

Supporting Tribal Co-Stewardship and Land Return in Southern Appalachia

By

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This report was devised under the invitation and guidance of our client,
the Eastern Band of Cherokee Indians.

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Positionality Statement

As students supporting the work of the Eastern Band of the Cherokee Indians, it is our responsibility to name our positionality and how it influences our relationship to this research. The three authors of the papers herein are all white, non-Indigenous, of European descent, and born and raised in the United States as U.S. citizens. All are Master's students at the University of Michigan, completing their Master's Capstone Project at the invitation of the Eastern Band's Department of Natural Resources, the *Elohi Dinigatiyi* (Earth Keepers) advisory group, and the Junaluska Museum hosted within the Eastern Band's Snowbird community. The history, stories, knowledge, language, and cosmologies of the Cherokee presented in these documents are shared secondhand from conversations, literature, or archival research and have been reviewed by a handful of advisors from the aforementioned organizations. While these documents reflect our inputs as student consultants and our aims to reflect the requests and input of these advisors, they do not reflect the views of the Eastern Band.

Land Acknowledgement for the University of Michigan

As students whose degrees will be conferred through the completion of this research, we must acknowledge our privilege in living and learning on traditional Anishinaabe land. The University of Michigan was established on lands ceded to the federal government in 1817 by the Odawa, Ojibwe, Bodéwadmi, and Wyandot nations through the Treaty at the Foot of the Rapids. Today we benefit from the lands and resources accumulated by our governments and by the University through the violent dispossession of Indigenous Peoples and the systematic alienation from their ancestral lands. To conduct this work with the Eastern Band concerning their history of land and use rights demands that we acknowledge the responsibility of students, researchers, and practitioners at the University of Michigan and nationwide to respect Tribal sovereignty and pursue serious, good-faith options to repair centuries of harm.

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Brief History of the Eastern Band

The Eastern Band of Cherokee Indians (EBCI) are the descendants of Cherokee families who remained in their ancestral homelands by resisting the Indian Removal Act (c.1838), and those who have returned to their ancestral homelands after Removal.¹ The Eastern Band is one of three federally recognized Cherokee Tribes, the others being the Cherokee Nation and the United Keetoowah Band (both in Oklahoma).² As indicated by the Royce schedule of Cherokee land cessions from original territories (Figure 1), Cherokee people share expansive ancestral homelands that span eight current US states: North Carolina, South Carolina, Virginia, West Virginia, Kentucky, Tennessee, Georgia, and Alabama. Presently, the Eastern Band are the only federally recognized Cherokee Tribe who live within the tribe's original ancestral lands, making them uniquely positioned to manage their lands using traditional ecological knowledge rooted in thousands of years of place-based cultural land-management practices.

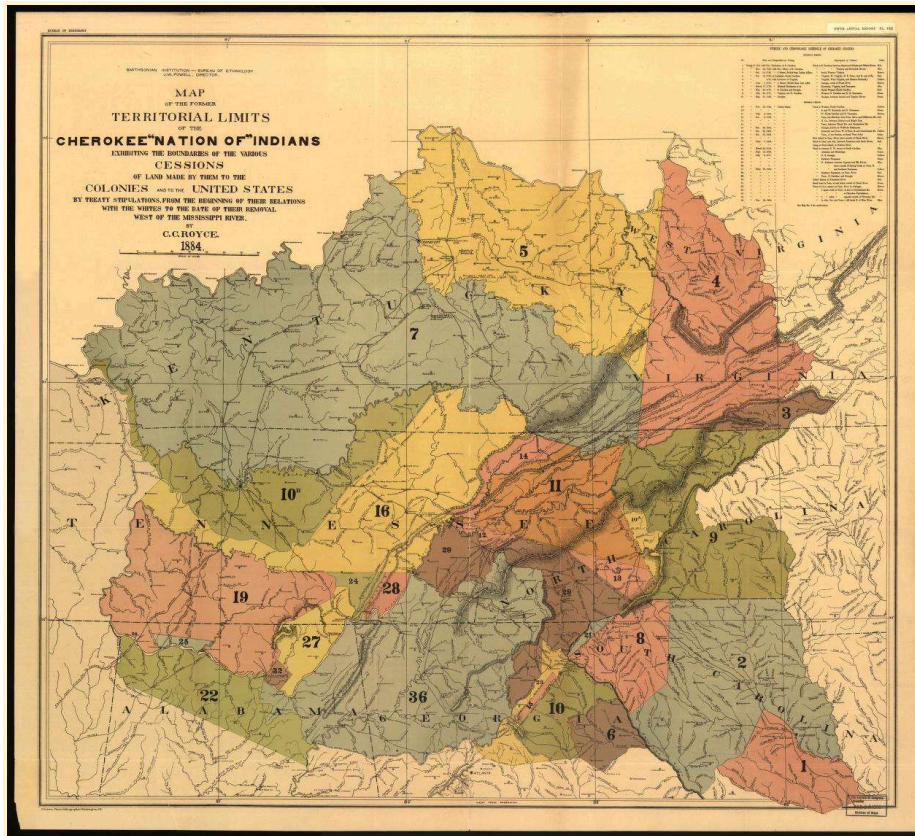


Figure 1. Royce Map of all treaty-based cessions of Cherokee land in the eastern U.S. from 1721-1836.³ Cherokee homelands span across 8 present-day states.

¹ Visit Cherokee North Carolina: Take a Journey to the Home of the Eastern Band of Cherokee Indians <https://visitchokeenc.com/eastern-band-of-the-chokeee/>

² Eastern Band of Cherokee Indians. (2023). *Learn about the Cherokee Government and Our Proud History.* <https://ebci.com/government/>

³ For a more detailed history and accompanying web maps of Cherokee land cessions, view this StoryMap: Buncombe County Register of Deeds. (2023, November 15). *As Long As The Grass Shall Grow.* ArcGIS StoryMaps. <https://storymaps.arcgis.com/stories/e9913eb717dc4e68aeb7a7c7d3f42c3>

Today, EBCI has over 16,000 enrolled members and a sovereign Tribal government with elected Principal Chief, Vice Chief, and twelve Tribal Council representatives, and a judiciary branch including Tribal Court.⁴ Following Removal, the Eastern Band resisted the U.S. government's ongoing attempts to displace them from their homeland for several decades by claiming North Carolina citizenship and organizing to purchase back their land as it became available. During the 1840s-1850s, the Eastern Band legally reclaimed a significant portion of the Tribe's ancestral land by purchasing the 57,000 acres of land known as the Qualla Boundary (Figure 2).⁵ The Qualla Boundary is different from a typical reservation in that the Eastern Band had to buy their land back parcel by parcel in order to rebuild their land holdings after Removal.

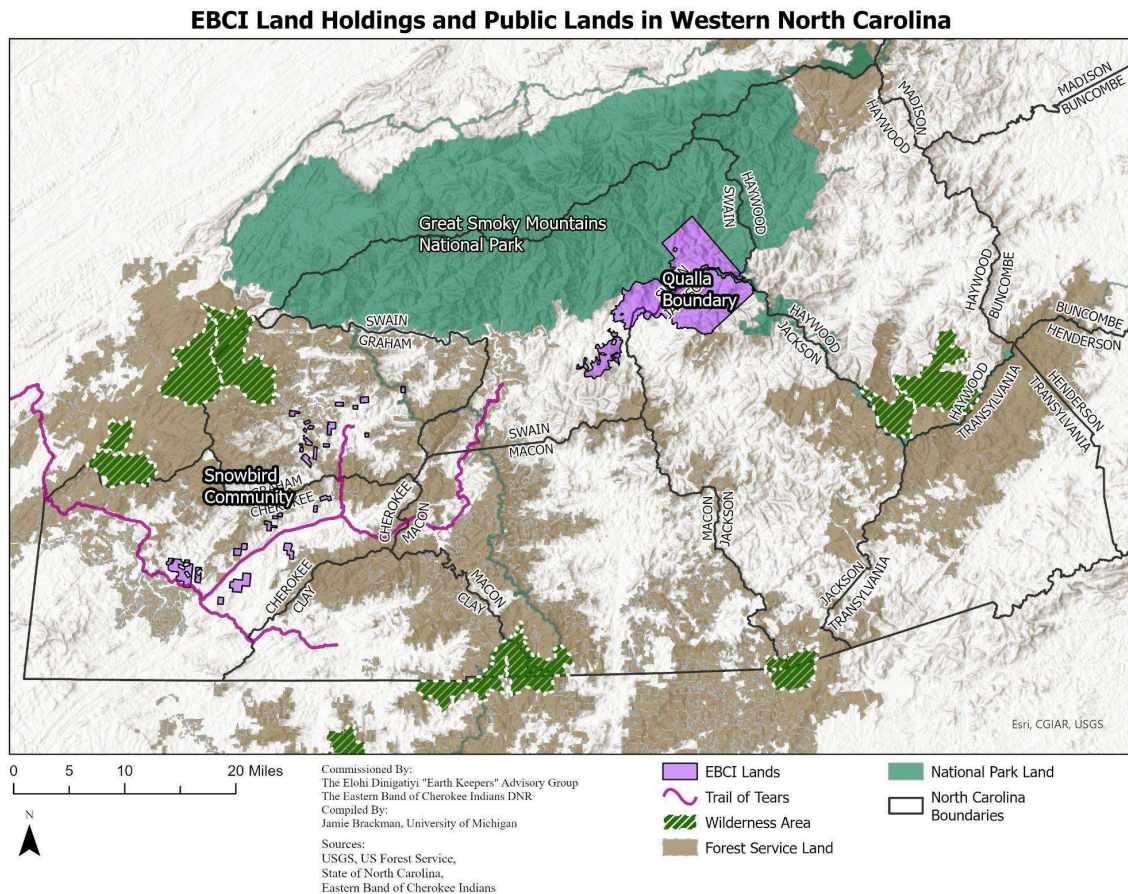


Figure 2. Current EBCI and public lands in Western North Carolina.

