATOR LANGEMEIER: Very good. Is there any other questions? Seeing none, thank you very much. [LB1019]

JON EDWARDS: Thank you. [LB1019]

SENATOR LANGEMEIER: Any other testimony in a neutral capacity? Senator Haar, would you like to close? Senator Haar waives closing. These hearings are a little different. Normally we don't have cooperation and some consensus on bills that are all of the same nature. So that's why we're trying to focus on the one that's got the most support. That closes the hearing on LB1019. Now we'll move on to the most approved

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of step yet, LB1010. Senator Pankonin, you're recognized to open on LB1010. [LB1019]

SENATOR PANKONIN: (Exhibit 4 and 5) Thank you, Chairman Langemeier and all those colleagues on the committee. I am Dave Pankonin, D-a-v-e P-a-n-k-o-n-i-n and I represent the 2nd Legislative District. I'm here to introduce LB1010. This bill would create procedures for the use of eminent domain by natural resources districts if private property is to be taken for a recreational trail project. I appreciate the committee's consideration of this issue several times during the past year. Although my initial involvement was prompted by proposed trail project in my district, I've become very interested in how we can draft a policy to provide greater protection for the rights of individual landowners throughout the state when a recreational trail is proposed. My office has invited discussions of this issue with others who are also interested, but who have different opinions about whether we need the policy change I'm proposing and if we do, what specific changes should be made. The outcomes of our conversations have been cordial and constructive. I feel we are very close to agreeing on amendment language that will modify some language, but preserve the most critical elements of LB1010. This committee should receive the amendment next week. As you can see in the first handout I've provided, Legislative Research and my office found that using eminent domain to take private property for a recreational trail can be used in an unlimited way in only eight of our 50 states. Nebraska is one of the eight. LB1010 would move our state from the list of eight which allows the use of this policy in an unlimited way to a list of 12 states that allow the power to be used within well defined limits. LB1010 would leave the power of eminent domain for recreational trails with a natural resources district, but would require public notification of the district's plan to develop a trail including the possible need to use eminent domain to take private property. An opportunity for public input in response to the initial trail development notification, the district would conduct a proceeding in the form of a public hearing to give and receive evidence that specific criteria have been met to demonstrate the need to use eminent domain to take private property to develop the trail. General public notice and specific individual notice to all affected landowners that such a proceeding is planned. An opportunity for public input in response to the notice that eminent domain may be needed to take private land to develop the trail. Voting by the district's board to use eminent domain to take private property to develop the trail is to be at a level greater than a simple majority. Some liability protection for affected landowners. A formal agreement between the district and affected landowners that states both parties' rights and obligations regarding the use of the trail. The right of an affected landowner to appeal the district's decision to use eminent domain to the district court in the county where the land is located. The decision of the district court to be final before a petition to condemn private property can be filed. The provisions in LB1010 offer solutions to real concerns that arose from the trail project in my district and can certainly occur in other parts of the state. The bill also includes recommendations from the Nebraska Comprehensive Trails Plan, the document from which our state law says development and management of recreational trails shall be in conformance. LB1010 represents a

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midrange alternative that would lie between the current unlimited ability of a natural resources district to use eminent domain to take private property for a recreational trail which may be very desirable but is not absolutely necessary, to the basic welfare of the society and the total repeal of that power. A self-reporting survey of Nebraska's 23 natural resources districts was conducted by Legislative Research last fall for this committee's interim study hearing on LR124. The districts were asked how many times they've used eminent domain to take private land for a recreational trail. My second handout reports their answers to this question. The NRDs state that they use their powers of eminent domain as a last resort and the self-reporting survey shows that the power has only been used once by each of two of the 23 districts. The conclusion I draw from the districts' own reports is that the procedure proposed in LB1010 would not be burdensome to the districts. I hope this committee will consider LB1010 to be an important way for the Legislature to demonstrate its responsibility to protect the rights of private landowners. Thank you. [LB1010]

SENATOR LANGEMEIER: Very good. Thank you for the opening on LB1010. Are there any questions for Senator Pankonin? We'll start with Dubas and work our way...Senator Dubas. [LB1010]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Senator Pankonin. I think you and I have had a few brief conversations about this, as I have a similar situation in my district. And you mentioned in your introduction that you have been working. Have you had all of the interested parties involved in this, the amendment you're working on or... [LB1010]

SENATOR PANKONIN: Senator Dubas, we've invited comments and considerations from all parties, but we have specifically been working with the Lower Platte South NRD Board, specifically, with Glenn Johnson, because that board is the one that...it was involved with the local situation. Dean Edson from the NRD association has been involved as well. And so, that's where we started. We knew if we started there, but we're open to others, and, obviously, your committee is going to have an important role. Laurie Lage, your counsel, has worked with Sherrie Geier in my office, over the interim and during the session on this. And I also want to thank Senator Haar as well. He mentioned that we have had continuing discussions, and we have. Even though we started out at odds on this issue, we have talked continuously and I appreciate his willingness to be open. And when he came to the hearing in Cass County, I know our local citizens were very appreciative of his interest in their own plight and also knowing that he wants to see recreational trail development. So we're all very appreciative of his role in this. [LB1010]

SENATOR DUBAS: Okay. I appreciate your time too. Thank you. [LB1010]

SENATOR LANGEMEIER: Senator Haar. [LB1010]

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SENATOR HAAR: Yeah, I just wanted to pass back the thank you and say that...or give you a thank you saying the cordial way we've worked together on this and it's a good example of how we should resolve problems, I think. And I appreciate all your work. [LB1010]

SENATOR LANGEMEIER: Are there any...Senator Fischer. [LB1010]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Senator Pankonin, for your work on this. I realize you're trying to bring the groups together and address a concern in your area, but I'm amazed at the information you just passed out on the states that don't allow the use of eminent domain and I'm amazed that Nebraska does. If we look at the states that don't allow eminent domain, California, Washington, Colorado, Wyoming, Montana, Iowa, Vermont, you know, a lot of those states could be viewed as being more liberal than Nebraska. I know that California and Colorado and Washington have a lot more trails than we do in Nebraska and they don't use eminent domain. Our NRDs haven't used it in the past, just a couple times, so why even have limited use? [LB1010]

SENATOR PANKONIN: Senator Fischer, I appreciate your comments, and I think, first of all, it does show that my office and my constituents I represent would probably...my constituents would probably prefer the next bill, LB1011, which would prohibit. But on the other hand, you were on the floor this morning and you saw what happened to a bill that didn't have 30 votes to stop it. I mean, realistic, last year the reason I pulled LB134 is we had an agreement to try to work on this issue because it was contentious and we wanted to try and find a solution. I think if we can, with your help on this committee, if we can have amended language that gives landowners significant protections and also solidifies this process in law, that it won't happen very often. If NRDs don't need eminent domain, they won't have to go through all these hoops. But if they do, it's going to be a fairly high standard, and I think it should be, and with your help I think we can provide that protection. The thing that I think is important for my constituents is they have no protection right now. And so moving to this type of a solution is important for not only people in my county, but a lot of counties where I think there will be more trail development and there's a lot of good attributes of trails, but we also need to respect private property rights. [LB1010]

SENATOR FISCHER: And I appreciate, as I said, your work on it. When I look at the states that allow the use of eminent domain with limitations, and I realize this is for recreation trails, but Connecticut is listed. Now Connecticut, in my mind, is well known for the Kelo case that went to the Supreme Court and that was for economic development. Proponents of recreation trails say that they're for economic development also. It brings people in the area; it provides amenities in a community, in an area that people enjoy, that they'll move to that locale then. So I have real concerns and am very

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cautious about the use of eminent domain for economic development, obviously, and that includes recreation trails. Because I don't want Nebraska truly to be in with Connecticut that it's allowed with limitations. I'm causing you problems, aren't I?
[LB1010]

SENATOR PANKONIN: Not specifically, Senator, but I was going to use this quote in my close, but one of the things that I think was important in our work on this was, and I'm going to use Senator Langemeier's own words from the January 24th Omaha World Herald editorial about Nebraska's wind strategy. You folks, obviously, have to deal with eminent domain on some other issue and Senator Langemeier was quoted in that editorial to say that it has to be out there, but at...it has to be at a restricted level, in regard to the wind energy issue and eminent domain. So the World Herald's editorial staff agreed that the balanced view is one that most Nebraskans would probably agree with, although, I know there would be strong support for your views. So I believe that this bill, LB1010, is a balanced view and where you can help me is when we come to the committee amendment on these steps and processes that we are talking about so that they are...give individuals a lot of protection. I think that's where you can be very helpful. Thank you. [LB1010]

SENATOR FISCHER: Okay. Thank you, Senator. [LB1010]

SENATOR LANGEMEIER: (Exhibit 6) Are there any other questions? Seeing none. Very good. Thank you very much. You've heard the opening on LB1010. Now we'll move on to supporters of LB1010. And I have a letter in support from Duane Gangwish with the Nebraska Cattlemen. Come on up. Welcome to the committee. [LB1010]

RENEA PANSKA: My name is Renea Panska, R-e-n-e-a P-a-n-s-k-a, and I support LB1010. And I'd like to say good afternoon to Senator Langemeier and members of the Natural Resources Committee. And I'd like to thank you, the members of the Natural Resources Committee, for your time and attention and especially Senator Haar for all your hard work on this issue. The use of eminent domain for the construction of recreational trails may not seem like an important issue when compared to some of the other issues that you're now dealing with. But I'd like to suggest that it is, indeed, very important because it speaks to the rights of citizens when faced with the power of a governmental agency. What we're trying to decide is whether recreational trails are so important, so essential, so necessary that one of the fundamental rights of citizenship, land ownership, can be compromised. I believe that we can all agree that we're not here today to discuss the merits of trails. There are some obvious benefits, although some of us would argue that at a low population density area such ours, the problems might outweigh the benefits. But nevertheless, if someone wants to testify today about what a fine thing trails are, I will not disagree with them. What must be decided is whether the trails are so vital that the NRD should continue to have absolute power to use eminent domain for recreational trails as they see fit, and that their decisions should be final and

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without appeal. We've all heard the reasons given for the NRDs' need to retain the power; we've heard these all before, two previous hearings, but please allow me, briefly, to recap. The trails have been described not just as recreation, but transportation. I don't think anyone would seriously argue that outside the city is a significant number of people will take the kids to school, bring home the groceries, or commute to work on a trail. While no one will argue that a long ride in the countryside on a fine spring day brings health and wellness benefits, outside the cities the trails are not for transportation, but for recreation. It has been claimed that the trails offer economic benefits. It would be interesting to see the statistics supporting this claim. At the hearing at Weeping Water, a young man from Brainard testified that the business at the local cafe had picked up. We did not hear how much. There is the convenience store in Elmwood right near the trail and the owner of that store says that usually when the bikers come in, they fill their bottles with ice, use the restroom and then leave. And in his estimation, the economic benefits are negligible, if not nonexistence. And I might add that there aren't any new businesses in either Brainard or Elmwood. We've also heard that the need to be away from road traffic for safety is one of the reason. Well there is a trail in the right-of-way of Highway 50 north of Springfield, a proposed trail section on the shoulder of Highway 63 north of Platte River, a trail in Lincoln alongside 84th, which as you know is a busy four-lane street and there's even a bike lane between two lanes of traffic beginning north of L Street on 14th here in Lincoln. And granted, this bike lane is not a recreational trail, but if bike riding is such a dangerous activity, why would such a bike lane exist? And if riding a bike is too dangerous along a country road, then it's still too dangerous on the shoulder of a highway. I go to work in Lincoln five days a week. Our home is about seven miles from Elmwood and many mornings I go all the way to Elmwood without seeing even one other vehicle. I would suggest that riding a bike near a country road is at least as safe as riding on the shoulder of a highway or alongside a busy street. And then there's the argument that we need the eminent domain because a single holdout could stop a project, but I would suggest that we might address that issue, rather than giving blanket authority against all the landowners. Now I'd like to...I would argue that the benefits of these trails are not of sufficient value to justify the unchecked use of eminent domain. Surely those who support the trails must see that in the long run, this situation is not good for the development of recreational trails as the trails need the support and good will of the communities through which they pass. And one sure way to lose that support and good will is to begin the project by antagonizing the people of the community. As word spreads of what the landowners stand to lose in the trail development process, fewer and fewer communities are likely to be willing to participate. The provisions...oops, sorry. [LB1010]

SENATOR LANGEMEIER: Do you have a little bit left to finish up? [LB1010]

RENEA PANSKA: I do, I have just a couple of paragraphs. [LB1010]

SENATOR LANGEMEIER: Okay, okay. [LB1010]

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RENEA PANSKA: Shall I finish? [LB1010]

SENATOR LANGEMEIER: Yep, finish it quick. [LB1010]

RENEA PANSKA: Okay. The provisions of LB1010 will go a long way toward removing some of the problems associated with the way eminent domain is currently being used. It provides for what should be a fundamental right of citizenship, which the right to appeal a decision by government. This brings some badly needed balance between the rights of citizens and the powers of government. And there are reasons for even the NRDs themselves to support this legislation. Through this process I have talked to a number of people across the state who have dealt with or are currently dealing with one NRD or another. And there is a lot of anger and resentment about some of the tactics used to complete some of these projects. To many, the NRDs are seen as bullies who approach little kids in the school yard and say, give me your lunch money or I'll take it. And when he is called to the principal's office he says, what's the problem. I didn't take their money, they gave it to me willingly. I would think the NRDs would be willing, even eager to change this perception. Also, if an NRD has made a good faith effort to work with local government and citizens, if they have truly exhausted every alternative to the use of eminent domain for a project, then I would think they would be glad to go before a disinterested third party and explain why this step is necessary. If they have indeed done everything possible to avoid eminent domain, then more than likely they will prevail. Their project can proceed and they will be able to cite the decision in their favor as proof that they have done everything they could to be fair to everyone involved. I thank you very much for your time and attention. And I would ask that you advance this bill to the floor for a full vote by the Legislature. [LB1010]

SENATOR LANGEMEIER: Very good. Thank you. Are there any questions? Start over here, Senator Carlson. [LB1010]

SENATOR CARLSON: Thank you, Senator Langemeier. Thank you for coming today. Now I'm listening to your testimony; I would think that in your mind you'd rather not see eminent domain even be available. [LB1010]

RENEA PANSKA: That is correct. [LB1010]

