

destination attractions. The size of these parcels makes it possible to develop them exclusively, which is of primary importance in the development of an anchor destination.

⁵ (emphasis added).

15A Cherokee Business District Master Plan, February 2001, pg. 5.20.

Even the poorly done Education Campus Site Evaluation, with EBCI's hand-picked criteria that assured the Ravensford tract would be identified, found potential alternative sites for the construction of schools. The study included a number of limiting criteria, including: Commuting distance for students (maximum 15-mile bus commute for all students on the Qualla Boundary).⁶

16A Education Campus Site Evaluation, Joel L. Starrow, P.E., Dale E. Fennell, P.E., P.L.S., McGill Associates, October, 2002, p. 4.

* Topography and soils analysis, based on a threshold of 8 degrees slope and 10cs.⁷

17A Education Campus Site Evaluation, p. 5.

A map showing low-slope land in and around the Qualla Boundary indicates large tracts of land with slope of no more than 8% within a ten-mile radius of the Ravensford tract.

EBCI have identified a need for 73 acres to accommodate a three-school complex with necessary parking and athletic facilities. The Education Campus Site Evaluation identifies 10 potential sites for school construction.

Following the site selection process, each site was evaluated based on a more detailed examination under the technical criteria. A lower ranking score of "4" was provided to sites that, among other factors, have "wetland and/or flood issues adversely impact full use."

⁸ The study also states that it is important to note that many of the tracts are "located outside reservation boundaries and are comprised of individual tracts with multiple owners" concluding that these sites "will prove difficult, if not impossible, to acquire."

⁹ The study neglects to point out that the Ravensford tract is among those sites outside the reservation boundary.

18A Education Campus Site Evaluation, p. 11.

19A Education Campus Site Evaluation, p. 12.

The Ravensford tract is outside the reservation boundary, within the Great Smoky Mountains National Park, and as parkland is owned by and for the enjoyment of every American, including the Cherokee. The tract includes approximately 7 acres of wetland.¹⁰ As stated earlier in the testimony, the Ravensford tract was flooded during the recent severe rains during the week of May 5, 2003.

¹¹ Nonetheless, the Ravensford tract was determined to be the "best suited to accommodate a consolidated school campus."

¹² The study does not conclude that the Ravensford tract is the only potential site for school construction. Also, the study neglects to consider the current locations of the schools as suitable locations for schools.

110A Draft Statement of Findings for Wetlands for a Proposed Land Exchange Between the National Park Service and the Eastern Band of Cherokee Indians at the Great Smoky Mountains National Park/Draft Land Exchange FIS, pg. 12.

111A Personal communication with GRSM staff.

112A Education Campus Site Evaluation, p. 13.

In a letter from NPS Director Roger Kennedy to Senator Jesse Helms, dated June 13, 1994 Mr. Kennedy noted that construction of either a

golf course or school complex "would be totally contrary to the purpose for which the land was placed within the park, i.e., to preserve its scenic, natural and cultural resources." The letter continues:

Construction of a school complex along with the attendant parking, athletic field and 2 other facilities would require extensive clearing, grading and construction in an area where native grasses and forests now exist. The resultant disturbance would be totally incompatible with the archeological district and historic appearance now protected by national park status.

Visually, the proposed school complex would have a dramatic impact on the view from the last two overlooks on the Blue Ridge Parkway which currently provide unimpaired vistas of the pastoral Oconaluftee River valley and the Oconaluftee Pioneer Farmstead which is part of the park's Oconaluftee Visitor Center Complex.

Finally, the National Park Service is concerned that carving into the park for this project would lead to proposals for development in the park by other entrance communities, all of which are nearing the limits of the developable land. A few years ago, for example, Gallatin, Tennessee, requested permission to build flood control facilities inside the park's northern entrance. This request was rejected as well.

13

 \13\ NPS letter dated June 13, 1994. To Senator Jesse Helms, from Director NPS.