⁴ Bradley, V., & et. al. (2018). *Eastern Band of Cherokee Indians Tribal Health Assessment*. 128.

<https://phhs.ebci-nsn.gov/wp-content/uploads/2021/10/THA-2018-FINAL-060119.pdf>

⁵ Finger, John R. 1984. *The Eastern Band of Cherokees, 1819-1900*. Knoxville: University of Tennessee Press.

<https://utpress.org/title/the-eastern-band-of-cherokees/>

Importance of Tribal land sovereignty to health, wellness, and conservation

Indigenous-Led Conservation Helps Protect Biodiversity

As Figure 2 shows, presently the Qualla Boundary and other EBCI lands are largely surrounded by public lands, including The Great Smoky Mountains National Park, the Nantahala National Forest, the Pisgah National Forest, and the Cherokee National Forest. Because all of these public lands are ancestral Cherokee homelands, there is a major opportunity for co-management between federal land management agencies and the Eastern Band. Indigenous Peoples around the world conserve forests, ecosystems, and biodiversity through collective ownership, good governance, and traditional ecological knowledge, and their lands protect biodiversity as well as or better than protected areas on public lands.^{6,7} Inclusive strategies and rights-based approaches to conservation, integration of traditional knowledges with Western scientific knowledge, and biocultural diversity have been shown to maintain biodiversity.^{8,9,10}

Restoring Kituwah (Cherokee) Names and Stewardship to Sacred Places Promotes Native Health

Advancing Indigenous Peoples' sovereignty over their ancestral lands is not only crucial to ecological stewardship but also to native health. Reciprocal relationships with place and land are integral to many Indigenous Peoples' identities, and restoring access to traditional uses in sacred places can contribute greatly to individual, community, and Tribal health.¹¹ The book *Sounds of Tohi* — written by Cherokee Elder Tom Belt and native health scholar Lisa Lefler — explains in detail how restoring Native youth's relationships with their native languages is also crucial in advancing tribal health and wellness.¹² Native languages describe reciprocal relationships and responsibilities to land in a way that English translations cannot. Specifically, instead of being noun-based like the English language, the Kituwah (Cherokee) language is a verb-based language that emphasizes action and relationships. According to Tom Belt, *tohi* is roughly translated to health, and “the first element of being Kituwah is gadugi (ᄎᄎᄎ, making oneself available to serve others). This means making opportunities to spend time with others and to

⁶ White, A., & Martin, A. (2002) Who Owns the World's Forests? Forest Tenure and Public Forests in Transition. Forest Trends. Retrieved April 4, 2023, from https://www.forest-trends.org/wp-content/uploads/imported/tenurereport_whoowns.pdf

⁷ Rights and Resources Initiative. (2020). Rights-Based Conservation: The path to preserving Earth's biological and cultural diversity? Washington, DC: Rights and Resources Initiative.

⁸ Zafra-Calvo, N. & Geldmann, J. (2020). Protected areas to deliver biodiversity need management effectiveness and equity. *Global Ecology and Conservation* 22.

⁹ Mackey, B. and Claudie, D. (2015) Points of Contact: Integrating Traditional and Scientific Knowledge for Biocultural Conservation. *Environmental Ethics* 35.

¹⁰ Pretty, J., et al. (2009) The intersections of Biological Diversity and Cultural Diversity: Towards Integration. *Conservation and Society* 7(2): 100-112.

¹¹ Lefler, L.J. (2021) Native Health: Making Important Connections to History, Language, and the Land. *N C Med J*. 2021;82(6):414-416.

¹² Belt, T.N., & Lefler, L.J. (2022) *Sounds of Tohi: Cherokee Health and Well-Being in Southern Appalachia*. Tuscaloosa: The University of Alabama Press. <https://www.uapress.ua.edu/9780817321192/sounds-of-tohi/>

develop an identity centered in service”.¹³ The Kituwah language also emphasizes the importance of differentiating between knowledge and wisdom:

‘The adage “a little knowledge is a dangerous thing” comes to mind. It has been said that there are protocols for plant usage and other medicinal usages to protect the person who is using the medicine. Without knowing the full context of where, when, and why particular medicines are used, you can do more harm than good. It takes years of learning, watching, listening, and understanding the Cherokee language to appropriately administer the full potential of Cherokee medicine.’ - Tom Belt and Lisa Lefler

How to care for the land is encoded in the Kituwah language, and restoring Kituwah names to sacred places where they have been overwritten with colonial names is an integral part of protecting them and contributing to native health. For example, Joyce Kilmer Memorial Forest was named for a white poet who wrote a famous poem entitled “Trees” in 1913 — yet he had never actually visited this forest or North Carolina at all. Renaming this place to honor the fact that Cherokee people have thousands of years of memory and relationships with this place is an important aspect of advancing land sovereignty and Indigenous-led conservation.

Restoring Indigenous Rights and Uses to the Land can Inform Better Land Management

In the current U.S. conservation regime, access to sacred lands and traditional uses can be restricted by strict National Park or National Forest boundaries and regulations associated with specific federal land management designations. Despite this, members of the Eastern Band are still actively stewarding culturally significant sites on these public lands. Many Cherokee families still visit family gravesites as well as return to the same places that their grandparents gathered materials for medicine, food, and artisanship such as basketry or pottery on these lands.

Wasdi (or ramps, wild onions) is just one example of a plant relative that Cherokee families have stewarded for generations. The 2023 paper “Doing Research Together” documents a collaborative research project - led by EBCI Tribal community members, EBCI Tribal natural resource managers, federal agency scientists, and academic researchers - that aimed to understand sustainable wasdi harvesting methods.¹⁴ According to the research team, “Cherokee people implement traditional wasdi harvesting with an intention to ensure the longevity of the plants,” and as a result many Cherokee families have a wasdi patch that they return to every year.¹⁵ Regarding wasdi’s connection to native health,

¹³ Belt, T.N., & Lefler, L.J. (2022) *Sounds of Tohi: Cherokee Health and Well-Being in Southern Appalachia*. Tuscaloosa: The University of Alabama Press. <https://www.uapress.ua.edu/9780817321192/sounds-of-tohi/>

¹⁴ Chen, S. L., Baumflek, M. J., Sampson, T., & Cabe, T. (2023). Doing research together: Wasdi (*Allium tricoccum*) plants guide dynamic research collaborations in Cherokee landscapes. *Ecology and Society*, 28(2). <https://doi.org/10.5751/ES-14000-280213>

¹⁵ Chen, S. L., Baumflek, M. J., Sampson, T., & Cabe, T. (2023). Doing research together: Wasdi (*Allium tricoccum*) plants guide dynamic research collaborations in Cherokee landscapes. *Ecology and Society*, 28(2). <https://doi.org/10.5751/ES-14000-280213>

“...community harvesting in a wasdi patch means more than extracting physical plant resources. Tyson Sampson [an EBCI Tribal community member and co-author] reflected, ‘The process of harvesting and sharing wasdi conveys meaning that extends beyond the biophysical benefits of consuming wasdi.’...Restoring access and relationality to wasdi is an act of food sovereignty.”¹⁶

However, despite demonstrated knowledge of how to care for wasdi across generations, there are still restrictions on wasdi and other plant harvesting for members of the Eastern Band in National Forests and National Parks. In 2007, the Great Smoky Mountains National Park placed a ban - which persists today - on all wasdi harvesting in response to declining plant populations due to unskilled and over-harvesting:

“The ban was based, in part, on overharvesting concerns raised by scientific studies examining impact of wasdi bulb harvests, a practice that involves removing the bulb, rhizome, and roots of the wasdi plant (Nantel et al. 1996, Rock et al. 2004; Rock 1996, unpublished manuscript). Following the ban of harvesting wasdi in the GSMNP, multiple EBCI Tribal members were charged with illegally harvesting wasdi and prosecuted. This led to the U.S. vs. Burgess court case in 2009, during which EBCI Tribal members addressed how the experimental harvest used in the studies informing the harvesting ban in the GSMNP did not include or account for Cherokee wasdi harvesting practices (Lewis 2012, Clabby 2016). ...”

The Park’s ban on harvesting wasdi fails to recognize that “a traditional Cherokee wasdi harvest involves cutting the wasdi in such a manner that leaves the roots and rhizome attached and in the ground.” In response, the article “Doing Research Together” is just one example of how management based in Cherokee traditional ecological knowledge - in this case a harvesting standard - would not only 1) help to protect an endangered plant relative by communicating sustainable harvesting practices, but also 2) support Tribal health by decriminalizing sustainable Cherokee harvesting.