SENATOR CARLSON: But you're supporting this bill because you believe that it makes it difficult enough that it won't happen very often. [LB1010]

RENEA PANSKA: I believe that it does protect the right of the individual. The way it is now, of course, if the decision is made by an NRD to take your property, it's gone. And I think that it's really imperative that when you're faced with the power of a governmental agency, you should have the right to say...you should have the right of appeal, at the

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very least. [LB1010]

SENATOR CARLSON: Okay. And you haven't seen the amendment that...have you seen the amendment that we haven't seen? [LB1010]

RENEA PANSKA: I have not. [LB1010]

SENATOR CARLSON: Okay. So you're just talking about the principle of the bill. [LB1010]

RENEA PANSKA: Yes. [LB1010]

SENATOR CARLSON: Okay. Thank you. [LB1010]

RENEA PANSKA: Uh-huh. [LB1010]

SENATOR LANGEMEIER: Senator Fischer. [LB1010]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Renea. I basically have the same question as Senator Carlson posed to you. Do you feel that an appeal process is enough for you to be secure that not only your voice will be heard, but maybe you'll win? [LB1010]

RENEA PANSKA: I do. I think that...well, in our case, one of the arguments for using the eminent domain where it was, was that that was really the only, the only option. And as it turns out, there is another option. Yeah, there is another trail they can...that...another route that is...that is acceptable. But in a perfect world, I would say, you know, take it out. But I realize that that may not...we may not be able to achieve that. And I think that this does give some significant protection to the landowner because it does force the NRDs to prove their claims that this is the only option. [LB1010]

SENATOR FISCHER: I happen to enjoy trails here, when I'm in Lincoln. I have the Cowboy Trail, I've mentioned that before, I've never seen anybody on that, in my district. But I...so I think trails have their place. But I bring up my experience with the Cowboy Trail and your experience in rural Nebraska with the recreational trails, because at the beginning of your testimony you talked about some people refer to recreation trails as transportation. [LB1010]

RENEA PANSKA: Right. [LB1010]

SENATOR FISCHER: And if it's a transportation corridor, which it would be in my opinion, don't you have some concerns about the expansion then of that transportation corridor in the future once you have a trail set up there? Right now, it may be walking

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and bikes... [LB1010]

RENEA PANSKA: Very much so. [LB1010]

SENATOR FISCHER: ...but it is a transportation corridor. [LB1010]

RENEA PANSKA: Yes, very much so. Yeah. [LB1010]

SENATOR FISCHER: Okay. Thank you very much. [LB1010]

RENEA PANSKA: Okay. [LB1010]

SENATOR LANGEMEIER: Are there any other questions? Seeing none, thank you very much for your testimony. Welcome. [LB1010]

ROGER GAEBEL: Good afternoon. Senators, Chairman Langemeier, my name is Roger Gaebel, R-o-g-e-r G-a-e-b-e-l. One of these times you're going to look at me and go, oh jeez, not him again. I could cut my testimony really short and just refer to Senator Fischer and so, what she said. But... [LB1010]

SENATOR LANGEMEIER: That's up to you. [LB1010]

ROGER GAEBEL: No. Thanks for this opportunity to speak in support of LB1010. This has been a long struggle for the landowners in Cass County and I appreciate all the time that all of you have spent, both in session and out in Cass County to help us resolve this issue. As long as anyone has the power of eminent domain and they can use it unquestioned or unrestrained, someone is going to test the limits of that authority, and I think that's what brings us here today. In this case it was easier for the NRD to condemn private property than it was to work with the county boards. This will happen again in other cities and other counties in Nebraska and it undoubtedly will be brought to the Legislature again unless there is some accountability required. I've heard arguments that there are avenues and there are processes that a citizen can use to protect themselves against a condemnation act. But Senators, we tried that. We went to the public meetings. We went to the NRD meetings. We questioned the design. We pointed out the flaws in that design. It didn't matter, this project was going to go through. Our only legal recourse in this whole thing was to argue the price of the property. And price was never an issue here. It was about the private rights of landowners, or in this case, the lack thereof. As opposition began to grow over this project, it became obvious there was a citizens advisory group that was going to be the sacrificial lamb. We were told that this route was chosen by a group of our peers. There was nobody in that group that ever agreed to, or suggested that they use private property. You heard from a member during the interim study that was a member of that group and he told us then that the route currently being studied and looked at today was one of the original routes

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that they had suggested, but was told by the NRD that wasn't workable. And now it is. This case is a textbook example of the situation that Mary Lee Brock from the Werner Institute, when she testified at the interim study on mediation, and she stated, and it's obvious, you simply cannot negotiate or mediate an issue when one party holds all the cards. Had it not been for Senator Pankonin's intervention and the introduction of LB134, all of the property for this trail would be condemned by this date. It took legislative action before the NRD would consider a better option and work with our county board. I believe LB1010 provides a process of checks and balances that offer some protection for the citizens of Nebraska from the arbitrary use of eminent domain and still allow the NRD the ability to move forward with a project when a very small minority might otherwise halt a project that would benefit the state. As the saying goes; the devil is in the details. If LB1010 is amended to the point where there are gray areas and wiggle room for the NRDs, the power of eminent domain will again be tested to the limits and we will have wasted all the hours, both yours and ours, to try and come up with a meaningful bill. As the law is currently written, private landowners have no rights when it comes to the power of eminent domain and recreational trails. I honestly do not believe that was what was intended when the Legislature gave this power to the NRDs. Thank you. [LB1010]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Gaebel? Senator Carlson. [LB1010]

SENATOR CARLSON: Thank you, Senator Langemeier. Roger, you testifying for yourself? You're not representing any group? [LB1010]

ROGER GAEBEL: I'm testifying for myself. [LB1010]

SENATOR CARLSON: Okay. So your feelings are much the same as the testifier before you and you would really rather not see eminent domain allowed at all, but you feel that you could live with something that would put some restriction on it and make it a much more difficult process. [LB1010]

ROGER GAEBEL: Yes. And that's a short answer. I would prefer not to have eminent domain. [LB1010]

SENATOR CARLSON: Okay. [LB1010]

ROGER GAEBEL: But, as Senator Pankonin said, without the support of everybody, this looks like the best option that we can hope for. So I would hope for a lot of restrictions, to be real honest with you. [LB1010]

SENATOR CARLSON: Now, I'm trying to be fair. So far, testimony is painting the NRD in a pretty bad picture. Have you had any other experiences with the NRD that you

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would classify as positive experiences? [LB1010]

ROGER GAEBEL: I think the NRD is one of the greatest groups the state has, to be real honest with you. I'm a farmer. I use the NRD for their conservation; they have water control issues. I think right now, the NRD is irreplaceable. I don't think they belong on a recreation business. But other than that, I have no complaints; I applaud what they do. [LB1010]

SENATOR CARLSON: Okay. Thank you. I'm glad I asked the question. [LB1010]

ROGER GAEBEL: Okay. [LB1010]

SENATOR LANGEMEIER: Are there any other questions? Thank you very much for your testimony. Further testimony in support of LB1010. Welcome. [LB1010]

JIM PANSKA: Good afternoon. [LB1010]

SENATOR LANGEMEIER: Good to see you. [LB1010]

JIM PANSKA: Jim Panska, J-i-m P-a-n-s-k-a. Good afternoon, Chairman Langemeier and members of the Resources Committee. I'd like to start out with a quote you're probably all familiar with, it's carved in stone on this building and it states: the salvation of the state is watchfulness of the citizen. In this case we're trying to protect the right of the individual against the unchecked power of a government agency. In my presentation before this committee last year about this time, I related how I had contacted Senator Pankonin for help when our property was threatened by eminent domain for the construction of a recreational trail and was told that NRDs had an unfettered right to take private property for any use, including recreational trails. This legislative body granted these rights and is the only one that can abridge them now. In this country, the rights of private property owners have historically been an essential part of our basic freedoms. Yet the NRDs we have...in the NRDs we have a governmental agency that has the use of the two most powerful tools, taxing authority and eminent domain. And one of these, eminent domain, is unchecked. You may hear people say that all the steps in this bill will increase the time it takes to complete a trail. But remember, the steps outlined in LB1010 aren't necessary at all unless the use of eminent domain is threatened. In our particular case, when questions were asked about the way things were being planned and done in a certain way, we were always told it had to be that way to qualify for federal funding. I always wondered if waivers couldn't be granted for some of these variances or a better plan couldn't be devised to complete the trail. Well, with LB1010, we have some extra steps that have to be met and in Section 7, another set of eyes provide another layer of protection for the individual through the district court. I might add that the question of liability has always been a problem or a concern with us out in the country as well. And no one could every really answer specifically how

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the adjacent property owner might be affected by problems on the trail. Well this bill also addresses that to some degree. In our case, it always felt the cart was before the horse and that the trail plan was always being developed to meet federal guidelines for funding instead of a workable, realistic plan being developed and then requesting federal funds for that trail. Around the country, government subdivisions often have conceived of plans and programs that are not essential but are optional; perhaps desirable, but not necessary, which I believe a recreational trail to be. And once a plan gains momentum, an individual's property rights can get trampled unless they have access to the courts to protect themselves. As Senator Pankonin said in his opening remarks, we hope the Natural Resources Committee will think foremost about the need to provide and then protect some rights for private landowners when NRDs decide to develop recreational trails anywhere in Nebraska. In conclusion, I'd like to thank this committee and especially Senator Haar for their time and efforts in working on a solution for what started out as a local problem, but I feel could and probably will come up again and again in other places in this state. I'm testifying for LB1010 because I feel it will more effectively protect the rights of individuals in a creative way to allow NRDs to maintain the right of eminent domain and still add protection to the rights of the individual. Thank you. [LB1010]

SENATOR LANGEMEIER: Very good. Are there any questions? Senator Haar. [LB1010]

SENATOR HAAR: Well I'd like to thank you for all the time you put in and I don't know who said this, but there was a national politician who said all politics are local, and so it's folks like you taking action that make things happen and I want to thank you for that. [LB1010]

JIM PANSKA: Thank you. [LB1010]

SENATOR LANGEMEIER: Any other questions? Seeing none, thank you very much. Very good. Did a great job. Further testimony in support of LB1010. Good afternoon. [LB1010]

STEVE ALTHOUSE: Good afternoon, Senator Langemeier and the members of the Natural Resources Committee. For the record, my name is Steve Althouse, S-t-e-v-e A-l-t-h-o-u-s-e. I live in Cass County and farm in both Cass and Lancaster County near Waverly. I'm here today to testify on behalf of Nebraska Farm Bureau Federation on LB1010. Farm Bureau was supportive of LB134 last session as we believed it would enhance the private property rights by limiting the natural resource districts' powers of eminent domain as it relates to the development and management of recreation areas. Similarly, we are supportive of LB1011, which I believe will be heard next. The Nebraska Farm Bureau Federation opposes the use of eminent domain for the development of recreation areas. We believe land acquisitions for trails and other

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projects should be done on a willing buyer-willing seller basis. With that as our policy, we wanted to go on record to state that should the Natural Resources Committee choose not to advance LB1011, we are supportive of LB1010 as we believe it does provide a better framework for the use of eminent domain by natural resource districts when it comes to recreational purposes than is in place today. I will also be testifying on LB1011 so I will leave you with these remarks at time and would be happy to answer any questions that you might have. [LB1010]

SENATOR LANGEMEIER: Are there any questions for Mr. Althouse? I'll ask one. So you're...you have the same mindset the others have had. You'd rather have LB1011, but if we can't get LB1011, LB1010 is better? [LB1010]

STEVE ALTHOUSE: It's better than nothing. [LB1010]

SENATOR LANGEMEIER: Than what we have today. [LB1010]

STEVE ALTHOUSE: That's right. [LB1010]

SENATOR LANGEMEIER: Okay. Thank you very much. [LB1010]

STEVE ALTHOUSE: Okay. [LB1010]

SENATOR LANGEMEIER: Did a great job. Further testimony in support of LB1010. Mr. Johnson, good afternoon. [LB1010]

GLENN JOHNSON: (Exhibits 7 and 8) Good afternoon. Senator Langemeier, members of the Natural Resources Committee, my name is Glenn Johnson, J-o-h-n-s-o-n and Glenn is G-l-e-n-n. I'm the general manager of the Lower Platte South Natural Resources District with offices in Lincoln and I'm appearing here on behalf of the board of directors of that district and also on behalf of the 23-member Nebraska Association of Resources Districts in support of LB1010, the concept of that bill. We certainly appreciate Senator Pankonin's extensive research into, and deliberation in developing this legislation. And we thank him for meeting with us to discuss this bill. We have offered some amendments which we think better define and clarify some of the steps and the criteria that are outlined in the bill, but certainly don't think they change the criteria or the intent or the focus of LB1010. We understand well what the issues are. We've been in this situation for quite some years and not just on this project, but we have been experienced with many other types of projects where land rights are acquired, sometimes by eminent domain, whether it's for flood control, whether it's for drainage improvements, levies, and in this case, this particular project happens to be a recreation trail. LB1010 as was described to you by Senator Pankonin focuses on the processes and procedures, essentially once a trail is proposed, as it goes, as the district would proceed through acquisition of right-of-way to establish the trail. It does, actually,

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you know, when it involves private property, we do think this bill will address many, if not most of all those concerns that we have heard addressed by landowners as we have gone through this process. And those who would be impacted, but we also think that for the natural resource districts who would be working through the process with them, it provides a workable, though challenging and could be lengthy and could be expensive process, but it is a workable process. We think we are close, as was Senator Pankonin, on reaching a set of amendments. We were in discussion yesterday and I think that we're very close and hopefully we can come together on those amendments. We certainly thank Senator Pankonin for the opportunity to work with him. We're committed to working with the committee to reach a legislative resolution that can help address the issues of the private property owners and still leave the districts with a workable process. While I'm here, I also want to thank Senator Haar for his work and working with us in this process and for his, both last session during the interim and now, and LB1019, again, the natural resource district and the resources association support that bill. We offered a couple of amendments to him on that particular bill. With that I would be open to any questions. [LB1010]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Johnson?
Senator Fischer. [LB1010]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Glenn, for being here. I want to compliment you and thank you for working with Senator Pankonin on this and, obviously, working with the landowners in the area. From their testimony, while they're not overjoyed, they are...seem to be content to some extent and feel better about the process. So hopefully that will take care of some of the concerns that I've heard in the past and we can move forward on it. So thank you. [LB1010]