 NPS published another GRSM Briefing Statement regarding the EBCI requests for special park use of land for development on January 20, 1998. The Briefing Statement includes the NPS official position: "The National Park Service continues to oppose cutting into the Park to construct facilities such as the golf course or school complex which are not compatible with Park purposes." 14

 \14\ NPS GRSM Briefing Statement re. Eastern Band of Cherokee Requests for Special Park Use of Land for Development, dated January 20, 1998.

 On June 14, 2000 NPS broke with their long-standing policy of rejecting EBCI's request for land within GRSM. Robert Stanton, former Director of NPS, entered into an agreement with the EBCI, to "create a framework within which the parties may explore the feasibility of a land exchange involving the Ravensford tract." The agreement includes a list of steps to be taken by both NPS and EBCI to determine whether it is feasible to exchange the land. One of the NPS action items listed in the agreement reads as follows:

5. Make final determination in good faith, after the completion of the required surveys and studies, to enter into the proposed land exchange or not to enter into the proposed land exchange. 15 (emphasis added)

 \15\ General Agreement (Agreement No. CA-GRSM-01-FY00) Between National Park Service and Eastern Band of Cherokee Indians, June 14, 2000.

 Thus the agreement does not contain a guarantee that the exchange would take place.

History of the Ravensford Tract

The Ravensford tract was part of the land ceded by the Cherokees at the Treaty of Tellico in 1798. 16 Euro-American settlers had begun to enter the area at that time and by the early 1800s the Ravensford tract and surrounding area was settled by the Mingo, Talbot and Hughes families. 17 Descendants of these three families continued to control the private holdings in the area into the 1920s.

116\ Paul A. Webb, et al., Cultural and Historical Resources Investigations of the Ravensford Land Exchange Tract, Great Smoky Mountains National Park, Swain County, North Carolina (ARPA Permit GRSM 99-011, Amendment 1 SEAC Acquisition No. 1580, June 2003), 37.

117\ Webb, Cultural and Historical Resources Investigations, 38.

118\ Webb, Cultural and Historical Resources Investigations, 39.

During that period leading up to the creation of the Great Smoky Mountains National Park (GRSM) in 1934, the states of Tennessee and North Carolina bought the land in preparation for turning it over to the Federal government. Timber interests owned and were harvesting the vast majority of the land that became GRSM. Such was the case with the Ravensford tract. The Whitlimer-Parsons Pulp & Lumber Company had purchased the land that was to become the lumber town of Ravensford in the early 1900s.¹⁹ The land in turn was acquired by condemnation from the lumber company by the State of North Carolina in 1933 and subsequently became part of the national park. Following the establishment of GRSM the Federal government began the process of developing the Blue Ridge Parkway, an ambitious vision for a unit of the park system to connect Shenandoah National Park in northern Virginia to the Great Smoky Mountains National Park in North Carolina.

119\ Margaret Lynn Brown, *The Wild East: A Biography of the Great Smoky Mountains* (University Press of Florida, 2000), 52.

The Blue Ridge Parkway Negotiations (1937--1940)

In 1937 the Cherokee declined an offer by NPS for the Ravensford tract as well as the Boundary Tree tract, Tight Run tract and cash in exchange for right-of-way across the Qualla Boundary to be used for the preferred, westward route for the Blue Ridge Parkway down from Soco Gap. The Cherokee's refusal of that offer set into motion a complex set of negotiations that eventually led to acceptance of an offer for cash and the construction of U.S. Highway 19 in exchange of right-of-way for the current eastward route of the Parkway.

One of the key issues faced by Parkway planners was acquiring right-of-way through the Qualla Boundary to GRSM to construct the southern terminus of the road. Negotiations began between the Federal government, North Carolina and EBCI with the original plan to route the Parkway through Soco Gap west along Soco Creek down into the town of Cherokee.²⁰ When the Cherokee discovered that NPS wanted a one-thousand-foot right-of-way and that the road would be for restricted use, the EBCI opposed the project.²¹ The Cherokee were concerned that the wider right-of-way would take valuable farmland in the Soco Valley and negatively impact commercial possibilities on the main street in Cherokee.²²

120\ Darley E. Jolley, *Blue Ridge Parkway* (University of Tennessee Press, 1985), 93.