¹⁶ Chen, S. L., Baumflek, M. J., Sampson, T., & Cabe, T. (2023). Doing research together: Wasdi (*Allium tricoccum*) plants guide dynamic research collaborations in Cherokee landscapes. *Ecology and Society*, 28(2). <https://doi.org/10.5751/ES-14000-280213>

Introduction to the clients and project

The EBCI DNR and *Elohi Dinigatiyi* (Earth Keepers)

The student team was originally invited to support the Eastern Band’s work in asserting their sovereignty over their homelands by the Tribe’s Department of Natural Resources (EBCI DNR) and the *Elohi Dinigatiyi* (Earth Keepers) Advisory Group. The EBCI DNR (and specifically Forest Research Specialist Tommy Cabe) had a working relationship with our Advisor Andy White prior to this project. The EBCI Tribal Council officially endorsed the *Elohi Dinigatiyi* in December of 2023, and the official Resolution outlines the group’s membership:

“Whereas, in order to guide this initiative and advise the DANR on related matters, DANR established an advisory group of seven Cherokee Elders, Speakers, and experts in traditional land use practices, and three additional academic experts, and this group has given itself the name of Elohi Dinigatiyi (Earth Keepers), committed to a Mission Statement defining its purpose and commitment to sacred Kituwah values, and to select new members based on demonstration of the highest level of expertise in the stewardship of Kituwah ancestral homelands, cultural crafts, and language;”¹⁷

Within the same Resolution, the *Elohi Dinigatiyi* outline their purpose as the following:

“Whereas, through the restoration of traditional land-use, access, names, and rights, and the traditional rights and roles of women in particular, the Initiative will contribute to improved health and wellness outcomes for EBCI members;”

Furthermore, the Resolution emphasizes that EBCI is moving to “seize historic opportunities to ‘re-indigenize’ the federally-held lands within their ancestral homelands (Tommy Cabe, Forestry Specialist, EBCI):

“Whereas, it is now widely recognized that, by not adhering to the traditional land management practices, privately and publicly held lands are highly vulnerable to invasive species, catastrophic fires, and climate change, which all risk destroying the ecosystems that are not only central to Cherokee culture and livelihoods, but upon which the social and economic development of the entire Southern Appalachian region depends; and

Whereas, for these reasons, conservation organizations, both public and private, are increasingly interested in engaging with EBCI and other Tribal Nations to better

¹⁷ Res. No. 15(23)—A resolution endorsing the EBCI Land Rights and Conservation for Tribal Wellness Initiative and the Elohi Dinigatiyi (Earth Keepers) Advisory Group for the purposes of advising the EBCI Department of Agriculture and Natural Resources, Eastern Band of Cherokee Indians Tribal Council (2023).
<https://easternband.legistar.com/LegislationDetail.aspx?ID=6392761&GUID=27B8502F-E25A-45AA-A6B5-521E167F7203>

integrate traditional environmental knowledge and collaborate. These interactions range from tokenistic “participation” and “consultation” where Tribal sovereignty is seemingly not understood or recognized, to substantive reforms in government rules that permit indigenous land use practices, to more substantive “co-management” of publicly held lands, and in some cases ‘land back’ - where indigenous land rights are recognized, and land ownership is transferred back to Tribal Nations;”

Pursuing Co-Stewardship with Federal Land Management Agencies

Through [Executive Order 14112](#) and [Joint Secretarial Order 3403](#) (issued by the Departments of Agriculture and the Interior), the Biden Administration has directed federal land management agencies to fully recognize the treaty rights and sovereignty of Tribes through co-management and to consult Tribes in land management decisions.¹⁸ While the Executive and Secretarial Orders only passed under the current Administration, the EBCI DNR has been proactively engaging with the US Forest Service for the past decade to redress past harms and violence inflicted by the U.S. government, including dispossession and limited access on U.S. public lands managed by the Forest Service and National Parks Service. As one result of this engagement, Cherokee and USDA Forest Service representatives formed the Culturally Significant Plant Species Initiative (CSPSI), which centers Cherokee traditional knowledge and serves to enable joint research around culturally significant plants. CSPSI was formally recognized by the EBCI Tribal Council in 2018, and one outcome of the initiative has been information sharing between National Forest botanists and Cherokee artisans in order to better manage for white oak.¹⁹

In November of 2022, EBCI entered into a Tribal Forest Protection Act agreement with the Forest Service in North Carolina that enables co-stewardship across the entirety of the Nantahala and Pisgah National Forests - the first of its kind in the Forest Service’s Southern Region.²⁰ This agreement aims to integrate “cultural and traditional ecological knowledge with silviculture and fire management to inform best management practices for basket-quality white oak trees and other culturally important forest products,” opening the door for co-stewardship across a wide range of culturally significant plants and places.

¹⁸ *Executive Order on Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination.* (2023). The White House. <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/12/06/executive-order-on-reforming-federal-funding-and-support-for-tribal-nations-to-better-embrace-our-trust-responsibilities-and-promote-the-next-era-of-tribal-self-determination/>

¹⁹ Baumflek, M., Cabe, T., Schelhas, J., & Dunlavey, M. (2022). Managing forests for culturally significant plants in traditional Cherokee homelands: Emerging platforms. *International Forestry Review*, 24(3), 298–314. <https://doi.org/10.1505/146554822835941841>

²⁰ USDA Forest Service. (2022, November 30). *USDA Forest Service signs 11 new agreements to advance tribal co-stewardship of national forests.* US Forest Service. <https://www.fs.usda.gov/news/releases/new-agreements-advance-tribal-co-stewardship>

The Snowbird Community and Junaluska Museum

To pilot the design and development of their co-stewardship agreement with the US Forest Service, the EBCI DNR has directed its attention to the Snowbird community - one of nine communities within the Tribe, each with their own governing Community Club - to serve as a pilot for a process by which each community will collectively determine its priorities.²¹ Through community mapping, the goal is to compile a list of sacred foods, plants, and sites that are of particular importance to EBCI members, and urgent to protect and restore the Tribe's access to in order to secure their sustainability, Tribal wellness, and food sovereignty into the future.

The EBCI DNR chose Snowbird to serve as a pilot for this community prioritization process for multiple reasons. First, the Snowbird community is particularly positioned to enter into collaborative projects with the US Forest Service because almost all of Snowbird's Tribal trust land is touching US Forest Service lands (Tommy Cabe, Forestry Specialist, EBCI). Furthermore, many Snowbird community members are still actively visiting and engaging with these lands that their families lost to the US Forest Service, but with significant barriers – such as a lack of access to Forest Service roads – that they hope to address through co-stewardship. Finally, given its remoteness and relative isolation from the other six communities that are closer to the Qualla Boundary, which is about an hour's drive East, the Snowbird community is feeling the urgency of collecting a record of their intricate relationships with this land so that they can pass it on to future generations.

As the *Elohi Dinigatiyi* directed their attention to the Snowbird EBCI community as a pilot for co-stewardship planning, the student team began to work closely with the Junaluska Museum, a Tribal museum located in Snowbird that is also home to the Tribe's archives. Throughout this project, we have worked under the close guidance of the museum's Director, Angelina Jumper, as well as the Snowbird Community Club's elected Chair and Chair of the Speakers' Council, Roger Smoker.

²¹ The Cherokee One Feather. (2023). Cherokee Community Clubs. *The Cherokee One Feather*. <https://theonefeather.com/cherokee-community-clubs/>

Deliverables

The overarching purpose of this student project is to support EBCI (i.e. the *Elohi Dinigatiyi*, Department of Natural Resources, and Junaluska Museum) in their internal strategy to (1) advance their role beyond that of stakeholders consulted, but rather as rights-holders in issues regarding Tribal trust and U.S. public lands on Cherokee ancestral homelands; (2) restoring traditional uses throughout their homelands, and (3) suggesting how the U.S. Forest Service can be a better partner to the Tribe and make amends through such initiatives as collaborative co-produced research, co-stewardship agreements, co-management plans, or land return.

We have prepared the following deliverables in this report as reference and support materials for EBCI. The strategies they choose to pursue in the near- or far-term given this information are entirely theirs. In order to ground this planning and future partnerships with U.S. government agencies, we have organized these deliverables as follows in Table 1 to track the past, present, and future of the Eastern Band's relationships with and access to their homelands which are presently categorized as public lands.

Deliverable	Impetus: Why did EBCI request it?	Impact: How will EBCI use it going forward?
Community Mapping: Methodology and Lessons Learned from Snowbird	The EBCI DNR invited the Junaluska Museum to conduct a community mapping pilot in Snowbird, with the goal of compiling a shared list and map of sacred foods, plants, & sites to guide priorities for co-stewardship, land return, and renaming.	To direct co-stewardship planning across the entire Nantahala and Pisgah National Forests, the EBCI DNR aims to expand this mapping pilot to the other 6 EBCI communities.
Case study of Cherokee family land condemned by US Forest Service in 1939	The Junaluska Museum aims to investigate and document personal stories of land loss that come out of the community mapping, mainly through a review of public records in County Registers of Deeds and Forest Service archives.	The EBCI DNR can use the findings to consider requesting the return of the land, and the method for replicating this approach to other contested lands in Western North Carolina.
Treaty History: Understanding Reserved Treaty Rights for EBCI	The EBCI DNR aims to understand what rights may have been reserved to the Tribe, and to understand what the Tribe could have understood the treaties to mean (as opposed to how they played out).	Any reserved rights could help advance co-stewardship agreements across more public lands that are superimposed on top of Cherokee homelands (beyond the Nantahala and Pisgah National Forests).
Implications of select federal land management designations for EBCI land stewardship initiatives	Given that the EBCI DNR aims to take advantage of historic opportunities for co-management and co-stewardship on federal lands, the Earth Keepers requested a document which provides an overview of how different land management designations would influence the Tribe’s ability to advance its land-stewardship interests.	Once EBCI identifies the highest priority places for increasing Tribal access and/or protection through community mapping, this report will provide an overview of relevant federal land designations that may be relevant in advancing the Tribe’s land-stewardship interests.
Snowbird Wilderness Study Area: contextual analysis to support EBCI decision making	The Snowbird Wilderness Study Area (WSA) and surrounding Wilderness Areas were brought to our attention early on by members of the Snowbird Community. Because it is now “Recommended Wilderness” per USFS Forest Planning, we provided analysis regarding the context and implications of the Wilderness Area designation for this and other places within EBCI’s ancestral homelands.	EBCI can reference this report as it makes decisions about advancing Tribal land stewardship in the Snowbird Region. The report briefly outlines why the Snowbird WSA is of particular importance to the Snowbird Community, provides an overview of conservation planning strategies and processes, and highlights examples where Tribes have successfully navigated “wilderness” to advance their land rights over their ancestral lands.