GLENN JOHNSON: Thank you. [LB1010]

SENATOR LANGEMEIER: Very good. Are there any other questions for Mr. Johnson?
Seeing none, thank you very much. [LB1010]

GLENN JOHNSON: Thank you. [LB1010]

SENATOR LANGEMEIER: Good job. Further testimony in support of LB1010. [LB1010]

GEOFF RUTH: (Exhibit 9) Good afternoon, Senator Langemeier and members of the Natural Resources Committee. For the record my name is Geoff Ruth, it's G-e-o-f Ruth R-u-t-h and I'm from Rising City, Nebraska. I'm a seventh generation to live on my family farm and I'm here to testify today on behalf of the Nebraska Soybean Association in support of LB1010. In December of 2009, a member of our organization attended our annual meeting and asked if NSA would add language to our resolutions that further supports property rights of individual landowners. Thus 7.1.13 states: the NSA opposes

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the use of eminent domain or mandatory restrictions that postpone or restrict the property rights of landowners. The NSA opposes the use of eminent domain for the taking of land for recreational purposes and for the purposes of economic development. The NSA supports a process that provides reasonable advance warning of right of way encroachment. Due process and impact studies should be conducted prior to state and local spending on the conversion of farmland to other uses. It has long been a priority of the Nebraska Soybean Association to advocate for personal property rights, especially pertaining to the use of eminent domain. We feel that all land exchange should take place between a willing buyer and a willing seller. While LB1010 does not disallow the use of eminent domain by the NRD, it does create a better framework for the use of such a practice. I wanted to appear before you today to testify in support of LB1010, but want it to be known the NSA views this as an alternative to LB1011. While this is not the preferred bill, it does create a framework for the use of eminent domain in a conceivable manner. So I will be testifying later on LB1011. So if you have any questions pertaining to LB1010, I'd answer them. [LB1010]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Ruth? And welcome back; last time you were here you were a page. [LB1010]

GEOFF RUTH: That's right, I was. Thank you. [LB1010]

SENATOR LANGEMEIER: Welcome. Continued testimony in support of LB1010. [LB1010]

JOHN WINKLER: (Exhibit 10) Chairman Langemeier and members of the Natural Resources Committee, my name is John Winkler, J-o-h-n W-i-n-k-l-e-r. I'm testifying today in my capacity as general manager of the Pappio-Missouri River Natural Resources District. I'd reiterate what Mr. Johnson said before me from the Lower Platte South is we believe that LB1010 with certain amendments and modifications it is a good step towards addressing the concerns of property owners when a recreational trail project is proposed near or through their property. The Pappio-Missouri River NRD is committed to working with Senator Pankonin and this committee and Senator Haar to achieve legislation that protects both property owners and provides for a reasonable and workable process when a recreational trail is considered by a natural resources district. The bill would require NRDs to consider eight important factors before making a decision whether or not to establish a trail. It would require NRDs to make all reasonable efforts to acquire any necessary land by negotiated agreements with property owners rather than by eminent domain. There are a few concerns we have regarding certain provisions of this bill, however, we believe they could be addressed through amendments. One concern that we have is that we are creating a legal process, what effectively turns our public hearing into an acquisition of a trail property into a quasi-judicial evidentiary proceeding. Under this provision, the board is to apply a clear and convincing standard to eight categories of evidence. And the clear and

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convincing standard is a very high standard. Any affected real property owner may then appeal the decision by petition in error to the state district court. No project may go forward until a final order has been issued. Mr. Steve Grasz will follow my testimony to give you the...a more coherent description of clear and convincing evidence and he is associated with the district there, our legal counsel and provide government relation services to us. So he will provide that testimony for us. In conclusion, we believe LB1010, again with certain modifications, is a good step toward addressing the concerns of the property owners and again protecting the districts' ability to be able to build these trail projects. I'd be glad to answer any questions that the committee may have at this time. Thank you. [LB1010]

SENATOR LANGEMEIER: Are there any questions for Mr. Winkler? Senator Fischer. [LB1010]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Mr. Winkler for being here. Does Papio have any trails? [LB1010]

JOHN WINKLER: Yes. [LB1010]

SENATOR FISCHER: How did you decide on the location of those trails? Did you follow a plan or was it a local board decision? [LB1010]

JOHN WINKLER: Typically in the trails in our district, because we are more urbanized at least with the cities, typically the trails are brought to us by a sponsor or like the city of Omaha or city of Valley, for example, work on the Western Douglas County Trail. Those trails are mapped out, obviously, by professional engineers and planned in those regards, similar to what the other districts do. I think trails in our district, obviously, since it's urban are much more transportation oriented. We do have people commute on our trails and things like that. So we are in a little different situation than probably the 20-some other NRDs that we talk about. They're very planned. We have extensive trail maps that are produced every year and we have a long list of trails that people would like to be completed, connector trails and things to tie the whole system together. So it's very extensive. [LB1010]

SENATOR FISCHER: Okay, thank you. [LB1010]

JOHN WINKLER: Yep. [LB1010]

SENATOR LANGEMEIER: Are there any other questions? Mr. Winkler... [LB1010]

JOHN WINKLER: Yes. [LB1010]

SENATOR LANGEMEIER: ...I'm going to ask you a question, but it's going to kind of

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divert us here a little bit. [LB1010]

JOHN WINKLER: Okay. [LB1010]

SENATOR LANGEMEIER: We had testimony earlier that said that the NRD shouldn't be in the trail business... [LB1010]

JOHN WINKLER: Yes. [LB1010]

SENATOR LANGEMEIER: ...or the recreation business, yet, you had a bill before Government...or Judiciary Committee yesterday in direct relationship to recreational trails, requesting law, that we make NRD employees law enforcement or quasi-law enforcement to monitor your own recreational facilities. Would they then, if they got that, would they have to...were you hoping to use them on trails as well? [LB1010]

JOHN WINKLER: To clarify the intent of that bill, it was to contract with certified law enforcement agencies and officers to provide patrol in our recreation areas, particularly our parks. We have seven recreation areas, about 1,300 acres that we are responsible for promulgating rules and regulations to protect citizens and make them a safe and fun place, environment for our constituents. That bill would not allow us to hire our own officers. We could enter into innerlocal agreements with existing agencies like the Douglas County Sheriff's Office or the city of Valley's Police Department for example, to provide extra patrols when we need them in those areas. But it's not to get our own type of game wardens or our own type of police force, so, to clarify, that's what that bill's for. [LB1010]

SENATOR LANGEMEIER: That's why I asked. [LB1010]

JOHN WINKLER: Okay. [LB1010]

SENATOR LANGEMEIER: So you could clarify it. [LB1010]

JOHN WINKLER: I hope that did it. [LB1010]

SENATOR LANGEMEIER: Yep, very good. Are there any questions? Seeing none. [LB1010]

JOHN WINKLER: Okay, thank you. [LB1010]

SENATOR LANGEMEIER: Great job. Further testimony in support of LB1010. Welcome. [LB1010]

STEVE GRASZ: Mr. Chairman and members of the committee, my name is Steve

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Grasz, S-t-e-v-e G-r-a-s-z. I want to apologize for my stuffy voice today. I am representing the Papio-Missouri River Natural Resources District. And as John mentioned, I'm an attorney with Husch Blackwell Sanders and serve as government affairs legal counsel to that NRD. And the purpose of my testimony is simply to bring to the committee's attention certain aspects of the bill that the committee may want to consider in terms of policy and procedures as it considers any amendments to the bill. As Mr. Winkler testified, the natural resources district favors the bill with, perhaps, some certain modifications. I just want to bring just a couple points to the committee's attention, more in terms of just how the bill is written than what it does. First of all, it authorizes and requires the natural resources districts to operate as quasi-judicial bodies. The NRDs would be acting as a court or a tribunal under the provisions of this bill. They would have to receive evidence, hear testimony of witnesses, and would have to create a record, probably either by using a court reporter or at least a recording that could be transcribed for a later use. So there would have to be an official record created. They would also be required to apply a legal standard of review which I will go into a little bit more. In addition, the bill creates a new appellate process by means of what's called a petition in error. The decision of the natural resources district would be appealable to the district court of the county. Those appeals would apparently be de novo on the record. In other words, the district court would basically start over. They would look at whatever decision the NRD made and make an independent decision based on the record created. So ultimately, the decision would be by the courts. This, of course, would result in significant legal cost at each stage of the process, both for the NRD and possibly the landowner as well. The NRD's legal expenses, of course, are paid through property taxes. The landowner's costs could well exceed the value of the land, but that's up to them whether they wanted to spend that or not. I think one of the most important things to consider is regardless of what legal standard of review is applied, it's the really...it's the appellate process that creates the judicial...and the creation of the quasi-judicial proceeding that creates the expense and would probably tie up any project in the courts for a couple of years if anybody wanted. The bill, as it is written, requires a super-majority of the board to find by a clear and convincing evidence standard, all of the different factors, and just wanted to make the committee aware that that is a very high legal standard. It would be kind of unusual in Nebraska law. Normally, a petition in error...now I'll just read a sentence here from the Nebraska Supreme Court, in reviewing a decision based on a petition in error and the appellate court determines whether the inferior tribunal acted within its jurisdiction and whether the decision rendered is supported by sufficient, relevant evidence. When making this determination, the appellate court is restricted to the record created before the lower tribunal. Another very, more common standard of review in civil proceedings in Nebraska is a preponderance of the evidence. So clear and convincing evidence is a pretty high standard; it would fall just under beyond a reasonable doubt, which is used in criminal proceedings. Clear and convincing evidence is most often used in Nebraska in cases involving termination of parental rights. So we just believe that it would be important for the committee to consider these issues because it would set precedent

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and perhaps an unusual process which deviates from the standard found in Nebraska law. [LB1010]

SENATOR LANGEMEIER: Very good, are there any questions? Senator Carlson. [LB1010]

SENATOR CARLSON: Thank you, Senator Langemeier. Now part of your statement, I think you said that it would a possibility for an individual or group start legal proceedings and delay a project for a couple of years? [LB1010]

STEVE GRASZ: If they followed the appeal process, right. If they, for example, if there was a dispute over whether or not they wanted to negotiate with the natural resources district, and it then went to the quasi-judicial proceeding, then that was appealed to the state district court and they appealed that again to either the court of appeals or the Nebraska Supreme Court. [LB1010]

SENATOR CARLSON: And they could accomplish this whether they had a case or not, whether they had a good case or not? [LB1010]

STEVE GRASZ: Well, certainly, yes. [LB1010]

SENATOR CARLSON: So if we had a system of loser pays, that might help. [LB1010]

STEVE GRASZ: That would help, yes. [LB1010]

SENATOR CARLSON: And you would agree with that? [LB1010]

STEVE GRASZ: As a general proposition, yes. [LB1010]

SENATOR CARLSON: Okay. Thank you. [LB1010]

STEVE GRASZ: That would be good, yeah. [LB1010]

SENATOR LANGEMEIER: Very good. Are there any other questions? Seeing none, thank you very much. Further testimony in support of LB1010. Good afternoon. [LB1010]

STAN STAAB: (Exhibit 11, 12, 13) Good afternoon, Senator Langemeier, members of the committee. My name is Stan Staab, spelled S-t-a-a-b. I am general manger of the Lower Elkhorn Natural Resource District in Norfolk. Our district covers all or parts of 15 counties in northeast Nebraska. On behalf of my board of directors and I would guess a fair number of our citizens of our district, our NRD wishes to support...wishes to testify in support of LB1010. Of course this is agreed upon refinement. The last testifier was

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sobering to me, to say the least, as a manager. Similar to any of our projects and programs, the NRD board agrees that specific procedures must be followed to plan recreational or connecting trails. This bill would outline many steps that continue to provide a transparent public process that is proper and necessary to maintain public trust. We do believe these steps are vital and must be utilized by the districts that choose to build public trails while strictly adhering to existing state statutes that pertain to eminent domain. In nearly 40 years of building projects and many miles of constructed trails, the Lower Elkhorn NRD has condemned land for only one project, a small piece of the connector trail. And that connector trail is 2.2 miles of paved 10-foot wide concrete that completed the Cowboy Trail connected to the longest rails and trails conversion in the United States. It reaches more than 323 miles from Chadron to Norfolk and is highly used in several sections. I would agree with Senator Fischer, it is not as used as much in the west as it is the east. It's a long walk from Chadron to Norfolk depending on where you start. And I've tried some of that. It is without a doubt this section of trail that we built, several miles of it, one of the most popular projects our NRD has ever done. In addition, our hiking and biking trails have been constructed in many of our smaller communities over the years. These trails are used daily by many of our citizens, would not be possible without NRD partnership. We are the trail builders in this state in partnership with the communities and the state and the federal funding. These trail projects all return tax dollars to our communities. Authority granted by the Legislature to NRDs for the ultimate use of eminent domain is exceptional authority for locally elected officials. And I want to stress that, exceptional authority. It is always implemented as a last resort. In the case of our directors, it was very, very difficult to arrive at this decision for eminent domain. This was back in the mid-90s when we did this. We highly respect and appreciate this authority for the board which is proper and necessary to build some trails. And again, I stress a very, very limited situations. I respectfully request this committee to work with all affected and interested NRDs and other parties to try to resolve this issue. Thank you for the opportunity to testify. [LB1010]

SENATOR LANGEMEIER: Thank you very much. Are there questions for Mr. Staab? Senator Carlson. [LB1010]

SENATOR CARLSON: Thank you, Senator Langemeier. Stan, in the...when you used eminent domain without identifying anybody, give us a little idea, why was it necessary and how did the process go? [LB1010]

STAN STAAB: Yes. This was used in the mid-90s. The gentleman that owned the property was out of state. We had the 2.2 miles. We debated even to get involved in this project. The Cowboy Trail officially stops behind the Goodyear plant in Norfolk in the middle of a cornfield. We were requested by many citizens to try to finish this off, bring it somewhere useful, we could get to it, get on it. And so with a lot of deliberation and thought we began a plan and it took several years to do this that we went under the

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Union Pacific Railroad, which, in fact, is more difficult than using eminent domain in this case. We took about 12 acres. The land was appraised and we gave the gentleman far more than its appraised values. It did go to the judge and, of course, we had a good attorney and the process went well and we got it resolved. That's the only time we've ever used it, and the only time I've ever been in court for condemnation. It's not a fun experience. But the process works and it's there if you need it. And I would stress that, if you need it, because our board is very reluctant to do this. And I think many other boards feel that way too; they should. That's how it went for us. [LB1010]