121\ Jolley, *Blue Ridge Parkway*, 93.

122\ John R. Finner, *Cherokee Americans: The Eastern Band of Cherokees in the Twentieth Century* (Lincoln: University of Nebraska Press, 1991), 78.

Negotiations for the preferred Blue Ridge Parkway route along Soco Creek evolved with the Secretary of Interior offering the following exchange of park land for EBCI land: the EBCI would receive the Ravensford, Boundary Tree, and Tight Run tracts (all within GRSM) plus reasonable cash compensation; the NPS would receive the 1,102 acre Rowstring tract and a right-of-way for the Parkway through the Qualla Boundary from Soco Gap west along Soco Creek.²³ This exchange was explicitly made contingent upon consent of EBCI through a secret ballot in a general election within sixty days of the bill's

passage.²⁴ The bill was approved by Congress on August 19, 1937.

\23\ 75th Congress, 1st Session, H.R. 5472, pg. 699.
 \24\ 75th Congress, H.R. 5472

This proposal was clearly controversial among the Cherokee as reflected in an article from the Sylva Herald dated September 9, 1937. The headline read "Council Vote Reflects Opposition to Soco Route." According to the article, a general election resulted in an EBCT Tribal Council consisting of eight opponents of the exchange plan and four proponents of the plan. The Sylva Herald reported on October 14, 1937 under the headline "Indians Will Not Vote on Parkway," that the new council had chosen to affirm without voting on the Parkway plan. Thus the offer of the Ravensford tract was rejected by EBCT in 1937.

Secretary of the Interior Ickes was thus caught between his attempts to procure a suitable route for the Blue Ridge Parkway and his obligation to protect the interests of the Cherokee. He composed a letter to the EBCT in which he plainly stated that DOI would not coerce the Cherokee into providing the right-of-way: "If you do not want the road to be built where the National Park Service desires it to go, it will not be built." The Cherokee were advised that if they did not approve of the current proposals for the Parkway, either a new route avoiding the reservation would have to be found or else the road would have to terminate at Soco Gap.²⁵

\25\ Jolley, Blue Ridge Parkway, 97.

The State of North Carolina, working through EBCT Principal Chief Carret Blythe and the Superintendent of the Cherokee Indian Agency, abandoned the original proposal to go down Soco Creek.²⁶

The new plan called for a completely different route eastward from Soco Gap, along the existing ridge-top route of the parkway. Given the complex of cuts, fills and tunnels NPS had realized that with this route it was going to cost significantly more to build the parkway into GRSM. This offer required that the State of North Carolina build a new highway through Soco Gap that would leave EBCT tourist business intact and allow economic expansion. This offer did not include any exchange of parkland. EBCT rejected this proposal.²⁷

\26\ Jolley, Blue Ridge Parkway, 100.
 \27\ John R. Finger, Cherokee Americans, 93.

Finally, in 1940 Congress passed legislation that would provide NPS with a right-of-way across the Qualla Boundary along the existing route of the Parkway. That route takes the Parkway from Soco Gap along the ridgeline and finally connects with U.S. Highway 461 (Newfound Gap Road) within GRSM immediately adjacent to the Ravensford tract.

²⁸ In exchange the State of North Carolina agreed to build a highway from Soco Gap to Cherokee (now U.S. Highway 19), and the Cherokee received \$40,000 or \$30 an acre (whichever amount was greater) for the right-of-way and an option to acquire the Boundary Tree tract.

²⁹ EBCT did acquire the Boundary Tree tract in 1943.

\28\ 76th Congress, 3d Session, H.R. 6668, pg. 299.
 \29\ 76th Congress, H.R. 6668.