Table 1. Project deliverables shared in the following chapters of this report.

Data Sovereignty: Returning the data back to EBCI

While there now exists a wide body of literature outlining the importance and practice of Indigenous Data Sovereignty, researchers - especially academics and anthropologists - have performed for centuries and continue to perform extractive research that not only fails to credit Indigenous knowledge but can also actively harm those Indigenous communities from which it is extracted. Indigenous Data Sovereignty can be defined as “the right of Indigenous Peoples to determine the means of collection, access, analysis, interpretation, management, dissemination and reuse of data pertaining to the Indigenous Peoples from whom it has been derived, or to whom it relates,” and it is supported by “Indigenous Peoples’ inherent rights of self-determination and governance over their peoples, country and resources as described in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).”^{22,23}

The student team has taken several actions to ensure that all of the data that EBCI community members have shared with us, as well as any data uncovered from “public records” that contain sensitive information that EBCI would like to keep internal to the Tribe, will remain confidential. To this end, several sections of our final reports have been cut down or excluded altogether. While notes regarding data sovereignty are embedded within each report, Table 2 contains a summary of explicit actions that were taken in each report in order to 1) respect EBCI’s data sovereignty and 2) promote project longevity once the student team returns the data to the Tribe, for example through supporting the Junaluska Museum in assessing options for GIS training.

²² Kukutai, T., & Taylor, J. (Eds.). (2016). *Indigenous Data Sovereignty: Toward an agenda*. <https://doi.org/10.22459/CAEPR38.11.2016>

²³ Walter, M., & Suina, M. (2019). Indigenous data, indigenous methodologies and indigenous data sovereignty. *International Journal of Social Research Methodology*, 22(3), 233–243. <https://doi.org/10.1080/13645579.2018.1531228>

Deliverable	Actions Taken to Respect EBCI's Data Sovereignty
Community Mapping: Methodology and Lessons Learned from Snowbird	<ul style="list-style-type: none"> <input type="checkbox"/> Shared cultural information is kept confidential <input type="checkbox"/> Results are held at the Junaluska Museum <input type="checkbox"/> Delete all sensitive info (e.g. Kituwah names) from UMich drives and servers after transfer <input type="checkbox"/> Transfer GIS files and documentation <input type="checkbox"/> Provide GIS training with Junaluska Museum staff <input type="checkbox"/> Connect Museum with EBCI GIS support staff
Case study of Cherokee family land condemned by US Forest Service in 1939	<ul style="list-style-type: none"> <input type="checkbox"/> Remove all family names in share-outs <input type="checkbox"/> Exclude sensitive information from this public report (e.g. all “public records” and family names in the condemnation records) <input type="checkbox"/> Connect Museum staff with Michigan Law faculty
Treaty History; Implications of Federal Land Management Designations; Snowbird Wilderness Study Area Analysis	<ul style="list-style-type: none"> <input type="checkbox"/> Provide reference lists and .pdf versions of sources for the whole report <input type="checkbox"/> Hand off analysis to Earth Keepers and DNR

Table 2. List of actions taken in each deliverable to respect the EBCI's data sovereignty.

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Community Mapping to Advance Tribal Co-stewardship with the US Forest Service in Western North Carolina: Methodology and Lessons Learned from Snowbird

Prepared for:

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04/23/2024

Introduction

The purpose of this report is to document preliminary methods of a community mapping initiative that representatives of the Eastern Band of Cherokee Indians are currently conducting in the Snowbird Cherokee community in Western North Carolina. Led by Angelina Jumper (Cultural Resources Supervisor for the Junaluska Museum) and Roger Smoker (Elder and Chairperson for the Cherokee Speakers Council), the goal of this mapping is to document Elders' knowledge of culturally important places as well as plant and other wildlife relatives on Cherokee homelands that are currently managed by the US Forest Service. Through [Executive Order 14112](#) and [Joint Secretarial Order 3403](#) (issued by the Departments of Agriculture and the Interior), the Biden Administration has directed federal land management agencies to fully recognize the treaty rights and sovereignty of Tribes through co-management and to consult Tribes in land management decisions.¹ As a result, the Eastern Band of Cherokee Indians Department of Natural Resources (EBCI DNR) is currently preparing to enter into a co-stewardship agreement with the US Forest Service for the entirety of the Pisgah and Nantahala National Forests. To inform their strategy, the EBCI DNR – as well as the *Elohi Dinigatiyi* (Earth Keepers) Advisory Group of Elders – are beginning to conduct community mapping across the areas of the Pisgah and Nantahala National Forests in order to create a list of EBCI's priorities for co-stewardship.

The EBCI DNR chose Snowbird to serve as a pilot for this community mapping for multiple reasons. First, the Snowbird community is particularly positioned to enter into collaborative projects with the US Forest Service because almost all of Snowbird's Tribal trust land is touching US Forest Service lands. Furthermore, many Snowbird community members are still actively visiting and engaging with these lands that their families lost to the US Forest Service, but with significant barriers – such as a lack of access to Forest Service roads – that they hope to address through co-stewardship. Finally, given its remoteness and relative isolation from the other six communities that are closer to the Qualla Boundary, which is about an hour's drive East, the Snowbird community is feeling the urgency of collecting a record of their intricate relationships with this land so that they can pass it on to future generations.

This report provides preliminary findings and recommendations for other EBCI leaders to consider when conducting future community mapping exercises in other areas of their ancestral homelands that are now held by federal agencies. Guidance is offered on the following topics:

- 1) outlining a process and timeline for home visits and community meetings,
- 2) deciding on a list of interview questions, and
- 3) preparing the maps using GIS software.

¹ *Executive Order on Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination*. (2023). The White House. <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/12/06/executive-order-on-reforming-federal-funding-and-support-for-tribal-nations-to-better-embrace-our-trust-responsibilities-and-promote-the-next-era-of-tribal-self-determination/>

Review of participatory mapping methods

The original inspiration for this community mapping in Snowbird is [Mark Maryboy's work](#) interviewing over 70 Diné Elders to create maps of culturally important places around Bears Ears in Utah.² These maps eventually led to the creation of Bears Ears National Monument, which established a pathbreaking co-management agreement between the five Tribes of the Bears Ears Commission, the Bureau of Land Management, and the US Forest Service.³ Because Maryboy and colleagues' work to document the relationships between Diné people and the Bears Ears landscape was so crucial in advancing their Tribe's role in managing the National Monument, the EBCI DNR aims to replicate it in order to identify priority places and projects for their co-stewardship agreement with the Pisgah and Nantahala National Forests. Maryboy conducted interviews at individuals' homes asking questions, such as the following:

“Mark explained the reason for his visit and asked the old man to circle the place of his birth on the map. He asked the man where his umbilical cord was buried, a traditional Diné practice, where his grandfather was born and where he had gathered herbs for medicine or rituals. Mark asked the old man about spiritually important sites, locations of ancient ruins and where certain animals live across the seasons, like bighorn sheep, white-tailed deer and bears. Mark wanted to know what the man had done to care for these sites, their artifacts, plants and wildlife.”⁴

Maryboy's process reveals the importance of taking the time to establish each individual's connection to the land through their family history, spirituality, and present-day relationships with plants and wildlife. Individuals' responses were then aggregated to reveal a community narrative of sacred lands that helped draw the boundaries of the 1.36 million protected acres at Bears Ears.

Other literature on participatory GIS was also helpful in designing a process for engaging interviewees in physically drawing on maps in order to document important places. For example, [Black and Liljeblad \(2006\)](#) mapped place attachment for visitors of Bitterroot National Forest in Montana by presenting each interviewee with their own 11x17 map of the region of interest and asking them to circle places that were important to them and then write a brief description of each area in the margins.⁵ See pg. 14 for a sample of the map worksheet that was given to each interviewee.

² Gray, H. (2018). *Meet the man fighting to preserve rural Utah lands*. Roads & Kingdoms. <https://roadsandkingdoms.com/2018/meet-man-fighting-preserve-rural-utah-lands/>

³ BLM, *Forest Service and Five Tribes of the Bears Ears Commission Commit to Historic Co-management of Bears Ears National Monument*. (2022). [Press Release]. U.S. Department of the Interior. <https://www.doi.gov/pressreleases/blm-forest-service-and-five-tribes-bears-ears-commission-commit-historic-co-management>

⁴ Gray, H. (2018). *Meet the man fighting to preserve rural Utah lands*. Roads & Kingdoms. <https://roadsandkingdoms.com/2018/meet-man-fighting-preserve-rural-utah-lands/>

⁵ Black, A., & Liljeblad, A. (2006). Guide to Methods Used for Developing, Analyzing, and Preparing Social Data Related to Attachment to Place. *Joint Fire Science Program*. https://www.researchgate.net/publication/239921773_Guide_to_Methods_Used_for_Developing_Analyzing_and_Preparing_Social_Data_Related_to_Attachment_to_Place

Because drawing circles on a 2-D topography map is very different from how people actually experience space or relationships to land, other more interactive methods were also surveyed. In a joint research project with the Cherokee Nation Medicine Keepers in Oklahoma, [Carroll et. al \(2018\)](#) used PhotoVoice to support Cherokee Elders in sharing their knowledge of the connections between land and health with younger generations.⁶ Researchers first directed the Elders in taking photographs of culturally important sites and conducted interviews with them on how those sites related to land and health. Then, they compiled these photographs and interviews into a documentary, which they showed to a broader audience of Cherokee Nation citizens. Through pre- and post- surveys, they found that while the broader citizenship did not share the ideas or knowledge of those who were interviewed before watching the documentary, “the post-survey showed statistically significant changes.” Paired with geolocation techniques such as [ArcGIS Survey123](#), PhotoVoice could be a powerful tool to conduct richer interviews with Elders in these physical places, especially with interviewees who have trouble locating these places on a 2-D map.