SENATOR CARLSON: Thank you. [LB1010]

SENATOR LANGEMEIER: Senator Fischer. [LB1010]

SENATOR FISCHER: Thank you, Senator Langemeier. Thank you, Stan. [LB1010]

STAN STAAB: Yes, Senator. [LB1010]

SENATOR FISCHER: I agree with you that there are sections of the Cowboy Trail that's used...I've been on it by Long Pine and... [LB1010]

STAN STAAB: Right. [LB1010]

SENATOR FISCHER: ...of course, by Valentine and within the cities... [LB1010]

STAN STAAB: Right. [LB1010]

SENATOR FISCHER: ...it's used. But, the speaker, my...your senator and I usually discuss, as we travel back and forth to visit each other, that we don't ever see anybody on it, though, on the stretches, because they are long stretches... [LB1010]

STAN STAAB: There are long stretches. [LB1010]

SENATOR FISCHER: ...between towns in our area, but I always appreciate the literature promoting my district, so thank you. [LB1010]

STAN STAAB: Not a problem. [LB1010]

SENATOR LANGEMEIER: Other questions for Mr. Staab? [LB1010]

STAN STAAB: Thank you, Senator [LB1010]

SENATOR LANGEMEIER: And just for the record, Senator Carlson and I and Senator McCoy drove up and research, and we walked down the Cowboy Trail. [LB1010]

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STAN STAAB: Thank you very much. [LB1010]

SENATOR LANGEMEIER: We experienced it this summer. [LB1010]

STAN STAAB: There you go. Senators, what we need in our state are more people to do lots of things. [LB1010]

SENATOR LANGEMEIER: That's an issue for another day. (Laughter) Thank you. Further testimony in support of LB1010. [LB1010]

ROSS GREATHOUSE: Good afternoon, Senators and...my name is Ross Greathouse and that's R-o-s-s G-r-e-a-t-h-o-u-s-e, just like it sounds. I am representing today the Nebraska Trails Council and we are testifying in favor of LB1010 and I want to thank Senator Pankonin and Senator Haar for all their efforts. And this committee had a major hearing last year down at Cass County Fairgrounds and spent hours and hours and hours and thank you for your patience and all your hard work. And I sincerely believe that Senator Haar and Senator Pankonin have arrived at a potential solution here that the NRDs and citizens and we "trailites", if you will, can work with. Mr. Staab just testified about their use of eminent domain. And, of course, Senator Pankonin earlier mentioned all the research and there were two incidents of the use of eminent domain in the last 37 years. All of these boards of the NRDs, and I've know a lot of them, as a matter of fact, I've been defeated twice to be elected to the local one here, but...so I have a lot experience. I've testified before many of them; I worked on trail projects with many of them. There isn't...I've never met a person on one of those boards that was for the use of eminent domain. They're not any different than the local school boards. Now school boards have the right of eminent domain, but they rarely use it. I don't know the history of that, but they...nobody wants to do that. It's a very unpleasant situation and I think they all, you know, would rather take a beating with a two-by-four than use eminent domain because they're all local citizens. They live here, they live...we have many members of the board of the Lower Platte South that live in Cass County and they know and have many friends there and so they have no desire whatsoever to use eminent domain. And it's the very, very last thing that we ought to do ever. But it shouldn't be taken away, because one person shouldn't stop a major project. Yeah, they've been really most cautious. And in regards to trail plans, you've been asking questions about the trails' plans, this state has had a major trails plan for about 15 years and we have an update on it. It's on the Web site, Game and Parks controls it, it's in their domain and this trail that we're talking about today, the MoPac East Trail, which is the reason for this bill coming to this situation, has been on that plan for 15 years. And so when I hear people tell us that it just happened and that it was a thing that they didn't know anything about, it's been testified on in public many, many, many times and the plan has been before you and before this state for a very long time. And the NRDs, the Game and Parks, many citizens, many governmental agencies were partners in the

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development of that plan and it's useful for this state. I see my time is almost up. And again, thanks to Senator Pankonin and Senator Haar and this committee for all of your hard work. And there is some negotiation that needs to be done on this bill, but I think it's doable and I know they have the right intent to do that. So thank you very much. [LB1010]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Greathouse? I do have one. The previous testifiers have kind of given us support for LB1010 if we can't have LB1011. Your support for LB1010 is the other way, right? [LB1010]

ROSS GREATHOUSE: Yes. [LB1010]

SENATOR LANGEMEIER: Okay. thank you. [LB1010]

ROSS GREATHOUSE: LB1011 would be a disaster. [LB1010]

SENATOR LANGEMEIER: Right. Thank you very much. Well done. Further testimony in support of LB1010. [LB1010]

BOB RIKLI: Good afternoon, my name is Bob Rikli, that's B-o-b R-i-k-l-i. I'm a farmer and landowner in Murdock. Chairman Langemeier, senators on the Natural Resources Committee, Senator Pankonin, thank you once again for allowing us to give testimony on behalf of the Nebraska taxpayers and property owners. I also want to thank you for taking time to come to Weeping Water last summer where you got a first-hand look of the information of the concerns of the landowners regarding taking of our property through a hammer of authority called eminent domain. Eminent domain can be a useful tool when used for the betterment of property owners and society as a whole. The actions that were going to be taken last year by the Lower Platte South NRD through the venue of eminent domain has left a bad taste in the mouths of property owners in Nebraska, particularly in Cass County. The lack of respect that was shown by this NRD and its leadership has not only offended the landowners involved, but also the Cass County commissioners. A my way or the highway stance never produces cooperation. Whenever a project is planned, it should have several requirements: Number one, how positively or negatively will the property owners be affected? Number two, is there a real need? This proposed trail is 34 miles from this room. And it is a similar distance to Omaha. How many people realistically do you think are actually going to come out and use this trail? Number three, what is the present cost, the maintenance and a future cost of this trail? As of today hundreds of thousands of dollars have already been spent; not one shovel of dirt has been turned over, not one. And our taxpayer dollars have spent hundreds of thousands of dollars. Another question we have is will this trail lead to future off-shoot trails? Just because a trail goes through today, what's to prevent off-shoot trails of being included in it? Last April, some of you are probably aware that on Thursday night at 9:30 I came in for supper when a Cass County Deputy, Billy West,

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served a paper from the NRD. It was a lawsuit against my wife and a separate lawsuit against me because we were not allowing them to trespass on our property in the name of eminent domain. They gave us a day and a half to get an attorney and prepare a case and be in court. This was Thursday night at 9:30. We had Friday and Monday till noon. Now how fair do you think that is? This session you have the opportunity to give back to the taxpayers, the landowners and the citizens of Nebraska their rights by denying them the power of eminent domain that is being used by the NRDs. Like Mr. Gaebel, we, too, use the NRDs for conservation work and find it is a valuable tool to protect our natural resources through the conservation projects that they have, and it doesn't require eminent domain. I would like to see it as eminent domain power removed, but this is a start. I urge support of LB1010 and LB1011 or a combination of the two. Any resulting committee must contain landowners because they are the ones that are affected. I am very sincere when I say our prayer is that we are given back our rights. Thank you. [LB1010]

SENATOR LANGEMEIER: Very good. Are there any questions? Seeing none, thank you very much for your testimony. Further testimony in support of LB1010? Welcome. [LB1010]

ROB SCHUPBACH: (Exhibits 14, 15, 16, and 17) Thank you. My name is Rob Schupbach. I'm speaking in favor of LB1010 this afternoon. I'm speaking because I have been a very grateful trail user of Lincoln's trails ever since the first one was built in Lincoln in 1979. In those days, I used the Antelope Park Trail to commute to work. The trail expansion in Lincoln has been very beneficial to Lincoln citizens. And over the years, the Lower Platte South has been very active in benefiting its taxpayers with trails that have supported the NRD purpose of providing recreation whenever possible. This support has been for the good of all people. After reviewing the Cass County comprehensive plan, which is the printed document that I have in front of you, page 58 and page 61, in 1998 Cass County published a comprehensive plan. And you're going to have to bear with me. I broke my reading glasses this morning and I'm using a spare pair that's about 15 years old so my arms aren't quite long enough to make it (laughter) so I'll be brief. Page 58 in the middle talks about parks and recreation, and then if you move down, and I can't see it well enough to read it, number five is trails and trailhead development. But the Cass comprehensive plan...Cass County, excuse me, comprehensive plan from 1998 on page 58 addressed the issues of the need for trails and trailhead development. The second page of their comprehensive plan from 1998, page 61, addresses future trail development. And it talks at great length about putting trails on land that is already off the tax rolls using county road right-of-way, and many of the things that people are talking about today. In the interest of not burning up my five minutes trying to read a word I can't see, I'll move on. The next document that I'd like to show you is a Cass County tourism brochure that the Cass County Visitors Bureau puts out. They outlined 43 different sites...or 41 different sites, excuse me, in Cass County that promote tourism. If you look at the right-hand corner, there's an Indian teepee and

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there's a picture of the Platte River bridge that this particular section of trail is attempting to get to. In the second panel, there's a picture of a man riding a bicycle with a dog on the MoPac bike trail. They mentioned the Platte River Bridge once...or actually twice in the brochure and the MoPac bike trail twice. It's very difficult for me to believe that Cass County is entirely against the MoPac bike trail when I look at the date on...of September, 1998 and they address it twice in their comprehensive plan and they have a beautiful tourism brochure that addresses it three times. In addition, I surveyed the eight NRD districts that have trails or trail projects in them. They're the Nemaha, Upper Big Blue, the Lower Loup, the Twin Platte, the Tri-Basin, Lower Elkhorn, Papio, and Lower Platte South. I asked them how many people in your NRD districts do you have, and their populations are outlined in that spreadsheet. They totaled 1,271,829 people as of the 2000 census, which is the census they use for election. The state population, according to the United States Census Bureau in 2000 was 1,711,263 people. That's 72 percent of the state's population. Taking some weak statistical inference, 72 percent of the people that live in Nebraska are served by NRDs that have trail projects in them. How much more of a supermajority of approval do you need? Seventy-two percent of Nebraska's population lives in the eight natural resources districts that participate in trail projects. It seems to me that 72 percent of the state's population is already a supermajority and that 72 percent majority already approves of natural resource districts participating in recreational trails. Requiring NRD boards to exceed what their taxpayers have already approved in the eight NRD districts that have trails seems redundant to me. They're already there. The citizens of Nebraska have already spoken by trusting their local NRD boards to make grass-roots decisions at the grass-roots level that affect them. It seems more logical to me to ask the Legislature to move on and deal with important statewide projects and let the local boards make local important decisions. Nebraska's Legislature is not an appeals court for dissatisfied local decisions. If the people in Cass County are dissatisfied with their county board supporting trail projects since 1998 and putting it in their trails brochures, they can vote the people off the county board if they want to. And they can...they have a couple of seats on the NRD board. They need to go to the ballot box and make their presence known. The Legislature is no place for this kind of appeal. Thank you for your time. [LB1010]

SENATOR DUBAS: Thank you, Mr. Schupbach. Questions? Seeing none, thank you. [LB1010]

SENATOR FISCHER: Could I? [LB1010]

SENATOR DUBAS: Oh, Senator Fischer. [LB1010]

ROB SCHUPBACH: Please. [LB1010]

SENATOR FISCHER: I just can't let this go. Your comment that this is...this issue shouldn't even be in the Legislature, I find that offensive. I happen to be from a district

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that was immensely impacted by legislative action that I could argue was a local decision and that was school consolidation. This body looks at local issues, what you would consider local issues, all the time and that includes what NRDs do, what counties do, what cities do, and what school districts do. So I could not let that comment of yours go without responding. [LB1010]

ROB SCHUPBACH: Well, I appreciate your comment, but I'd also like to point out that there is already a perfectly adequate system for dealing with eminent domain and dissatisfaction with it in the courts. [LB1010]

SENATOR FISCHER: So I would assume then you are against this bill and not in favor of it. [LB1010]

ROB SCHUPBACH: No, I'm in favor of having perhaps a lower standard of supermajority, but I don't think there needs to be, as the attorney for the Papio pointed out, an established...an attempt to establish another court system, which is what that would...what part of this bill would do with people that are simply not trained to handle legal matters. If they do what...if the procedure that Senator Pankonin...is followed as outlined, the NRD board is going to have to set up a municipal court system or a county court system to be able to take good evidence, not evidence that's appealable. They're going to have to process it. They're going to have to have it ready. They're going to have to create a record that is good in court. And the first time they do make a mistake and someone appeals it and a district court judge looks at it and says, this deal is out of here because you didn't follow the rules, are they going to go back and say, jeez, this is the first time we've ever had to do this, we don't know how to follow the rules, we've never been in law school? And that's what... [LB1010]

SENATOR FISCHER: I believe... [LB1010]

ROB SCHUPBACH: ...that's part of what's being asked to do here. [LB1010]

SENATOR FISCHER: Correct, and I also believe that work is still being done on this bill, as Senator Pankonin and Senator Haar alluded to in their openings. [LB1010]

ROB SCHUPBACH: But is it a good idea to ask the NRD board to become a court? That's part of what that's doing. [LB1010]

SENATOR FISCHER: And your opinion would be no. [LB1010]

ROB SCHUPBACH: My opinion is there's already enough. There are perhaps too many lawyers. There are perhaps too many courts. There is a court system to handle eminent domain and it seems to be working. The problem that many people have is the land might not be worth what the legal fees are so they don't want to go along...so they

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capitulate, which may be the problem in this case. There may be some dissatisfaction with communication between the county board and the NRD board that could be improved, but to sit...but to turn around and say you've got to have a supermajority, which is higher than any other majority according to the attorney for the Papió, and standards that are extremely high, seem to be very, very unnecessary, all what you're going to do is you're going to turn the elected NRD board, which are part-time elected officials, into full-time jobs and those people aren't...have no legal training to do that. [LB1010]

SENATOR FISCHER: Not to argue with you, but I would point out that there are other elected boards that need to have supermajorities for certain actions that they take. So thank you for being here. [LB1010]

ROB SCHUPBACH: Thank you. [LB1010]

SENATOR DUBAS: Senator Carlson. [LB1010]

ROB SCHUPBACH: Yes, sir. [LB1010]