Thus the boundaries of the Parkway and GRSM overlap along the southernmost mile of the Parkway, with the Parkway passing immediately southeast of the Ravensford tract and running parallel to Big Cove Road. In other words, the Ravensford tract is completely surrounded by GRSM and bounded on the southeast side by the Parkway. The Ravensford tract is situated with both the Parkway and over one-half mile of GRSM land separating it from the Qualla Boundary to the southeast. Removing the tract from the park would create a private in holding almost completely surrounded by national park land.

For that reason the route of the Parkway became a significant issue in NPS removing the Ravensford tract from the negotiating table. With the original proposal, the Parkway would have come down the west side of the ridge along Soco Creek, following a path that did not overlap with GRSM. Writing in 1940, GRSM Superintendent J.R. Eakin discussed, in pertinent part, the original rationale for the land exchange in the 1937 offer and how the NPS position had to change with the alternative route of the Blue Ridge Parkway:

I initiated the exchange that was offered to the Indians in 1937. The idea was to get a better administrative boundary for the park and to secure a right-of-way for the Parkway down Soco Creek, where construction costs would have been very much less than the location selected. We offered the Indians a value of about four to one, predicated upon the Soco Creek location. The Indians did not accept, and we here considered the matter ended. At the time the exchange was offered the site of the Secondary Administration Building (at Oconaluftee) had not been selected'. We are going to have a very fine layout there and I will state to Mr. Zimmerman [Acting

Commissioner of the Indian Service] that in my opinion it would be unwise to complicate the situation by letting the Indians have the Ravensford tract. This is still my opinion and is the opinion of our entire staff. We believe the Parkway location has changed the whole picture.

Mr. Zimmerman appears to be of the opinion that we are withholding something that rightfully belongs to the Indians. The North Carolina Parks Commission purchased the lands under discussion for park purposes.

The present Cherokee entrance is not impressive and we proposed to exchange the boundary tree tract, the northern boundary of which will make a more impressive entrance, unless the present deplorable development along the road in the Reservation continues on the Boundary Tree Tract, if acquired by the Indians.

In conclusion, I desire to state that I have made no misleading statements, but on the contrary, Mr. Zimmerman is badly confused.

30

NSA Memorandum dated August 8, 1940 from Superintendent J. R. Eakin to Acting Director NPS Demaray.

Recent History (1970--Present)

Since 1971, leaders of EBCI have periodically approached NPS requesting that up to 200 acres of the Ravensford tract be made available to the tribe. NPS consistently rejected EBCI's request for a land exchange. For many years EBCI requested the land to build an 18-hole golf course. Writing to Noah Powell, Principal Chief EBCI, in 1972 GRSM Superintendent Vincent Ellis explained the NPS position. Ellis pointed to a set of reasons for the denial including:

1. Policies for the administration of natural areas of the National Park System. Moving the developed area into the natural area in effect diminishes the attraction, which brings the visitors here. It would also reduce the perimeter of the Great Smoky Mountains natural and historic area and open the door to further such requests at other entrances to the park. These requests usually originate in response to needs generated by inadequate land use planning adjacent to the park.

2. Visual impact from Blue Ridge Parkway.

Immediately above the proposed golf course area two scenic overlooks have been established on the Blue Ridge Parkway specifically to provide the visitor views of the pastoral scene including the open meadows, the natural river environment, and the Oconaluftee historic farmstead in the background. I do not think that a golf course in this location is compatible with the historic and pastoral scene we are attempting to maintain in the Ravensford-Oconaluftee area.

31

\31\ Letter dated February 22, 1972 from Superintendent Vincent Ellis to the Honorable Noah Powell, Principal Chief.

The Cherokee continued to request the Ravensford tract for a golf course. A memorandum to George Hertzog, Jr., Director NPS, from David Thompson, Director SE Regional Office NPS on November 16, 1972 sets out his recommendation that NPS not support a land exchange with EBCI. Thompson provides a list of reasons for this denial:

The land within the boundaries of the Great Smoky Mountains National Park have been set aside for all the people to use and still preserve the natural, historical, and cultural values. Certain of these Ravensford lands are classed as cultural and historical. Section 105 of the Historic Preservation Act and Executive Order 11593 apply to portions of this land.