⁶ Carroll, C., Garroutte, E., Noonan, C., & Buchwald, D. (2018). Using PhotoVoice to Promote Land Conservation and Indigenous Well-Being in Oklahoma. *EcoHealth*, 15(2), 450–461. <https://doi.org/10.1007/s10393-018-1330-9>

Snowbird Pilot: Two sample processes

The Snowbird community's - as well as the Earth Keepers' - feedback was the most crucial in designing the community mapping process because they are the ones who are being asked to share their memories of the land. Two separate processes were considered, with the second ultimately being chosen as the preferred method for Snowbird. Both are outlined below for consideration in other communities across the Qualla Boundary.

Process 1: Individual map worksheets

- Entirety of Snowbird depicted within an 8.5x11 sheet of paper
- Individuals fill out their own map worksheets by circling important places and explaining their significance on the back
- Individual maps could be combined into a community map using GIS software to create a heat map or similar

Feedback on this (from Speakers Council, Snowbird Community Club, and Earth Keepers):

1. Include transliterated spelling of Kituwah names to help people identify places
2. Zoom in significantly so people can see the topo lines
3. Create a grayscale option to make it accessible for colorblind folks
4. Don't break questions into "environmental" and "cultural" categories - all are interrelated

Figures 1 and 2* are the front and back of a sample map worksheet, including the map itself that individuals would be asked to draw on as well as guiding questions.

Process 2: Large community map

- 16, 11x17 panels arranged in a 4x4 grid
- Home visits are conducted with individuals in Snowbird to draw important places on the large map
- Individuals can see what their neighbors have already added to the map and build on this narrative of important places
- A community meeting will be held after interviews with individuals to tweak the maps in small groups, report back common themes, suggest relevant projects in the context of co-stewardship, and get the community's feedback on all of this

Figures 3 and 4* are sample 11x17 quad maps, in color and grayscale respectively. Figure 4 shows how the grid of 16 quad maps fit together to create a zoomed in version of the original map worksheet.

***An important note on data sovereignty**

The locations of culturally important places and their corresponding Kituwah (Cherokee) names have been removed from the sample maps that are included in this report. While these names are essential for helping Snowbird community members in documenting important sites, they will stay within EBCI and only be shared with other EBCI communities working to replicate the Snowbird mapping pilot.

Home Visit Process (a rough guide):

Before

- Send questions in advance so people have time to think about them
- Consider if a native speaker can/should join to do the interview in the language
- Consider inviting kids and grandkids to sit in on the interview so they can learn the histories and contribute if relevant

During

- Bring large map (same map for everyone so they can see what their neighbors have already put down)
 - Bring sharpies, sticky notes, anything else that might be helpful to write on the map
 - Number each site and write down a short description in the margins surrounding the map
 - Emphasize that circles can be large to protect privacy, and you can indicate info that should not be shared with the Forest Service**
- Bring something to record the audio (such as a phone recorder)
 - Let them know that they can ask to pause the recording if they are about to share something sensitive
- Home Visit Questions:
 - Family history: Where did you grow up, and is it that land still in your family?
 - Food: Where do you harvest plants (gather), fish, or hunt wildlife?
 - Artisans: Where do you gather materials for baskets, pottery, etc.?
 - Places of gathering medicine?
 - Family gravesites?
 - ...
 - What limits access & what protections would you like to see?**

After

- After every interview, take a picture of the map for progress so you know who identified what places in case you need to go back for more info

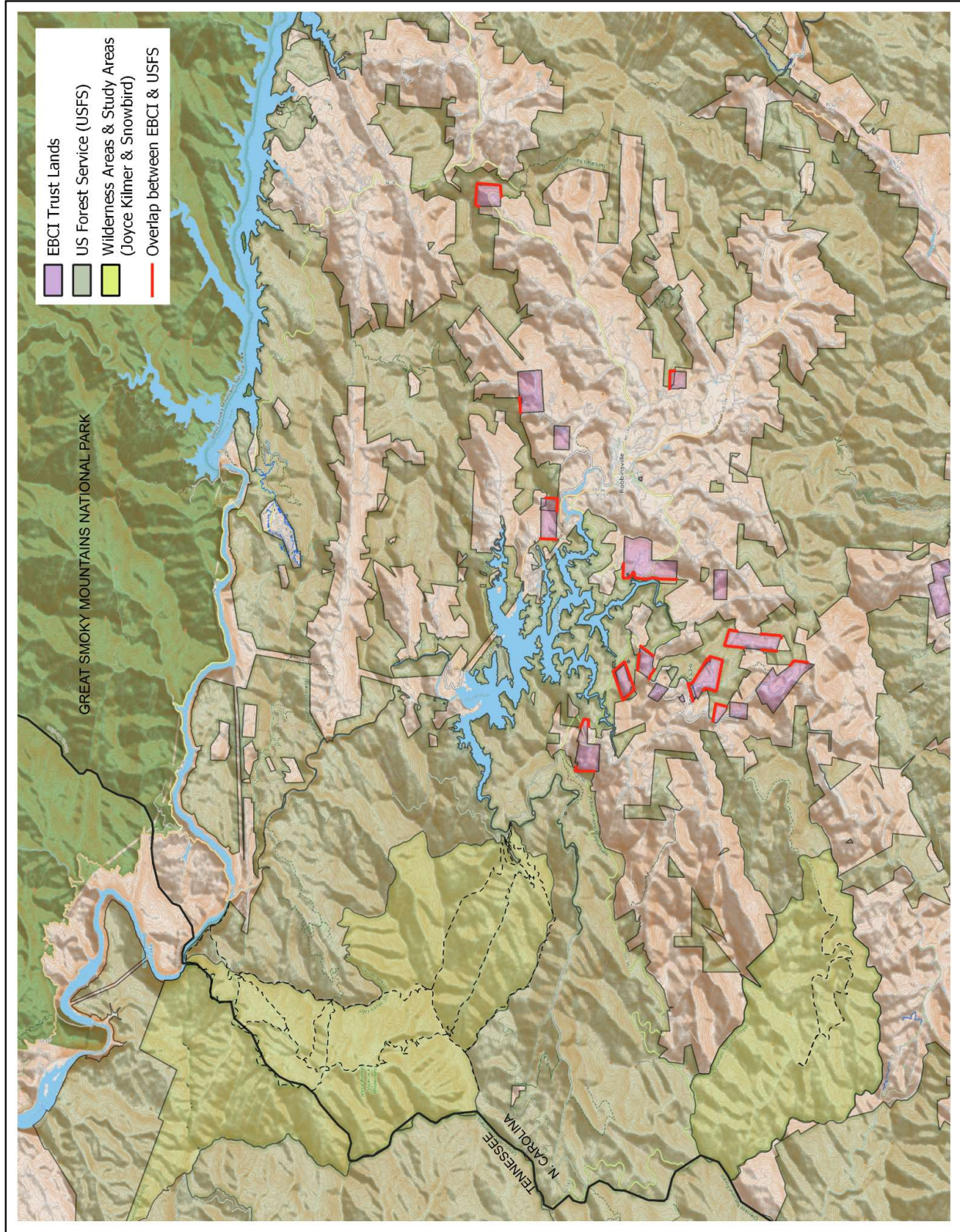


Figure 1. Sample map with limited labels to allow participants room to circle and label the places that are important to them on the map. Designed for 8.5x11. Prepared using QGIS.

NAME: _____ DATE: _____

1) **BLUE: Family history**

- Place a dot and circle (⊙ 1) where you grew up. Label with a blue (1).
- Place a dot and circle (⊙ 2) where your grandparents lived. Label with a blue (2).
- If you or your family don't live on that land anymore, when did that happen? Do you know how, and who owns it today?
- Can you still access that land? If no, why not?

For green and red sections, you can draw circles on the map as large as you want to **protect the privacy** of the exact locations.
 → **Place an (X)** next to any circles or answers which you want to **stay internal to EBCL** (ex: not shared with Forest Service).

2) **GREEN: Plants, trees, herbs, fish, wildlife**

- Circle any places where you gather plants, **NUMBER THEM IN GREEN**, and write down why that place and plant are special to you.
 Ex: **Sochan patch in spring; we use it for ...** What limits your ability to gather plants & access places? Ex: **Joyce Kilmer vehicle restrictions**
- (1)
- (2)
- (3)
- (4)
- (5)

3) **RED: Spiritually and culturally important places**

- Circle these places, **NUMBER THEM IN RED**, and write down why they are special to you.
 Ex: **Gravesites, Places of gathering medicine** What limits access & what protections would you like to see? Ex: **Maintain trails and fences**
- (1)
- (2)
- (3)
- (4)
- (5)

Figure 2. Sample individual map worksheet with questions that prompt participants to draw on the map.