SENATOR CARLSON: Thank you, Senator Dubas. And, Mr. Schupbach, to follow up a little bit on what Senator Fischer said, you did ask her a question in the process here and our procedure here is that we ask the questions and you answer them. But this thing about the Nebraska Legislature, not an appeals court for dissatisfied local decisions, I don't really want to argue that. But you're participating in a process today that I think is one of the most important ones in the Unicameral. We are one body. And every bill that's brought forward by any senator has a hearing date at which you, the second house, can come and be a part of the process, either to support or oppose. It may be one of the most important aspects of the entire Unicameral procedure and we value that very, very highly. I'm going to ask you a question. When you talk about the...all decisions made at the local level and all disputes at the local level, is an NRD ever wrong? [LB1010]

ROB SCHUPBACH: I don't think anyone is perfect. I don't know how else to answer that question. I am not seeking perfection. I think we need to have progress, but I don't think establishing an NRD court, for lack of a better term, is productive. [LB1010]

SENATOR CARLSON: Okay, and I'm being a little harsh on you because I think... [LB1010]

ROB SCHUPBACH: You're not. [LB1010]

SENATOR CARLSON: ...you've got enough confidence in what you're talking about that I'm not going to intimidate you. But no group is ever right all the time. There has to be a

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process by which an appeal can be made and others enter in and it may not...at some point it may be a state level because many local processes, many local issues become statewide. Because if they're important in your area, they're important in other areas as well. And I just wanted to make that statement as a reaction to some of these things that you've written. But thank you for your testimony today. [LB1010]

ROB SCHUPBACH: Yeah. Thank you for your time. [LB1010]

SENATOR DUBAS: Other questions? Thank you for coming today. Additional support for LB1010? Support? Any letters of support? Okay, opposition to LB1010. [LB1010]

SADIE NICHOLSON: (Exhibit 18) SADIE NICHOLSON, N-i-c-h-o-l-s-o-n, Senator Pankonin's words that some states are using eminent domain for recreational trails, I believe that this is a violation of the Constitution and especially federal laws, and this is why our country is in so much trouble today, because of the corruption in the system. And now the Michigan Supreme Court in 2004 tried a case based on eminent domain and their decision was that if a government entity or someone wants to take land, they negotiate with the landowner or landowners, and if the landowner says no, they go elsewhere. Amendment 5, I quote, "The role of the judiciary in determining whether that power is being exercised for a public use is an extremely narrow one." So that brings it back to the necessary for public safety and public health. The National Trails System Act, which I donated a copy to the committee, covers all laws of acquisition and development of trails. Section 1243, private property cannot (sic) be used for trails with the written consent of the owner of the land involved. Section 1251 says, no federal funds for facilities or acquisition of any land or lands that are not within the boundaries of federal lands. There's trails and bicycle trails are not a need. Lincoln has 120 miles of trails in the area. Omaha has 150 miles of trails. The federal law, National Trails System Act, says that segments do not need to be connected. The 26 MoPac Trail...26 mile long MoPac Trail, the east 20 miles are not used. There's...it costs \$1,000 per mile annually to keep them up. We've been silent as greedy quests for power over individual rights and privacy is taking place. We've been silent as checks and balances are disappearing. We have been silent as our ideals of our democracy are being disregarded. We've been silent as respect for the truth has diminished. We have been silent as voter fraud has become rampant in our nation. We were silent when the state passed LB269 in 1969, which gave NRDs power of eminent domain. We have been silent as NRDs have built huge bureaucracies. We have been silent as our nation is being destroyed from within, but I hear a rumbling. The solution needs all of us. Let's put civics back in schools, replace the propaganda-laden social studies with history and geography. Candidates for any public office need to understand the Constitution. Thomas Jefferson wrote: I think we have more machinery of government than is necessary; too many parasites are living off of the labor of the industrious. NRDs are taking one man's income-producing land for another man's pleasure at no cost to the bicycle rider. To enact this law would violate at least two federal laws, the Constitution,

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and the Michigan Supreme Court decision. I ask the Legislature to make NRDs accountable instead of giving them more power. Power over people and property corrupts. Acquisition development of trails or federal laws in this state lacks the right to approve a trail without owner's approval. It's the law in the Constitution. Don't cause further illegal seizure of land by abrogating private property rights with this proposed legislation. [LB1010]

SENATOR DUBAS: Thank you, Ms. Nicholson. Are there questions? Seeing none, thank you for coming forward today. [LB1010]

SADIE NICHOLSON: Thank you. [LB1010]

SENATOR DUBAS: Additional opponents to LB1010? Anyone in the neutral? [LB1010]

JIM COOK: Senator Dubas, members of the committee, my name is Jim Cook. My address is 3339 South 40 Street in Lincoln, Nebraska. My name is spelled J-i-m C-o-o-k. I know many of you. I retired from the state Department of Natural Resources three years ago so I've been before this committee a number of times in the past. I must say it's refreshing to me to be able to do that on something other than water policy issues, which I spent 36 years addressing in Nebraska. I can relate to the issues you continue to have with water policy issues. But when you retire, one of the things you do is pursue your passions, and a passion for me has long been to be outdoors more and get more exercise. For me, that's turned into being a bicycle rider. I thoroughly enjoy riding a bike. Passions sometimes also turn into volunteer jobs which can turn into work, and that's how I happen to be before you today. I've become a member of the board of the Great Plains Trails Network here in Lincoln. I'm testifying today on behalf of the Great Plains Trails Network, or GPTN. GPTN is a nonprofit organization. We have more than 800 members, most of whom reside in Lancaster County, and our primary mission is to support the development and maintenance of recreational hiking and biking trails in and around the county. And in more than 20 years, our organization has raised more than \$2 million in private funds for trail development. Some \$275,000 of that was for the MoPac East Trail that's been discussed here many times today. As you know, for some time, you've had many hearings about this, the Lower Platte South NRD has been trying to find an acceptable connection between that MoPac East Trail and the lead Platte River Bridge so that we can make a complete connection between Lincoln and Omaha with a trail system. Relative to the three bills being considered today, my testimony on behalf of GPTN is based on a couple of principles. First, we feel very strongly as an organization that we need to find that acceptable route for that particular trail. There are many existing trail resources already in place. What is missing is that nine miles or so of connection that, in our opinion, is very important. You've had testimony in the past about why that trail is so important and we...I'm not going to spend time restating that today. We believe it ought to be an acceptable route, an appropriate route, and we think it's very important that we try to get that done. Secondly, a second principle is most of us

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are landowners as well and we respect the rights of individual landowners in concerns about eminent domain. But we also believe that while the pendulum may need to swing, we don't believe it needs to swing entirely the other way. And so those are the two principles that we apply. I could have appeared today in opposition today to LB1011. We are opposed to that because we believe that bill does conflict with both of those principles that I stated. We're reserving judgment on LB1010 and LB1019 because that process is still unfolding. But what I've heard today gives me hope that we can use a process like that to find a balance between landowner rights and the needs for appropriate trails in not only this part of the state, but in other parts of the state as well. We encourage that process to move forward. We ask simply all of you that as you...and that includes the NRDs as well as yourselves, that as you move forward with that, please try to find that balance, the balance between making sure landowners' rights are protected adequately, and we think there is some promise, for example, in LB1010 to do those kind of things. At the same time, not closing the door entirely to appropriate trail development in the state of Nebraska. I'd be glad to answer any questions you might have. [LB1010]

SENATOR DUBAS: Thank you very much, Mr. Cook. Questions? Seeing none, thank you for coming forward today. [LB1010]

JIM COOK: Thank you. [LB1010]

JOHN K. HANSEN: Vice Chair Dubas, members of the committee, for the record, my name is John K. Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of the Nebraska Farmers Union, and appear before you today as our organization's president and also a lobbyist. The issue before you is a...could potentially be looked at as a bit of a wake-up call for the Legislature and the Natural Resources Committee, as you can clearly see the kind of conflicts that happen when there's the intersection of eminent domain authority and landowners, and especially when you get to the issue of recreation. It is absolutely appropriate for the Legislature to constantly review the use of eminent domain authority and especially in the area of recreation. My organization represents 5,338 farm and ranch families, and they set our policy. And as I looked at our policy, I could not find my way clear to support this bill, but I support the effort on the part of Senator Haar and Senator Pankonin to find a resolution to this problem. If we back up and take the longer view of the use of eminent domain for recreation, and while today we're talking about trails it also exists in other areas of NRD. Thirty-eight years ago when we created the NRD system in 1972, there were powers given to the NRDs to use eminent domain authority for flood control structures. And after a while as that power was looked at, there was a compelling public interest to expand the use of eminent domain for multipurpose structures, which would include...give NRDs who had used their eminent domain power to condemn land for flood control to then use it for...to enhance the multipurpose recreational potential of flood control projects, bearing in mind that the Game and Parks Commission had been granted previously the power of

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eminent domain by the Legislature. They had abused it. They had worn out their welcome and the Legislature saw fit to take that power away from them. So then, as the NRDs, and I say all of this by virtue of the fact that I was first elected to the Lower Elkhorn NRD in 1974, which was the first publicly elected set of directors from the newly formed NRD, served there for 14 years, that then you saw the Game and Parks folks coming in and saying, boy, wouldn't it be handy if you NRDs would maybe go out and help us get some of those recreation projects that we can't get with a willing buyer, willing seller, and then if you develop them, by golly, then we could take them over and operate them as our own entities. And so the first real test of that was the Willow Creek project in my home, Lower Elkhorn NRD, a very contentious project. We had a surplus of recreational inventory. We had at most, on the best estimate that we could get, about 4 percent flood control damage coming from that particular tributary to the North Branch of the Elkhorn River. So the project was a 96 percent recreation project, a 4 percent flood control, but it was the flood control authority that allowed us to go ahead and condemn prime farmland for that project. And as a result, I was obviously in the dissent position, it was a 10 to 9 vote, but if the provisions of this were applicable to that situation, it would never have gone forward because there was obviously no supermajority. So then later on, as you've heard previously, in 1999 we expanded the NRD use of eminent domain for additional recreation. And so part of the concern and the risk that we have on this issue is that every single major program that the NRD does depends on the goodwill of landowners, and you have already heard here today and I hear it all too well when I talk to our members, that when you erode that trust and that good working relationship with landowners, you have undermined the opportunity and the effectiveness of the NRD. And so while we're firm believers in the NRD and we as an organization helped support the creation of the NRD as a concept, if eminent domain is overused and abused, it will undermine the long-term best interests of the NRD itself. And so if we were to end up with LB1010 or a version of it as a compromise, I reckon our folks probably would reckon that that was an improvement over their previous position, but our policy in our organization does not allow me to support it right up front. And with that, I'd be glad to close and answer any questions if I could. [LB1010]

SENATOR DUBAS: Thank you very much, Mr. Hansen. Questions? I would just say I appreciate your comment about that building of trust and I think we've seen that maybe in some other areas, too, that if people feel like they're being treated up front and that they're being...even if you can't always give them what they're asking for, if they at least feel like they've been treated squarely, it goes a long way to finding a solution, and I think that's what Senator Pankonin is attempting to do with this bill. [LB1010]

JOHN K. HANSEN: I agree and, you know, the issue of eminent domain for recreation, most landowners, even though they are against it, understand the difference between protecting human health and safety in the case of a flood control project, which clearly protects human life, and doing that which is necessary for the common good, and doing something which would just be really a nice thing to do and be nice but not necessarily

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critical. And so the difference between nice and necessary is understood. But thank you. [LB1010]

SENATOR DUBAS: Thank you. Thank you for coming forward. Additional neutral testimony? [LB1010]

KEN WINSTON: (Exhibit 19) Good afternoon, Vice Chairman Dubas and members of the Natural Resources Committee. My name is Ken Winston, K-e-n W-i-n-s-t-o-n, appearing on behalf of the Nebraska Sierra Club in a neutral position on this bill. Most of the things that I was going to say have already been said, and it's late in the afternoon so I'm just going to say that we really appreciate the opportunity to work with Senator Pankonin on this bill and we look forward to working out the issues on this bill. [LB1010]

SENATOR DUBAS: Thank you, Mr. Winston. Questions? Senator Fischer. [LB1010]

SENATOR FISCHER: Thank you, Senator Dubas. Mr. Winston, you're an attorney, correct? [LB1010]

KEN WINSTON: Uh-huh. Yes, I am. [LB1010]

SENATOR FISCHER: When you look at this bill on the appeals process that the attorney for the Papio brought up in his concerns on that, have you formed any opinions when you read the bill on that process? [LB1010]

KEN WINSTON: Well, I've had some discussions with Senator Pankonin's office about it and I raised some of the same issues that Mr. Grasz raised about trying to create an evidentiary system by a body that isn't necessarily designed to do that kind of work. And I know that it can be done. I mean sometimes school boards sometimes act as hearing boards and what have you and have to act in an evidentiary capacity. But I just...I raised it as an issue and I'm confident that if there's a will that that issue can be appropriately defined so that it can be done the way that it needs to be done. [LB1010]

SENATOR FISCHER: Right. And thank you for mentioning that school boards do it because they are the judge and the jury in many cases. [LB1010]

KEN WINSTON: I've been there and I know you have, too, Senator. [LB1010]

SENATOR FISCHER: Yes, I know you have, so I appreciate that. Thank you. [LB1010]

SENATOR DUBAS: Senator Carlson. [LB1010]

SENATOR CARLSON: Thank you, Senator Dubas. Ken, expand a little bit on your hesitation for a supermajority, because these kinds of issues are difficult to deal with

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and strong feelings, and so there should be, to me, there should be a definite majority of board members that feel it's necessary. So what's bad about supermajority? [LB1010]

KEN WINSTON: Well, the hesitation, I guess I was just thinking about the example that John Hansen raised where he said they did it and it was a fairly evenly split board. They did the project and I don't...I couldn't tell from what he was describing, whether it was something that necessary for...I mean he said there was a flood control element there. And I guess the reason I have concern about the supermajority is I'm concerned that you may end up with a situation where you never can get there, you know? I mean I'm just trying to think of, in the legislative process, in the Legislature, I think the highest majority that I'm aware of...I'm trying to think if there's any three-quarter majority. I'm a little rusty on my legislative rules, but I was just trying to think if there was any place where there's a three-quarter majority required for the Legislature to make a decision, and I know that it's a lot harder each time you keep upping the threshold. So that's a matter that we're concerned about and...but I'm glad to visit with you and any members of the committee and Senator Pankonin about that issue and see if there's an appropriate number that we can find that's workable. [LB1010]