32

\32\ Memorandum dated November 16, 1972. To Director, NPS, from Director Southeast Region.

In reaction to a subsequent EBCI request for the land, NPS requested that the park's historian, Edward Trout, analyze the feasibility of conducting a land exchange involving the Ravensford tract. A memorandum produced by Trout in 1991 explains his determination that NPS cannot conduct the land exchange and includes the following:

It should be noted that the land in question lies within the Coonahutsee Archeological District, which was placed on the National Register of Historic Places on February 19, 1967. It was placed thereon because of the valuable store of Cherokee and pre-Cherokee archeological resources contained within the District. 33

\33\ Memorandum dated March 4, 1991. To Chief Resource Management and Science, from Historian, GRSM.

A Great Smoky Mountains National Park Briefing Statement on the Ravensford land exchange followed that memo. NPS's stated position is "The National Park Service strongly opposes cutting into the Park to construct a golf course." 34

\34\ GRSM Briefing Statement, re. Proposed Transfer of Park Lands to Cherokee Indian Reservation, dated March 5, 1991.

EBCI established a Harrah's Casino in Cherokee, NC, in the early 1990s. It is assumed that with this revenue stream, EBCI shifted its priority to improving its school system. In 1994, the tribe requested a land transfer for the construction of new schools.

NPS officials have made it clear that no pre-decision on the land exchange has been made. This issue came to the forefront when Yosemite Superintendent David Mihalic chose to retire rather than take the Superintendent position at GRSM. Mihalic spoke to the press explaining that he was getting pressure from NPS officials. Quoted in the Asheville Citizen-Times Mihalic stated:

"I was told that one of the reasons that (Michael) Tollefsen (current Smokies superintendent) was being moved was that he hadn't done it (the land swap), and it was my job to get it done," Yosemite Superintendent David Mihalic said Friday. "My charge in going to the Smokies wasn't to go in there and fight that direction."

Mihalic says he also was asked to tackle the controversial North Shore Road - a project the park historically has opposed. He announced this week he would retire Jan. 3 rather than take on the tasks. 35

\35\ Asheville Citizen-Times, Man turns back on park job and its

controversies. October 5, 2002.

Also quoted in that October 5, 2002 Asheville Citizen-Times article was National Park Service Spokesman David Barne.

National Park Service spokesman David Barne said there has been no "pre-decision" on either the North Shore Road or the Ravensford land swap.

It is our understanding that EBCI have yet to purchase the non-Federal land that is proposed for the land exchange. According to Jackson County, North Carolina records the property is still owned by Jay Schenck of Florida.³⁶ According to Jackson County records the land value is assessed at \$58,400.³⁷ This is in sharp contrast to the NPS appraisal value cited by EBCI in a letter to the editor of the Washington Post that states "The land the Park Service would receive in exchange, the 218-acre Yellow Face site, was appraised at \$590,000."³⁸

336) Warranty Deed, Book Number 758, Page 132, Jackson County Register of Deeds, Registered June 25, 1996.

337) Real Property Identifiy Results, Jackson County Maps Department, May 19, 2003.

338) The Washington Post, Good for the Cherokee, Good for the Park Service, letter to the editor from Principia Chief Leon Jones, October 21, 2002, pp. A 24.

Access Between Big Cove and Qualla Boundary

Another of the reasons that EBCI have stated for their request for the Ravensford tract is to reconnect the community of Big Cove with the rest of the Qualla Boundary communities. The mountainous topography in western North Carolina provides a limited number of suitable routes for roads through the area. By the 1960s the road system in and around the Qualla Boundary included the paved Big Cove Road, approximately one mile of which runs through GRSM. NPS has worked with EBCI providing the tribe with the authority to maintain Big Cove Road and providing right-of-way through the park for water, sewer, cable TV and electricity along the Big Cove Road corridor to service the community of Big Cove. EBCI have not articulated any problems with access to Big Cove as a result of the stretch of Big Cove Road that passes through the park.