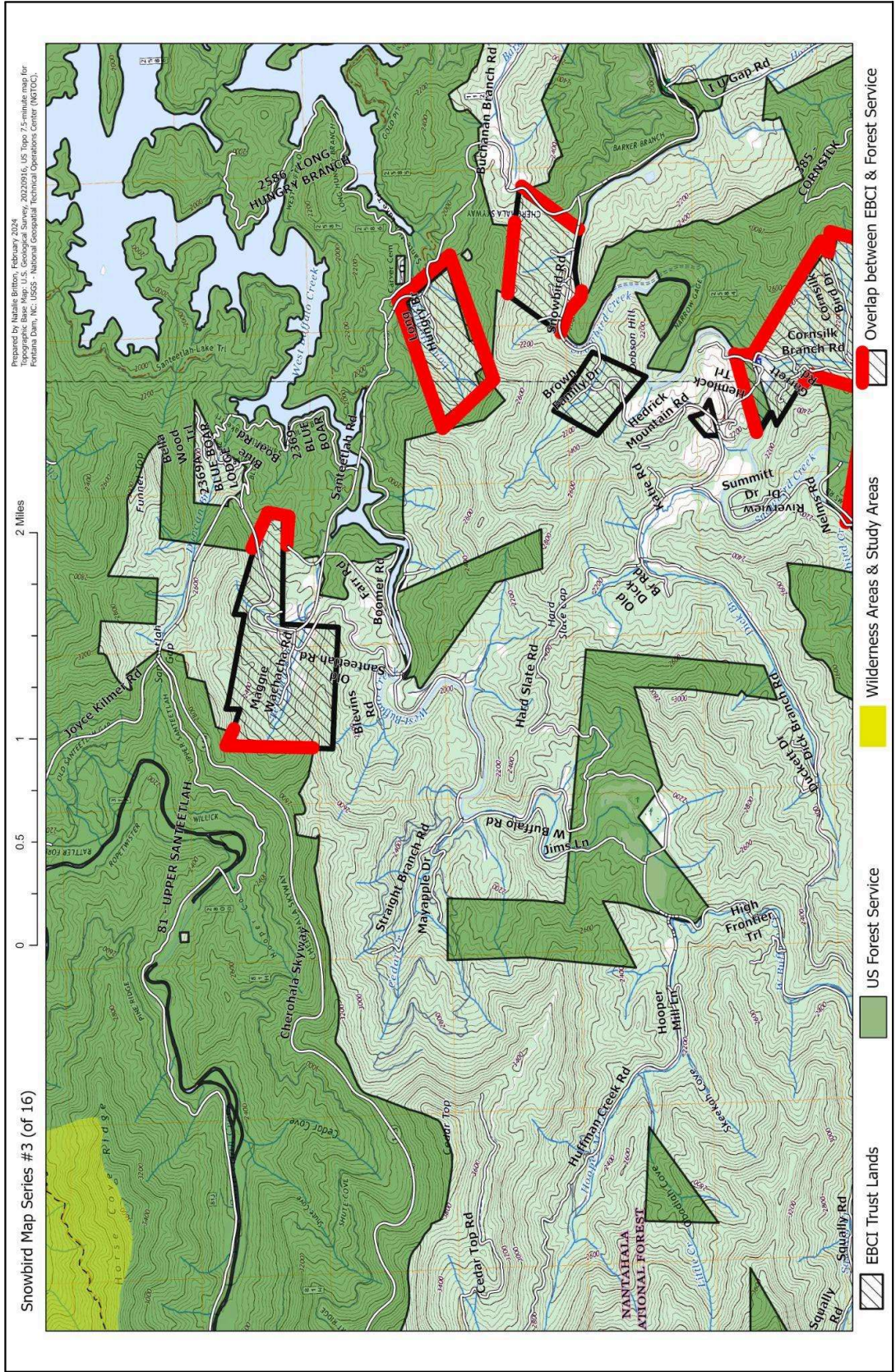


Figure 3. One of 16 quads of the large community map. Designed for 11x17. Prepared using ArcGIS Pro.

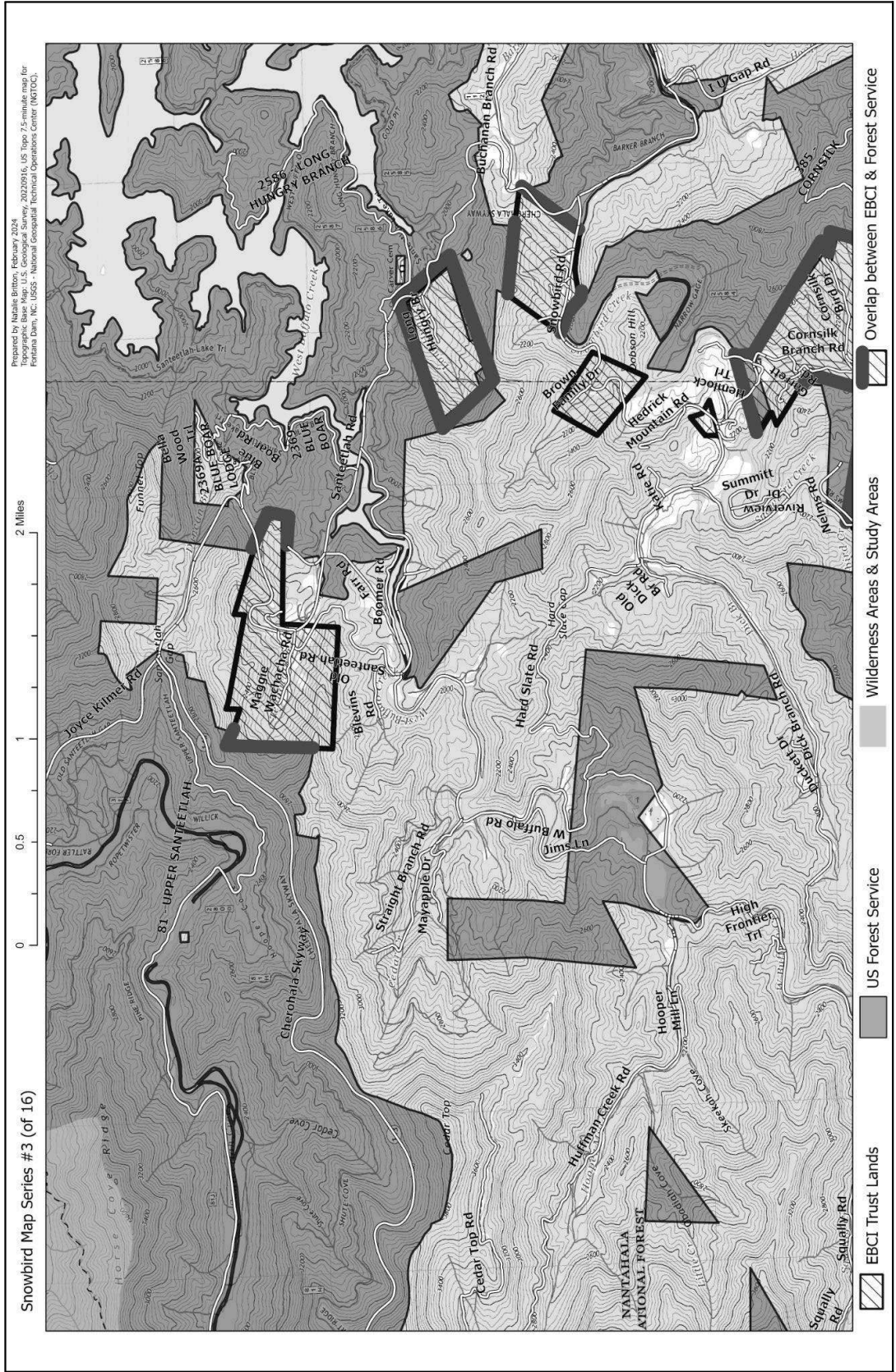


Figure 4. The same quad map as Figure 3, but in grayscale to make it more accessible to colorblindness.