SENATOR CARLSON: Well, I would think on a 10 to 9 majority, on a big project that maybe is not enough. And certainly we have different levels in the Legislature that we need to deal with, but I wanted to make that comment. [LB1010]

KEN WINSTON: And I appreciate that and I know I was trying to just get in and out of here, but going back...I mean talking about my own personal experience, as I indicated, I sat on a school board for a number of years. And one of the things that you always want to try and do, I mean you hate to have those things where there's just a split and it's decided by one vote and, I mean, you really like to have a consensus if you're going to go forward with anything that's got a major community impact. And as John said and some other people have said, it's a lot better...I mean, as a bicyclist, I'm out there riding my bicycle down a bike path, I'd kind of like to know that the people in the neighborhood think it's a good idea as opposed to knowing that they're not too happy about it. [LB1010]

SENATOR CARLSON: Okay. Good. Thank you. [LB1010]

KEN WINSTON: Okay. Thank you. [LB1010]

SENATOR DUBAS: Any other questions? Seeing none, thank you, Mr. Winston. [LB1010]

KEN WINSTON: Thank you. I'm just going to leave written testimony on the other bill. (Exhibit 20) [LB1010]

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SENATOR DUBAS: Great. Thank you. Any other neutral testimony? Seeing none, Senator Pankonin, would you like to close? [LB1010]

SENATOR PANKONIN: I'll close and open, Annette. [LB1010]

SENATOR DUBAS: Okay. [LB1010]

SENATOR PANKONIN: First of all, I want to apologize to Senator Schilz. I told him I thought we'd be out of here in pretty good shape this afternoon, but you can see that this is an issue that does take some time because it is a serious issue. It's a very important issue. And so I appreciate everyone coming. I appreciate the patience of the committee today very, very much. I just want to mention, because of some of the questions that have come up, comments about the legal standards, about how I arrived at that, and also want to tell you that we've had very fruitful discussions with Lower Platte South NRD on some of those very issues about the supermajority and that and I think we have an amendment that you'll hopefully see next week. We'll have some solutions that I think make sense to you. But I want to mention that I'm all for using a lot of free legal advice when I'm down here so, fortunately, my legislative aide, Sherrie Geier, her husband, David Geier, is an attorney; he has helped us. I got the idea on the clear and convincing, not only from him but I went over this with Senator Tom White and he said for the standard that you're...for what you're talking about doing, for eminent domain, clear and convincing is a fair standard. So I went over that with Senator White. As far as some of the issues on liability, my next-door neighbor, Senator Lathrop, was involved in those discussions on some of the language that we have come up with. So I can tell you that we have given careful thought to the legal standard that needs to be here and that's a question...an answer a little bit to your question, Senator Fischer, is that if we are going to allow this power, it has to be a high standard. And as you know from your school board experience, some of those situations you got into, it needs to be because it's a serious, serious consequence. As far as Senator Carlson's comment about loser pays in one of these if it does ever go to a district court type situation, we got to remember the landowner would be paying his or her legal expenses through that process, not the state or nobody pays it. They're going up against an NRD that would be paid by taxpayer dollars for their legal expenses. And if they lose in district court, they will have lost those funds and their ground. It will be gone. So I think, you know, there's consequences everywhere in this bill and I think we have a chance to come to a successful conclusion. And I can tell you, after a year on this topic in my office, if this ever gets done, we're going to sing "Happy Trails." (Laughter) So...maybe this committee too. So I will...that will close my testimony on LB1010. [LB1010]

SENATOR DUBAS: Let me see if there's any other questions first, Senator Pankonin. [LB1010]

SENATOR PANKONIN: Okay. [LB1010]

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SENATOR DUBAS: Any questions? [LB1010]

SENATOR HAAR: May I join you? (Laughter) [LB1010]

SENATOR SCHILZ: Not now, Ken. [LB1010]

SENATOR DUBAS: All right. You're welcome to open on LB1011. [LB1010]

SENATOR PANKONIN: Okay. I had some written testimony but subject to time, I think it's been well defined today that LB1011 would be the outright prohibition for eminent domain for recreational trails. As you can probably sense, one of these bills will be my priority bill for the session and hopefully to bring to some kind of conclusion. I'm hoping that with working with your committee and other interested stakeholders, that LB1010 will be the vehicle that will provide a way forward that gives property owners a lot of protection and yet does allow in very rare cases the opportunity for eminent domain to be used after many, many procedures and possibly years of study. And I think it goes to reason that NRDs, knowing that this bill and this procedure would be in place, are going to look for solutions that don't include eminent domain, because they don't want to go through all of these steps. So hopefully that will be being resolved. But we wanted to lay...you know, when we introduce these bills in those first ten days, as all of you know, we wanted to lay out both policies. And not knowing how the negotiations were going to go, we wanted to have both options, and knowing that that option of LB1011 would also hopefully bring people to the table to talk very constructively about LB1010, and so that's why it was introduced. You know, that would be something that, if I'm not reelected or even after I'm out, I'll rely on Senator McCoy to bring that issue forward. I'm not going to let this go. It has become very interesting, not only because of the local folks I know so well and the ground I know, the property I know, but I do think this hearing has shown again we do need a policy on this and I think this is the time to get it done. So thank you for your time and consideration today. [LB1011]

SENATOR DUBAS: Any questions for Senator Pankonin? Senator Cook. [LB1011]

SENATOR COOK: Thank you. I just wanted to echo the thanks from earlier. We had some conversations starting last year. As a brand new senator, the official city girl of the committee, I really appreciate the investment of time and effort that you've made. This issue is as important, in my district and to my constituencies from the other side, from the economic development side and from the recreational side, as it is to our rural friends. So thanks a lot for your hard work. [LB1011]

SENATOR PANKONIN: Okay. [LB1011]

SENATOR DUBAS: Anything else? Seeing none, thank you. First proponent for

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LB1011? [LB1011]

JOHN K. HANSEN: Vice Chairman Dubas, members of the committee, for the record, my name is John Hansen, J-o-h-n H-a-n-s-e-n. I'm the president of the Nebraska Farmers Union. As I said in my previous testimony, if my organization has its druthers, based on the policy that our members set through a deliberative process, they would prefer this bill. That would be their starting point. And I have been serving as president of Nebraska Farmers Union for 20 years and I am a connoisseur of hot-button issues in my organization and can tell you that my organization, in its efforts to try to keep railroad corridors open and available for future potential short line development, as we have continued our proud history of fighting the railroad since we were first born in 1913 over access and fair rates, we wanted to keep those corridors open so that if we ever could develop a short line again we supported the rails-to-trails effort in our organization and it was a very divisive issue but we came to a consensus that was the best road forward. But as time went on, I would tell you that I've taken, I think, about as many or more beatings, of all the things my organization have ever done, for its support of rails to trails by virtue of the unhappy landowners who were not happy with not being able to put their farms and ranches back together again once the railroad got done abusing their land. And so with that, that is simply a measure of the amount of heat that is tied to this issue. But I wish you well in your deliberations as you find a way forward. Thank you. [LB1011]

SENATOR DUBAS: Thank you, Mr. Hansen. Questions? Seeing none, thank you. Additional proponents for LB1011? Welcome. [LB1011]

STEVE ALTHOUSE: Thank you, Senator Dubas and members of the committee. Again, for the record, my name is Steve Althouse. It's S-t-e-v-e A-l-t-h-o-u-s-e, and I am here today testifying on behalf of Nebraska Farm Bureau on this LB1011. Like to begin by thanking Senator Pankonin for introducing the legislation and taking an interest in this issue. I know also that, Senator Haar, that you've been very involved in this issue as well and thank you for your efforts. Nebraska Farm Bureau has long been a champion of private property rights. Property rights are among our most basic rights and we believe it is the government's role to protect them. The taking of property through eminent domain should only be permitted when there is a clear public use for the betterment of the public good. Regardless of the kind of real property that we may own, whether it's our home, a vacant lot, or farmland, the government should never be able to force us to sell it just so that it can be turned over to someone else for their recreational or economic benefit. Although agreeable sales account for the majority of land acquisitions by NRDs, eminent domain has been used in the past by NRDs to acquire recreational lands. Near Norfolk in the Lower Elkhorn NRD, has been used the power of eminent domain to acquire more than 12 acres along a three-quarter mile stretch on the north bank of the Elkhorn River. That land, which was held by the same family for more than 100 years, was used for a Cowboy Trail extension project. Condemnation was also used by the Papio-Missouri River NRD on parcels of land for the Boyer Chute project

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near Fort Calhoun. This past summer when I testified at the interim study related to this issue, Senator Fischer had raised a question regarding the value of the land that was taken off the tax rolls in these acquisitions by NRDs. We were able to find information on that, that it appears that the total appraised value of that land that we mentioned above there was approximately \$24,610. That value represents the appraised value, not the assessed value. But that information we were able to obtain from Dean Edson, the NARD executive director, and we thank him for that information. It is our opinion that the condemnation by an NRD for recreational lands raises serious concerns as to whether the power is being used for the betterment of a public good or necessity. We believe that the flood control and resource issues and conservation issues and similar projects are instrumental in meeting the structural needs of our society. However, we would question whether a bike trail or recreational park would be treated in the same manner...should be treated in the same manner for acquisition purposes. We also have concerns about safety along some of these trails in these areas. Should they be close to farmland that is actively farmed? There's the possibility of large machinery operating nearby and this can create safety concerns if children are using these trails. Additionally, who becomes responsible for maintaining the trails? In order for someone to get to the trail to maintain it, they may have to repeatedly cross through private lands. Furthermore, the use of eminent domain serves to create a twofold problem for the existing and surrounding landowners. Not only do landowners lose their rights to the land, surrounding landowners watch their taxes rise as the acquired lands are taken off of the tax base rolls. Many will argue the benefits of developing recreation areas. We would argue that this benefit should not come at the expense of private landowners who in many instances have held ownership of the properties for several generations and will be the ones responsible for making up the lost tax dollars for the schools and the roads and local services. As a landowner, my family has had personal experiences with acquisition of private property by Department of Roads, as well as several other different public utilities that were needed to gain access across our property. While these are necessary public uses that provide for the common good of all citizens, it's my experience that there will always be some damage to the remaining property. The taking of private property by the NRDs for recreational purposes does not fit these other uses. When property is acquired for recreational use, it is serving a small amount of people and is not absolutely necessary for the benefit of all. Thank you for your consideration of these comments and I'd be happy to answer any questions that you might have. [LB1011]

SENATOR DUBAS: Questions for Mr. Althouse? Seeing none, thank you for coming forward. [LB1011]

ROGER GAEBEL: Good afternoon again. My name is Roger Gaebel, R-o-g-e-r G-a-e-b-e-l. LB1011, as I stated before, would be my obvious choice. It's been a year since we first enlisted the help of Senator Pankonin to help us with this conflict with the NRD and their use of eminent domain as it pertains to the MoPac Trail. It took LB134 to

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convince the NRD this wasn't the right route or it wasn't even the right procedure to accomplish this task. As you all knew, Senator Pankonin withdrew the bill with the understanding there was an interim study and then the work would be halted on the 334 Street corridor. You heard testimony at the interim study and it illustrated the frustration from both the landowners and the county board with the NRD's lack of concern. Senator Pankonin opened his statement telling us that 23 states do not allow the use of eminent domain. And so I have to wonder, do these states not have trails at all or has this forced them to work with local governments to do this? And Senator Fischer filled part of that in when she's been there and they do have trails in those states. Our NRDs could be working with cities, counties, the state Department of Roads. But as long as they have the power of eminent domain, they have no reason to negotiate with anybody. Last year we were told, and we heard it again today, eminent domain is hardly ever used and it's as the last resort. Last year, this seldom used last resort was going to be used 22 times to acquire this property on 334 Street because it was the only way to go. It had to be taken. After LB134, then there was a new route that was worthy of evaluation. Wasn't there before LB134, I guess. Nebraska would not be setting a new precedent. It would just be joining 23 other states if it took the power of eminent domain away. We heard testimony last summer that these trails are about transportation and the hundreds of parking spaces that are freed up because of using bicycles for transportation. This might be true to some extent in Lincoln and Omaha, but I can honestly say I know of no one in my area that takes a bicycle to either of these cities. Trails in rural Nebraska are about recreation and that's all, and right now Nebraska law says recreational trails trump land rights of personal individuals. I don't think that's right. We have city and county governments that can determine what is and what is not beneficial for our communities, and these local governments can and do enlist the help of the NRDs with special projects. I find it especially hard to believe that any group, regardless of how organized they are, can use the NRD as their muscle to force their project on to anyone, anywhere. LB1011 would restore the rights of landowners and allow our local governments to determine which projects would best benefit their community. What it would not do is impede any conservation or water quality programs that the NRDs do so well. I consider the decision of the Legislature to give the NRDs the power of attorney, however many years ago they did that, an honest mistake and I'd like to see that corrected. Thank you. [LB1011]

SENATOR DUBAS: Thank you, Mr. Gaebel. Questions? Seeing none, thank you for coming today. [LB1011]

JIM PANSKA: Jim Panska, J-i-m P-a-n-s-k-a. Vice Chairman Dubas, committee members, I'd like to thank Senator Pankonin myself for all his time and effort. We had a problem and we didn't know where else to turn and he's been very, very supportive and helpful with us in our concern. I think everyone agrees that eminent domain should be used sparingly, only for the most important reasons. For example, if we have a dangerous intersection and property needs to be acquired to expand that intersection or