Conclusion

NPCA stands ready to work with the Resources Committee, the National Park Service and EBCI to devise a solution that both protects Great Smoky Mountains National Park and the Blue Ridge Parkway and provides Cherokee children with the best possible educational opportunities. Both of these goals can be satisfied. Unfortunately, the legislation before you does not produce such a solution.

Thank you for the opportunity to testify about this important issue. I would be pleased to respond to any questions you may have.

The Chairman. Thank you. Thank the panel for their testimony. As I am sure you are aware, we have a vote that has been called on the House floor. We are going to recess the Committee temporarily to allow the members to go over and vote, and then we will reconvene as soon as the votes are complete. So it will probably be about 25 minutes that we are over there, but we will be back as soon as we can.

I will tell the members that I know a number of you have questions for this panel, so if you can hurry back, it would help in moving this along.

The Committee will stand in recess.

[Recess.]

The Chairman. I want to thank the panel for their patience. Chief Jones, what are the plans that the tribe has for the use of this land? We have heard about the building of an educational facility on the land. Are there any other plans that you have or that you envision for the future on this land?

Mr. Leon Jones. There is only one other use that we have

discussed, sir, and that is the corridor for transportation back and forth between the Big Cove community, which has been snubbed from the reservation by this piece of property. I have personally told the parties involved that I would sign any document needed to say that this piece of property will be used for educational purposes only, sir, no other use except transportation through to go to the Big Cove area, sir.

The Chairman. What if at sometimes in the future there is economic activity? I understand that the bill specifically says that there could be no gaming, and what if at sometime in the future there is some other type of economic development that could occur on this land? Would that be a possibility?

Mr. Leon Jones. No, sir. I have expressed that I would sign the document saying that it is to be used for educational purposes only, sir. The Cherokee are honorable people. We will keep our word, sir.

The Chairman. I want to ask you about the environmental questions that have come up. I don't know if you are familiar with it, but there is a group called the Sierra Club that has come out in opposition to this. They sent out a letter talking about this. Does your tribe have a history of environmental degradation? Do you have a long history of destroying the environment around you?

Mr. Leon Jones. Sir, we have a Cultural and Heritage Department. The employees of this department, some of them have doctor degrees, others have master's degrees. Their specialty is preserving the lands and the archaeological sites, not only on the reservation. They have been called, when they were going to expand the Marine Corps base in South Carolina, that far away, up into Kentucky, for their advice and their counsel on how to preserve cultural and archaeological sites. No, sir. To answer your question, the answer is no, we do not have a history of doing destruction to the land, but only preserving the land, sir.

The Chairman. On the culturally significant sites, the archaeological sites, it is my understanding from your answer that you don't have a long history of destroying those sites either?

Mr. Leon Jones. That is correct, sir.

The Chairman. That is interesting.

Mr. Blankenship, can you tell the Committee what current educational opportunities exist for students on the reservation or nearby the reservation?

Mr. Blankenship. There is a public school system in the county schools, which some of our students are forced to attend because of the overcrowding and conditions at Cherokee Central Schools, but as far as education goes, Cherokee schools strive for excellence in their school system. We have a number of students with us today who are going off to college to pursue their own academic careers, so the support is there, but the facilities that we have now are not conducive to learning and conducive to supporting these students at the facility.

And also if I may, I would like to make a comment on the land. We, as Cherokee people, have lived off that land for thousands of years, and to say that we go and destroy that land is far from the truth.

The Chairman. Well, let me ask you then. Do you have any attachment to the land? Do you care about it at all? do you have any history in the area? Have your people been there for a number of years and tried to protect this land?

Mr. Blankenship. My people have been there for thousands of years and because of our commitment to the United States we were willing to give up that land for the Blue Ridge Parkway to come through, because of our commitment to the United States and being United States citizens. I mean we haven't even been citizens of the United States for a number of years now. To say that we would go and destroy something that is sacred to us, something that we have lived off of for thousands of years,