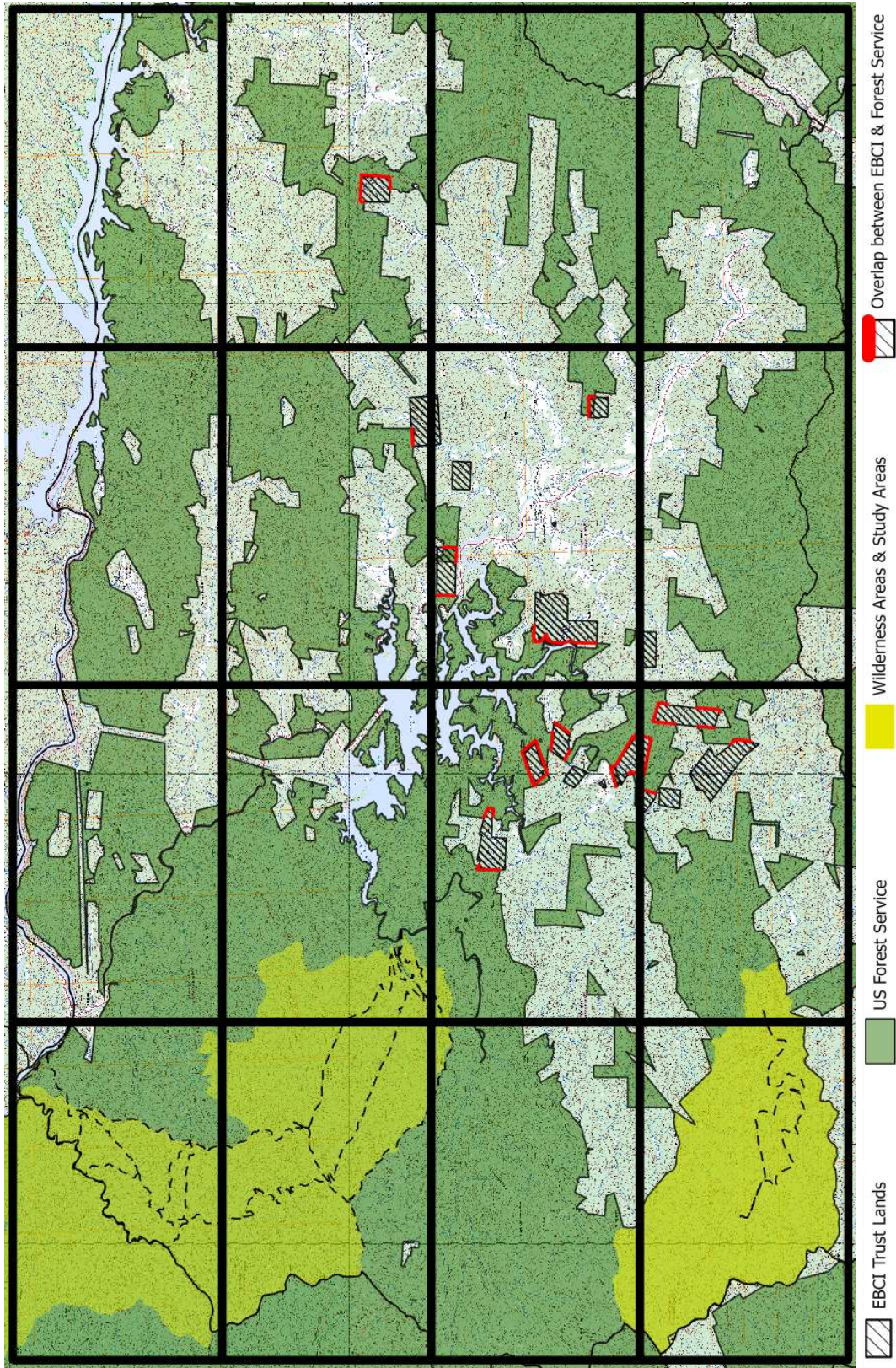


Figure 5. All 16 quad maps arranged in a grid. Reaches Joyce Kilmer-Slickrock Wilderness Area and Snowbird Wilderness Study Areas to the West, and Cheoah Bald to the East.

Preparing the maps using GIS software

All of these maps were prepared using QGIS and ArcGIS Pro software. The first set of maps (Figure 1) prepared for the “Individual Map Worksheet” process were developed earlier on in the project using QGIS, because at that time it was unclear whether the Junaluska Museum would have access to ArcGIS Pro software, which requires an expensive license. QGIS is a free, open-source GIS software that is an excellent option for basic GIS functionality, such as aggregating publicly available data layers to create a blank map on which community members can draw to identify important places. Later on in the project, once the Junaluska Museum connected with GIS support within EBCI and secured an ArcGIS Pro license⁷, the sixteen quad maps (Figures 3-5) prepared for the “Large Community Map” process were developed using ArcGIS Pro. The student team switched to ArcGIS Pro once it became available because it is more user-friendly and offers more analysis tools. Tables 1 and 2 provide lists of the publicly available layers as well as the major analysis tools that were used to create both sets of maps.

Layer Type	Layer Name	Source
Topo maps	“US Topo 7.5-minute map for Robbinsville, NC”	USGS
Index of North Carolina topo maps	“USGS National Map Index Names (published 20240120) Shapefile”	USGS
Forest Service boundaries	“Survey parcels described by metes and bounds”	USFS
Tribal lands	“TIGER/Line Shapefile, 2018, nation, U.S., Current American Indian/Alaska Native/Native Hawaiian Areas National (AIANNH) National”	US Census Bureau
Wilderness Areas	“Wilderness Areas in the United States”	USGS

Table 1. List of publicly available GIS layers that were used to create the maps.

⁷ Thank you to Josh Istavan, GIS specialist for EBCI, who helped the Junaluska Museum secure a GIS license and has offered to provide ongoing GIS support. We recommend that other EBCI organizations and communities looking to begin GIS work for the first time reach out to Josh to learn more about the options regarding GIS software and data privacy concerns.

Tool Name	Layers Involved	Tips
Clip	Tribal lands	Clip to polygon of Western North Carolina to extract EBCI trust lands from all Tribal lands in the US
Dissolve	Forest Service boundaries	Dissolve this layer to eliminate lines between individual parcels in order to more easily depict large sections of FS land
PDF to Tiff	Topo maps	Need to convert topo maps from PDF to Tiff in order to display in ArcGIS
Clip Raster	Input raster: Topo maps Output extent: Index of North Carolina topo maps	Clip collars around topo maps; make sure to check “use input features for clipping geometry”; after clip is finished, in symbology, make Alpha “Band_4” to preserve colors

Table 2. Major analysis tools available in ArcGIS Pro that were used to prepare the maps.

References

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https://www.researchgate.net/publication/239921773_Guide_to_Methods_Used_for_Developing_Analyzing_and_Preparing_Social_Data_Related_to_Attachment_to_Place
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Preliminary Analysis of Wachacha Land Condemned in 1939 by the U.S. Forest Service

Prepared for:

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04/23/2024

Introduction

The purpose of this report* is to document one instance of land dispossession in the Snowbird Cherokee community in Western North Carolina. It was compiled at the request of multiple groups within the Eastern Band of Cherokee Indians (EBCI): the Department of Natural Resources (DNR), the Junaluska Museum, and the *Elohi Dinigatiyi* (Earth Keepers), a group of Tribal Elders, Speakers, and experts in traditional land use practices who are advising the DNR on the Tribe’s land and conservation initiatives.¹ This land is of particular interest not only because it was acquired by the USFS from an influential Cherokee family — the Wachachas — but also because this area is of high cultural and historical significance to the Tribe. EBCI members are still actively visiting and engaging with this land, which is now under USFS management. In addition to informing the DNR’s discussions regarding how to restore family access to and management over this land, this case study could also be useful for considering other cases of Tribal land loss in the region.

***An important note on data sovereignty**

To respect the wishes of the family, the timeline of primary sources and “public records” will be confidential and excluded from our official submission to the University of Michigan. Only archival research methods (pp. 3-4) and surface level key findings (pp. 4-5) will be shared in this public report, with the hope that they will aid other researchers in creating similar case studies of Tribal land loss by identifying similar trends that enabled this land to be condemned.

Historical Context

Enacted in 1911, the Weeks Act granted the USFS the authority to purchase privately-held lands to incorporate into National Forests. Since then, over 19 million acres of National Forest lands across the US have been acquired under the Weeks Act at an average price of \$5.68 per acre.² In Western North Carolina specifically, this legislation enabled the USFS to acquire lands for its National Forests which were established after this legislation, namely Pisgah National Forest in 1916 and Nantahala National Forest in 1920.

When the Weeks Act was passed, “although 70,000 square miles of forest reserves had [already] been created in the West, not a single reserve existed in the East.”³ Before the Weeks Act, the USFS was *not* authorized to purchase private land. Thus, National Forests could only be established by re-designating land that was already in the public domain. However, prior to the

¹ Res. No. 15(23)—A resolution endorsing the EBCI Land Rights and Conservation for Tribal Wellness Initiative and the Elohi Dinigatiyi (Earth Keepers) Advisory Group for the purposes of advising the EBCI Department of Agriculture and Natural Resources, Eastern Band of Cherokee Indians Tribal Council (2023).
<https://easternband.legistar.com/LegislationDetail.aspx?ID=6392761&GUID=27B8502F-E25A-45AA-A6B5-521E167F7203>

² Bramwell, L., & Lewis, J. G. (2011). The Law that Nationalized the U.S. Forest Service. *Forest History Today, Spring/Fall 2011*.
https://foresthistor.org/wp-content/uploads/2016/12/2011_Law_That_Nationalized.pdf

³ Bramwell, L., & Lewis, J. G. (2011). The Law that Nationalized the U.S. Forest Service. *Forest History Today, Spring/Fall 2011*.
https://foresthistor.org/wp-content/uploads/2016/12/2011_Law_That_Nationalized.pdf

Weeks Act, US public policy had been focused on *giving away* public land - which had been amassed by violently displacing Indigenous peoples from their homelands - in order to populate the US, for example through the Homestead Act of 1862.⁴ While settlers had not yet fully populated the West - leaving ample public lands to be re-designated as forest reserves - nearly all of the land in the Eastern US was privately owned by the 1900s. Thus, once the Weeks Act was passed, conservation-minded leaders in the East were anxious to catch up with the West's expansive forest reserves. However, still the only way to establish public land East of the Mississippi was to either condemn it or purchase it. Thus began a campaign to gain public support for forest reserve purchases in the East, which 1) attributed widespread flooding and forest fires to over-logging to emphasize the need for forest restoration and conservation, and 2) framed target acquisition areas as "The Land Nobody Wanted"⁵ so that they could market the purchase program as a "willing buyer – willing seller" concept.⁶ Indeed, many rural mountain communities appreciated the Weeks Act because it allowed them to sell their steep and degraded mountain land while still largely maintaining access to it for modest hunting, fishing, and timber harvesting.⁷

However, in cases where cloudy titles prevented the USFS from obtaining a clean transfer of ownership, "much land was [also] acquired under the Weeks Act through eminent domain, commonly called condemnation."⁸ Legally, to condemn land "refers to when a government exercises its eminent domain powers to seize private property for public use".⁹ When it uses this power, the Federal Government is "subject to the takings clause of the Fifth Amendment, which states that they must provide *just compensation* to any party whose land is seized under eminent domain and that land can only be condemned when it furthers a *public purpose*."¹⁰ In the present day, the US government's use of condemnation "is widely maligned, and Congress has effectively taken it away as a tool for land management agencies."¹¹ Thus, the use of condemnation under the Weeks Act suggests that not *all* of the prior stewards of the acquired lands were eager to sell them. Specifically, members of the Eastern Band of Cherokee Indians (EBCI), whose ancestral homelands encompass all of what is presently known as Pisgah and Nantahala National Forests, have never willingly let go of their sacred lands.