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take the hill down to make it safe, that would be a reasonable reason. And if there is a single landowner that doesn't agree to relinquish the property, almost everyone but the landowner would agree that it's a justifiable use of eminent domain. Not only is there a better usage, but there's also public safety and concern about an accident or loss of life. On the other hand, if a homeowner builds a large swimming pool in his backyard and the mayor or the city council comes to that landowner and says, you have a wonderful pool, the town would greatly benefit if it belonged to us so we're going to take it from you, I hope we would all be shocked if this happened. I think everyone would agree that this is not a justifiable use of eminent domain. Somewhere between these two extremes is a line that we need to identify. I think that we are trying to decide today on which side of this line the use of eminent domain for recreational trails falls. If you're going to take something that someone has worked for, saved for, gone into debt for, paid the interest on, paid the taxes on, and maintained care for, you better have a good reason for taking the property. The reason needs to be more than I have a better use for this property than you do. It needs to be more than we have federal funds for this project and if we don't use them we'll lose them. These need...there needs to be hard evidence, not that there's just a significant number of people that benefit in some way, but that if eminent domain is not used these people will suffer some ill effect. Flood control projects that are truly about flood control fall under this category. Highway safety falls under this category. Public utilities may fall under this category. I don't believe that recreational trails do. We all agree that trails have benefits to offer. That's not the point. The question we need to be asking about the use of eminent domain for recreational trails is, what ill effect would be suffered if this particular trail isn't built? If the decision is made on the basis of benefits, then the benefits should be substantial and well documented, not just unrealistic usage projections and vague promises of economic development and raised property values. So on which side of this line does the use of eminent domain for recreational trails fall? I believe that this is on the same side of the line as the taking of someone's swimming pool because the mayor or the city council thinks it would be of benefit to the community. In fact, the only difference I can see is that in one case there is a structure, the swimming pool, involved and in the other there isn't. I realize that LB1011 is an underdog, but I hope you won't dismiss this bill without consideration. As Senator Pankonin said, 23 states do not allow the use of eminent domain for recreational trails. Nebraska, which is a traditional property rights state, should add itself to that number. Thank you. [LB1011]

SENATOR DUBAS: Thank you, Mr. Panska. Questions. Senator Fischer. [LB1011]

SENATOR FISCHER: Thank you, Senator Dubas. Thank you, Jim. I liked your story about the swimming pool. I was born and raised in Lincoln and a lot of my friends that are still here and family still here in Lincoln, and in Omaha I have family, we have conversations sometimes about this. The example I always use would be, you know, when people come on our property in rural Nebraska, a lot of times they don't...they don't think it's anybody's property because there's no house there or anything, and I

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always say, you know, gosh, you have a really nice backyard. Can I have a picnic here next Friday? You know, and it...we all just need to be aware of, I think, private property rights and limitations that citizens face with regard to that. So I enjoyed your story. Thanks. [LB1011]

SENATOR DUBAS: Senator Carlson. [LB1011]

SENATOR CARLSON: Thank you, Senator Dubas. Jim, the bill reads that "except the district shall not use the power of eminent domain for the development or management of recreational trails or corridors unless associated with a flood control structure." How could you make recreational trails or corridors a flood control project? [LB1011]

JIM PANSKA: Well, I'm not too familiar with that except that I do know there are flood control projects that once they're developed do have recreational trails developed around them. I guess I'm not, other than that, I'm not quite sure what your... [LB1011]

SENATOR CARLSON: Well, I'm not seeing...I don't think it's very simple to make a flood control project out of a recreation trail or corridor plan. And I'm not saying it should be. I'm just interested in what kind of a project could you have that would be a trail that would also be flood control. [LB1011]

JIM PANSKA: I guess I don't...I don't see that either. I think what it's saying is that we're just restricting this to recreational trails, not to the development of a flood control project. [LB1011]

SENATOR CARLSON: No. No, and I understand, flood control trumps this, but sometimes it takes a stretch to make a project a flood control project. [LB1011]

JIM PANSKA: Oh. I guess I can't think of any recreational trail that could be made into a flood control project. [LB1011]

SENATOR CARLSON: Okay. Have to be creative maybe. [LB1011]

JIM PANSKA: Right, very, very creative I guess. [LB1011]

SENATOR CARLSON: Okay. All right. Thank you. [LB1011]

SENATOR DUBAS: Other questions? Senator Cook. [LB1011]

SENATOR COOK: Yes. Mr. Panska, thank you for coming and staying to testify for each of these bills. I have a...you made reference to unrealistic usage of the trails, and I guess I'm wondering upon what you are basing your assessment of what is an unrealistic usage projection. [LB1011]

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JIM PANSKA: I guess our concern was this trail, I think it was stated earlier, is 23 miles from either city, so we've got a large, large stretch of very isolated area. And if this trail is going to be put through that area, is it really going to be much usage in that, you know, in that stretch of trail because it is so far from the population? I mean we realize there could be an occasional person that's going to say, okay, this weekend my buddy and I are going to try and see if we can get to the other end. But as far as a recreational trail for a family of, say, a mother with her three children or, you know, in their stroller, they're not going to be...they're not going to be that far from the city. [LB1011]

SENATOR COOK: Okay. [LB1011]

JIM PANSKA: So... [LB1011]

SENATOR COOK: Thank you. [LB1011]

JIM PANSKA: ...as far as a family recreational trail, it just doesn't seem feasible. [LB1011]

SENATOR COOK: All right. And I'd like to clarify that not all recreational trails are used by the families, the kind of family that you might describe,... [LB1011]

JIM PANSKA: Right. [LB1011]

SENATOR COOK: ...because some of the people that I talked to in my district are very eager to ride their bikes from Omaha to Lincoln, have been waiting a long time. So thank you very much for offering your characterization of what you think it's for. [LB1011]

JIM PANSKA: Uh-huh. Well, thank you for listening. [LB1011]

SENATOR DUBAS: Thank you. Other questions? Seeing none, thank you for coming forward. [LB1011]

JIM PANSKA: Thank you. [LB1011]

SENATOR DUBAS: Other proponents for LB1011? [LB1011]

GEOFF RUTH: (Exhibit 21) Good afternoon again. Once again, my name is Geoff Ruth, G-e-o-f-f, Ruth, R-u-t-h. As vice president of the Nebraska Soybean Association, I come before you today in support of LB1011. As I stated earlier, NSA is a strong advocate for the rights of property owners, especially when it pertains to the use of eminent domain. Anytime land is being taken for any purpose through eminent domain, it places a strain

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on the landholder and those around them. In the case of the land being used for a public utility purpose, it's difficult but also understandable, as it does impact the greater good of the population. However, recreational areas target a very small demographic of the population and, therefore, should be viewed differently. I'll keep it short and say the Nebraska Soybean Association is a strong grass-roots member and strongly encourages implementation of this bill. [LB1011]

SENATOR DUBAS: Thank you, Mr. Ruth. Questions? Seeing none, thank you. [LB1011]

GEOFF RUTH: Thank you. [LB1011]

SENATOR DUBAS: Additional supporters for LB1011? No letters? [LB1011]

KATHY PLATT: Good afternoon. My name is Kathy Platt, K-a-t-h-y P-l-a-t-t. We are landowners out along the 334 Street corridor that was proposed for the bike trail this year, last year, year before. I have to tell you that the way that we were dealt with by members of the NRD was reprehensible. There was so much conflict in the community about it and concern that we really didn't know what to do. And thank goodness Dave came along side us and helped us to try to find a way to make it right. Living right on the designated bike trail on 334 Street, we see all year long how much traffic there is as far as the bikes, because they do go by our house. That is a designated bike trail. And I have to honestly tell you that if we see somebody on our road with a bike three times, three days, three days in the summer, most used time, that would probably be the limit. It's not used. It's very seldom used and it's, you know, we don't have a lot of traffic on our roads being out in the middle of the country. I don't think that stops people from completing their trip from Lincoln to South Bend. For example, we had one young girl last year, last summer, from the university that was from a different state that decided she was going to ride down to South Bend and see the river. She got down, she had the wind behind her going down. It was a really hot day. She stopped by at our place on the way back because she was totally wiped out. She road up to our house, asked my husband, could you please take me just as far as Wabash? I know I can't make it back. He took her to Elmwood instead to save her some more miles. And this is a young person in good shape that just overestimated her abilities. The reason that they want...that we have been told that they want the bike trail to not be alongside a hard-surfaced road is because it's not family friendly. It's safer to have it out in our fields or away from a highway. But I have to tell you, there is no family that I know of, I'm a nurse in one of the local hospitals here, I drive from Murdock to Lincoln, it's not something that a family could do to make it from Lincoln to Omaha or Lincoln to South Bend, because you have to remember, you have to come back. So there are some that I see, they haul their...they haul their bikes down to South Bend and then go from there. But our road is not used. And the way that we were treated was so bad that it gives us a very bad taste in our mouth to cooperate. I support this bill because eminent domain

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was going to be abused to the worst extent on the landowners around Murdock. I wanted to...I wanted to support your first bill, Dave, but the longer that I heard testimony and from the more people I heard it, and the NRD, it was always, I think we can work together, we have to add some amendments, we have to add some attachments. You know what? What's it going to end up to be before it's acceptable? Is it going to be another Health Care Reform Act? Who knows what all is in that. You see what I'm saying? So I think we need to simplify a little bit, use some common sense, use some common sense financially. We are not in a time to be throwing money away on things that are not going to be used. People say you use it or lose it for the...from the federal government. Well, guess what? Those are our taxpayer dollars. And what's left for the county to pay? Those are taxpayer dollars. The NRD is supported by the taxpayers. Should they not be more accountable to who's running the show? Thank you. [LB1011]

SENATOR DUBAS: Thank you very much for coming forward, Ms. Platt. Questions? Seeing none, thank you. Additional support for LB1011? Opposition? [LB1011]

SADIE NICHOLSON: (Exhibits 22 and 23) Sadie Nicholson, N-i-c-h-o-l-s-o-n. To allow recreation when flood control structures are built would have the intent of eminent domain for recreation. While flood control would qualify for eminent domain because it is necessary for the public safety and health, the recreation would not qualify. This is sneak theory. Eminent domain laws are federal laws. The Constitution gives all power and authority to landowners. Nebraska statute 79-1096 says no to eminent domain for public parks. Any eminent domain for any recreation connected to a flood control structure, a case was tried in Lower Big Blue NRD v. Krauter (sic). It was a Nebraska Supreme Court decision which decided that excessive farmland cannot be taken by eminent domain. The landowner has the right to say how much is excessive. If the farmer says 20 feet is enough for a round of water for maintenance, that's it. Copy of the decision is enclosed in your packet. Games and Parks says in "Focusing on the Future," that Nebraska rarely encounters difficulty finding nearby areas offering such traditional recreational opportunities as camping, picnicking, hiking, fishing, hunting, water skiing, and swimming, and I'll add bicycle riding to that. I compiled a book for the committee. Nebraska has eight state parks with 33,000 acres and more. The Games and Parks lists 87 recreation areas with 117,000 acres, and I found too that my husband and I have visited that are not included in that. We have 11 historic parks with 2,354 acres. There are 54 grasses preservation areas with 41 of them having 12,475 acres. There are 33 wildlife areas with 658,597 acres, a partial list because Schilling is not on it. Schilling is in Cass County and I believe it's 1,800 acres. Nebraska Games and Parks manages all of these areas using our tax money. Maintenance costs are partially paid from sales of permits and licenses and entrance fees. All of these areas have been removed from assessment for taxes. The areas cover all areas in Nebraska. We don't need any more. Proof is in this notebook that I've put together for the committee. Included is two pages of attendance for 2007 at selected Nebraska attractions, which includes most of the parks. Some of the parks have unfair competition with private enterprise. Camping

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facilities have driven private campgrounds out of business. Mahoney has an ice skating rink which would go against any private party that wanted to open one. Eating places in Mahoney and Platte River State Park are competition with our local restaurants. The 7g dam site was built and they were going to put a recreation area. In your packet is a map that shows Plan A that was adopted by the NRD following a November 8, 1984 hearing. When Plan A with 57 reservoirs was adopted, dam site 7g is not on it, so it was not a necessary flood control structure. After the MoPac right-of-way was abandoned, the trails people wanted a recreation area built there even though dam site 15 near Nehawka was in Plan E and Plan B. The NRD stopped after 18 dams were built, when 7g funding was withdrawn by the state funding commission. Thirty-five of the dams were not built to fund a castle on the MoPac. Most of watershed remains without flood control, two-thirds in fact. The NRD pushed for this to be built, even though it showed that when water went out the spillway, the Elmwood's waste water treatment plant, a highway bridge, and three trail bridges would be going under water. I ask the Legislature not to pass this bill. [LB1011]

SENATOR DUBAS: Thank you very much, Ms. Nicholson. Questions? [LB1011]

SADIE NICHOLSON: And I donate this to your library with the proof. Thank you. [LB1011]

SENATOR DUBAS: All right. Thank you. Other opposition to LB1011? [LB1011]

GLENN JOHNSON: (Exhibit 24) Good afternoon again, Senator Dubas and members of the committee. My name is Glenn Johnson, G-l-e-n-n J-o-h-n-s-o-n. I'm the general manager of the Lower Platte South Natural Resources District and I'm here on behalf of the board of directors of that district and also on behalf of the Nebraska Association of Resources Districts, appearing in opposition to LB1011. I think we've been through this process before last year with LB134, I think it was, and again our testimony would be the same. The issue, while we are very reluctant, we understand the power of eminent domain. The board of directors are very judicious about its use. But we feel that eminent domain is an authority that the Legislature gave to the natural resources district along with a list of 12 statutory authorities in 1972. Those haven't changed. Those authorities continue to this day. Those authorities included recreation in 1972. Those authorities included eminent domain authority in 1972. And, you know, I think the record has spoke for itself in the amount of times the NRDs have used it, but there are times when it is necessary. And so we would oppose the complete elimination of that authority for recreation trails. I'd be happy to answer any questions. [LB1011]

SENATOR DUBAS: Thank you, Mr. Johnson. Questions? Senator Carlson. [LB1011]

SENATOR CARLSON: Thank you, Senator Dubas. You maybe don't want to respond to this and that's okay, but there's been some damaging statements made today. Would

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you want to respond to any of those? [LB1011]

GLENN JOHNSON: Which ones and which category, I guess? [LB1011]

SENATOR CARLSON: Well, one statement made, they were treated terribly by the NRD and that eminent domain was abused to its worst extent. [LB1011]

GLENN JOHNSON: Okay. I will respond to that because let me give you the scenario and where we were. The natural resources district had a very public process, involving public hearings, numerous contacts with all of the landowners, direct contacts by mail, individual contacts, attempted to meet personally with them during this process of identifying a corridor, looking at multiple different corridors. There were public meetings. These landowners that are here testifying were at those public meetings. They were contacted by letter. They were contacted, attempted to contact in person to meet individually on a case-by-case to talk about their particular circumstances and where, if a trail were to be located adjacent or part of their property, is there a place that's least likely to be as intrusive as in another area. The board ultimately selected a corridor. There was an advisory committee made up not of NRD directors, but of local folks, directed by two NRD board members that took the initiative to bring those people together to look at alternative corridors. They did come in with a recommendation. The recommendation was 334 Street and either using...just widening the roadway five foot on either side or at least building a trail within the county road right-of-way. The county board was involved. Individual county board members were part of the discussion on the different corridors before 334 Street was selected. We moved forward with a project, with preliminary design in locating a trail on a preliminary basis that encroached into the public right-of-way. It used as much of the county road right-of-way as the county board was willing to let us use, as long as it didn't affect the drainage and the future road needs in that. So we were going in as far as we could, but some of that was still...some of the trail would still require going outside of the 66-foot right-of-way and would require private property, would require an easement. We presented this finding to the county board. The question was raised by the county attorney, does the Lower Platte South district have authority to use eminent domain? Let me repeat the question, and the question was asked at the hearings. Does the NRD have the authority to use eminent domain? And the answer truthfully was given, yes. At that meeting, the county board said, you no longer can go within the county road right-of-way, and voted to oppose the project and not allow the district to use that portion of the county road right-of-way. We were forced to go back out then basically and put the whole project outside of public right-of-way. Other than county road right-of-way between Elmwood, well, other than Highway 1, for a portion of the way, the state highway right-of-way, but other than that, there is no public right-of-way for at least six miles, up to eight miles, none, unless it's the 66-foot. And that's public right-of-way, but it's still privately owned. Don't forget that fact, even if you go in the county road right-of-way, we still have to get an easement from the landowner because that property owner owns to the center of the road. Not

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once did this board of directors of the Lower Platte South ever threaten to use eminent domain. We weren't to that point. We hadn't even gone to the design of the project; we were still working on the alignment. We were still trying to refine how much right-of-way would be involved on any particular property. We didn't even get to the point where LB1010 starts. The hearing at the beginning in LB1010 is approximately where we were and where any other NRD will need...they'll need to continue to develop those kind...that kind of information before they ever get to the process in LB1010. You have to go through identify a corridor, you have to go through an alternatives process, looking at all the different alternatives. You have to do a preliminary design. That may mean you have to get on the property to do some surveying. You also would have to do a title search because those eight also require you to do, you know, identify the right-of-way that's going to be involved, come up with cost estimates for both the project and the right-of-way. So, you know, where LB1010 kicks in is really once the negotiations, once the district makes the commitment to move forward with the right-of-way acquisition process. We never even got to that point. And so that's the issue on...you know, on eminent domain. The district, while there may be speculation that up to all the properties may have required the use of eminent domain, the district wasn't there. The district had the authority. The district never had made any action to exercise that authority. We didn't even get...weren't even given the opportunity to develop appraisals and right-of-way requirements and offers. [LB1011]

SENATOR CARLSON: Okay. Thank you for your answer and one more question. If you could turn the clock back, would you do anything differently? [LB1011]

GLENN JOHNSON: Obviously anytime you look at a project, certainly you would go back and there are things that you could do differently. Would the outcome be any different? That I can't tell you. I think that we did a process that is about as thorough a up-front process...now we can certainly spend a lot more effort and a lot of time, but if landowners are not willing to engage individually in discussion, if the county board changes a position on you, you're put in an awkward situation. We want to work with the county. They came to us with another alternative route. It was identified at the interim study hearing. We had heard it one time prior to that. But that came as a suggestion from the county board to do as a cooperative project. There is still private property that is going to be involved in that particular alignment also. But it may be a joint project rather than strictly an NRD project. [LB1011]

SENATOR CARLSON: Thank you. [LB1011]

GLENN JOHNSON: Um-hum. [LB1011]

SENATOR DUBAS: Senator Fischer. [LB1011]

SENATOR FISCHER: Thank you, Senator Dubas. Mr. Johnson, on the last bill we had

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a gentleman from the Trails Council and, if I remember his testimony correctly, I believe he said that there was a plan that's been in effect for trails since the early nineties. Did your NRD use that plan in picking the trail location? [LB1011]

GLENN JOHNSON: There's a...the first plan was in 1994 and that plan talked about a trails connection between Lincoln and Omaha using that particular...the Lied Platte River Bridge as the place to cross and, obviously, at that point the MoPac Trail was in place. There was not a well defined corridor making that connection. When the plan was updated, it does describe several different types and alternates of trails, but the corridor that was ultimately selected by the board, 334 Street, was generally the alignment that was shown on the state trails plan that was prepared by the state. [LB1011]

SENATOR FISCHER: When you say prepared by the state, who prepares that? Isn't it Game and Parks? [LB1011]

GLENN JOHNSON: It's Game and Parks and I don't know what the process is once...they're charged by statute... [LB1011]

SENATOR FISCHER: Right. [LB1011]

GLENN JOHNSON: ...to develop a state trails plan. If that's adopted somewhere, I...you know, I'm not sure. [LB1011]

SENATOR FISCHER: I don't know what that process is either, but I'd ask Mr. Winkler on the previous bill about his NRD and I realize it's an urban NRD and they have a...probably a different system for trails than we're looking at specifically today with the testimony, but do you...does your NRD make those decisions locally? Really, when you're looking at trails, aren't you making those decisions as a board and using your own experiences and the issues at hand and you have the flexibility to pick where the trails are? You don't really have the state saying you have to build a trail here, do you? [LB1011]

GLENN JOHNSON: No, certainly not on that particular alignment. And, you know, its said, you know, and that's a goal in that plan. The plan doesn't require the district to perform and complete that connection. That's a decision made by the local board of directors and the actual alignment ultimately is a decision that can be made by the directors. It does not have to follow that planned alignment. [LB1011]

SENATOR FISCHER: Then there's really nothing binding in that state trail plan, as I understand it. It's not a binding plan in any way, it's one of those planning processes... [LB1011]

GLENN JOHNSON: Right. [LB1011]

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SENATOR FISCHER: ...that has been put in state statute without anything to it, really. [LB1011]

GLENN JOHNSON: Probably the, yeah... [LB1011]

SENATOR FISCHER: I just don't know how it...I don't know how it ever could be binding on local political subdivisions and local people that the state could come up with this, so. [LB1011]

GLENN JOHNSON: When you make application for the Federal Trails Funds, one of the questions in the application is, is it consistent with a plan? And it doesn't necessarily tie it into the state plan or a city. It's just, is there a...is there a plan for trails that this is consistent with? [LB1011]

SENATOR FISCHER: Which you could do locally with your NRD. [LB1011]

GLENN JOHNSON: Certainly. [LB1011]

SENATOR FISCHER: Yes. And I think that would be the place... [LB1011]

GLENN JOHNSON: Uh-huh. [LB1011]

SENATOR FISCHER: ...that it should be done. So, thank you. [LB1011]

GLENN JOHNSON: Yes. [LB1011]

SENATOR DUBAS: Senator Haar. [LB1011]

SENATOR HAAR: Yes. Thanks for staying so long. And we won't know until things eventually get built, but your board must have talked somewhat about the use of the trail. Could you, at least from your board's standpoint, give us... [LB1011]

GLENN JOHNSON: Well we've, you know, we've got experience with three rural trails right now, and one that goes from Valparaiso to Brainard, there's no large metro connection there. Neither Valparaiso nor Brainard would probably qualify as large metro, but I won't downplay the number of people and the importance it is to them. The other is the MoPac Trail that begins, actually, in the center of Lincoln, extends out to the edge and the district's portion of it picks up and heads east through, you know, Eagle, Elmwood and terminates right now at Wabash. We also have the Homestead Trail which begins center of Lincoln, extends south, the district picks it up at Saltillo and it goes down to Cortland. Just as you would expect, just like road traffic, the farther you get from the urban center, the less traffic there is. And we see that same thing. If you go

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from Lincoln to Walton, there's an awful lot of traffic on the trail. From Walton to Eagle there's a little bit less. From Eagle to Elmwood less and from Elmwood, certainly on, there's even less. The designated road that we have, if you ride bicycles and you...like I did, you grew up on county road where the rocks were this big, if you had rocks or gravel, very difficult to ride on. And that road is set up for, you know, traffic, vehicle traffic, vehicle tires, yeah, you can ride it with a bicycle, but if you get a choice, you're probably not going to. It's not a very easy place to ride on any of those roads. So there's not a lot of traffic on it now. We've never done any pulling numbers out of the sky, projections as to what the traffic would be, but we have a lot of reason to believe that there's going to be a considerable amount of traffic that will go back and forth between Lincoln and Omaha. You look at other states; there's plenty of experience to show you that in other states along that type of a 50-mile trail. Fifty miles for many trail riders is getting started. It's not a long, you know, it's not a...it's a good day out and back. I think one of the other speakers did describe well what a lot of the usage is though. It's, you know, you go and you ride this week...this Saturday I'm going to ride from Lincoln out to Eagle and then back; the next Saturday I'll drive out to Eagle, take my vehicle out there and I'll pick, you know, get my bike off and I'll ride to Elmwood and back. And there's a lot of people that do that. That's the type of riding you would see a lot, particularly if they can tie in with the Lied Platte River Bridge. So we think there's a goodly number of users that will utilize the facility, whatever connection we can ultimately make. [LB1011]

SENATOR HAAR: Well thank you. [LB1011]

SENATOR DUBAS: Other questions? Thank you. [LB1011]

GLENN JOHNSON: Okay. Thank you. [LB1011]

JOHN WINKLER: (Exhibit 25) Senator Dubas, members of the committee, again thank you for the opportunity to testify. My name is John Winkler, J-o-h-n W-i-n-k-l-e-r, and again I'm the general manager for the Papio-Missouri River Natural Resources District. I'm here today in opposition to LB1011. As I earlier testified in connection LB1010, the Papio-Missouri River NRD is committed to working with this committee and Senator Pankonin and Senator Haar and all the other senators of this committee to come up with a workable process that protects, not only property owners, but also is a workable process for the districts to construct recreational trails. Glenn did discuss our statutory obligations and authorities under this state statutes for NRDs and recreation is, obviously, one part of those twelve. One situation that continues to come up is the Papio NRD did use eminent domain for a recreational trail. And I'd like to explain the purpose of that. The property owner actually approved of the trail, but as part of the negotiations, wanted the district to pay for...to bring three-phase power to his barn. And we took that back to our board and our board didn't think that was fair to the rest of the taxpayers of the district that that person would not only get fair and equitable value for his property, but also would receive a personal benefit of bringing three-phase power to

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his particular building. And so that was one of the reason that that was used at that particular time. And that was a deal breaker for him. If we did not provide that three-phase power to his barn, then he would not deal with the district in good faith and so an eminent domain was necessary to complete that part of the trail. That is just one example of how one particular property owner, regardless if they approve of it or not, can stop an entire trail project, no matter how...everybody wants it or not. One other issue too is when you deal with the Public Lands Trust, the schools, as part of their process, you have to use eminent domain to acquire their property. It's in state statute. So that would force the district, if you negotiate in good faith or not, you have to go through that process to acquire that land. So that's just a couple of instances where our board...our board does not like to use eminent domain. It is the last resort possible. But there is circumstances where, one, that they didn't think it was fair to the other taxpayers of the district to do that particular deal, to make that particular investment because it was for the benefit of just one party, and then also because we had to follow state statute to comply. And if we...and another state statute is if we have to acquire property from an NRD director for any project, we have to use eminent domain on that director. And so that's just a couple of examples of what...the state statute, obviously, makes us do. So I'd be glad to take any questions from anybody. I don't want to reiterate the opposition testimony that's been before me, but obviously, our district opposes the complete elimination of eminent domain by the NRDs. [LB1011]

SENATOR DUBAS: Questions? Senator Carlson. [LB1011]

SENATOR CARLSON: Thank you, Senator Dubas. John, you're representing Papio-Missouri NRD in testimony today. Did the Nebraska Association of Resource Districts vote on this bill and how did that go? [LB1011]

JOHN WINKLER: Yes, they voted to oppose, obviously, this legislation. [LB1011]

SENATOR CARLSON: And I don't know if Glenn represented that, I didn't hear it. [LB1011]

GLENN JOHNSON: Yes. [LB1011]

SENATOR CARLSON: Okay. [LB1011]

JOHN WINKLER: He did. Okay. [LB1011]

SENATOR CARLSON: Okay. Thank you. [LB1011]

JOHN WINKLER: Yep. [LB1011]

SENATOR DUBAS: Other questions? Seeing none, thank you. [LB1011]

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JOHN WINKLER: Thank you. [LB1011]

SENATOR DUBAS: Further opposition to LB1011? [LB1011]

ROB SCHUPBACH: (Exhibit 26) My name is Rob Schupbach, R-o-b S-c-h-u-p-b-a-c-h. I'm speaking as a trail enthusiast against LB1011. I would like to draw to the committee's attention what I call the law of unintended consequences. Many times things are put together for what seems to be a good reason and it just doesn't turn out that way. I think this bill has the potential to do that. Many NRDs participate in cooperative projects with other governmental subdivisions and in many instances they bring the seed money to the table that allows small communities to put together beneficial development projects and it allows them to bring in other money from outside sources that they might not have the seed money to do. And in some instances, eminent domain may be used by the joint project. Joint projects are covered by...or cooperative projects that NRDs never...other governmental entities participate in and may not be the sponsor, are governed by the Nebraska Interlocal Cooperation Act, it's Nebraska Statute 13-801 through 27. And if eminent domain is required for a project governed by 13-801 through to 27 and LB1011 becomes law and an NRD can't participate in anything that has to do with eminent domain outside of a flood control project, can the NRD participate in the project at all? There are two cases, one is going on now and one has already happened. Two NRDs have participated in projects, in city park projects: one in Columbus and one that's going on right now in Minden. In my scenario my question is, if the park project...if the NRD brings its money for the project to the table and it helps the city or the other government entities partner with other government entities, but they have to have seed money to begin with, and eminent domain is required for the project and LB1011 was in effect, would 13-801 through to 27 required the NRD to withdraw its participation in the project and take its seed money out of it. I know you don't have the answer today, but if...it may be something that the state Attorney General could clarify for you before you make a decision on this. Any questions? [LB1011]

SENATOR FISCHER: Thank you, Mr. Schupbach. Are there any questions? I see none. Thank you very much. [LB1011]

ROB SCHUPBACH: Thank you. [LB1011]

SENATOR FISCHER: Are there other opponents to the bill? Any other opponents? Is there anyone wishing to testify in the neutral capacity? I see none. Senator Pankonin, would you like to close? Senator Pankonin waives closing. With that I will close the hearing on LB1011 and the close the hearings for the day. Thank you all for coming. (Exhibit 27) [LB1011]