The Eastern Band has a long and cyclic history of being forcibly displaced from their ancestral homelands and then organizing to buy their own land back from those who displaced them. Before the forced Removal of 1838, the Treaty of 1819 had provisions for voluntary

⁴ Bramwell, L. (2012). 1911 Weeks Act: The Legislation that Nationalised the US Forest Service. *Journal of Energy & Natural Resources Law*, 30(3), 325–336. <https://doi.org/10.1080/02646811.2012.11435298>

⁵ Shands, W. E., & Healy, R. G. (1977). *The Lands Nobody Wanted: Policy for National Forests in the Eastern United States: A Conservation Foundation Report*. The Foundation.

⁶ Sutton, J. (Ed.). (1987). *The Heritage of Macon County North Carolina*. Macon County Historical Society, Incorporated.

⁷ Newfont, K. (2012). *Blue Ridge commons: Environmental activism and forest history in western North Carolina*. University of Georgia Press.

⁸ Snow, J. B. (2011). Implementing the Weeks Act: A Lawyer's Perspective. *Forest History Today, Spring/Fall 2011*. https://foresthistor.org/wp-content/uploads/2016/12/2011_Lawyers_Perspective_implementing-weeks-act.pdf

⁹ *Condemn*. (n.d.). Cornell Legal Information Institute. Retrieved December 12, 2023, from <https://www.law.cornell.edu/wex/condemn>

¹⁰ *Condemn*. (n.d.). Cornell Legal Information Institute. Retrieved December 12, 2023, from <https://www.law.cornell.edu/wex/condemn>

¹¹ Snow, J. B. (2011). Implementing the Weeks Act: A Lawyer's Perspective. *Forest History Today, Spring/Fall 2011*. https://foresthistor.org/wp-content/uploads/2016/12/2011_Lawyers_Perspective_implementing-weeks-act.pdf

removal, promising that “a Cherokee head of family could remain in the ceded area by applying for a 640-acre reservation and becoming a citizen of the United States.”¹² However, “North Carolina was so hasty in taking possession of the ceded lands that eager officials even sold some of the reservations which the federal government had guaranteed to individual Cherokees,” thus breaking their promise that Cherokee people could remain if they agreed to integrate into white society by becoming private landowners and U.S. citizens.¹³ The government attempted to rectify this mistake by allowing Cherokee claimants to settle elsewhere in the area, which is how some Cherokee people came to own land in Snowbird or other places that were either less desirable to white settlers - due to more mountainous terrain that was less suitable for farming - or sacred to Cherokee people and thus imperative to protect, such as ceremonial mounds.¹⁴

In 1835, the Treaty of New Echota triggered the violent and forced displacement of Cherokee people to Oklahoma during Removal, which is estimated to have left only 400 Cherokee people along the Cheoah River in Snowbird.¹⁵ These people either hid in the mountains to resist Removal or walked back after they had been deported,¹⁶ which is what Wachacha — Junaluska’s brother — did. However, upon his return, Wachacha was prevented from claiming his original homeplace and instead was allotted different land in Snowbird and U.S. citizenship in 1847.¹⁷ Land dispossession did not end with Removal; instead, Cherokee people began yet another long campaign to purchase their land back. Although in 1876 the Eastern Band was able to secure the 57,000-acre tract of land now known as the Qualla Boundary, their attorney William Holland Thomas was unable to do the same in Snowbird. When Thomas fell short of his promise to establish a similarly uninterrupted tract of land to be called the “Cheoah Boundary” near present-day Robbinsville, the Eastern Band’s scattered landholdings in Snowbird became Tribal lands held in trust by the U.S. government.¹⁸ This complicated land history serves as a backdrop over which Weeks Act acquisitions like that of the Wachacha land were made.

Authority to condemn land under the Weeks Act and its Amendments

As shown in Figure 1, the 1939 legal proceeding that officially condemned the Wachacha land was completed “under the authority and in conformity and compliance with the provisions and requirements by law contained in Act of Congress, approved March 1, 1911 (36 Stat. L., 961), known as the ‘Weeks Forestry Act’, and amendments thereto, particularly Section 6 of an Act of Congress, approved June 7, 1924, (43 Stat. L., Chap. 348, p. 653), and according to the method, and procedure for condemnation under Judicial process as contained in the Act of Congress, approved August 1, 1888, (Chap. 726, 25 Stat. L., 357) authorizing officers of the

¹² Finger, J. R. (1984). *The Eastern Band of Cherokees, 1819-1900*. University of Tennessee Press.

¹³ Finger, J. R. (1984). *The Eastern Band of Cherokees, 1819-1900*. University of Tennessee Press.

¹⁴ Finger, J. R. (1984). *The Eastern Band of Cherokees, 1819-1900*. University of Tennessee Press.

¹⁵ Finger, J. R. (1984). *The Eastern Band of Cherokees, 1819-1900*. University of Tennessee Press.

¹⁶ Greene, L. (2022). *Their Determination to Remain: A Cherokee Community's Resistance to the Trail of Tears in North Carolina*. The University of Alabama Press.

¹⁷ Neufeld, R. (2014). *Visiting Our Past: Cultural series begins with Cherokee*. The Asheville Citizen Times. <https://www.citizen-times.com/story/life/2014/10/19/visiting-past-cultural-series-begins-chokeee/17585727/>

¹⁸ Finger, J. R. (1984). *The Eastern Band of Cherokees, 1819-1900*. University of Tennessee Press.

United States Government to acquire real estate for public use by condemnation under judicial process.” Three specific Acts of Congress are cited as granting authority and/or providing a legal procedure for condemning the Wachacha land: 1) the Weeks Act of 1911, 2) the Clarke-McNary Act of 1924, an amendment to the Weeks Act, and 3) the Condemnation Act of 1888. Table 1 provides an overview of any language that may be relevant to enabling condemnation in each of these three Acts of Congress.

This is an action at law instituted by the United States of America, as plaintiff, for the purpose of acquiring title to the lands described in the petition filed herein for the necessary public use of plaintiff by means and procedure of condemnation under judicial process under the authority and in conformity and compliance with the provisions and requirements by law contained in Act of Congress, approved March 1, 1911 (36 Stat. L., 961), known as the "Weeks Forestry Act", and amendments thereto, particularly Section 6 of an Act of Congress, approved June 7, 1924, (43 Stat. L., Chap. 348, p. 653), and according to the method and procedure for condemnation under Judicial process as contained in the Act of Congress, approved August 1, 1888, (Chap. 726, 25 Stat. L., 357) authorizing officers of the United States Government to acquire real estate for public use by condemnation under judicial process.

Figure 1. An excerpt from the 1939 judgment: *United States v. 351.61 acres of land in Graham County, North Carolina, Willick Wachcha Heirs et. al.*¹⁹ The Weeks Act and following amendments (such as Section 6 of the Clarke-McNary Act of 1924) granted “officers of the United States government” the authority to condemn the Wachaha land.

¹⁹ United States v. 351.61 acres of land in Graham County, North Carolina, Willick Wachcha Heirs et. al, Oct. 31, 1939; Book 43, p. 328; Graham County Register of Deeds; 12 North Main Street Robbinsville, NC 28771

Act of Congress	Language enabling condemnation, or describing what specific conditions of lands would warrant condemnation under the Weeks Forestry Act and amendments
Condemnation Act of August 1, 1888	"In every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses, he may acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so..." ²⁰
Weeks Forestry Act of March 1, 1911	"The Secretary of Agriculture is hereby authorized and directed to examine, locate, and purchase such forested, cut-over, or denuded lands within the watersheds of navigable streams as in his judgment may be necessary to the regulation of the flow of navigable streams or for the production of timber...for the purpose of preserving the navigability of navigable streams." ²¹
Clarke-McNary Act of June 7, 1924	Analysis from <i>The Land We Cared For</i> : 'Section 6 amended the Weeks Act to authorize the purchase of "such forested, cut-over, or denuded land within the watersheds of navigable streams as ... may be necessary to the regulation of the flow of navigable streams or for the production of timber. .. " Into this simple statement are tucked vast new powers for the Forest Service. Instead of limiting the purchase of land to the headwaters of navigable streams, the law would now read "watersheds," a vastly broader definition. Furthermore, and probably even more important, the new law could be read to authorize the purchase of land "for the production of timber" with no limit at all on where it could be purchased.' ²²

Table 1. A summary of the three Acts of Congress that granted authority and/or provided a legal procedure for condemning the Wachacha land.

²⁰ Mulhall Jr., E. (1964). The Visitation with the Federal Law of Eminent Domain. *Denver Law Review*, 41(5). <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=3912&context=dlr>

²¹ Act of March 1, 1911-(Weeks Law), Congress (1911). <https://www.agriculture.senate.gov/imo/media/doc/ii.%20Act%20Of%20March%201.%201911.pdf#:~:text=No%20deed%20or%20ot%20instrument,the%20purpose%20of%20preserving%20the>

²² Conrad, D. E. (1997). *The Land We Cared For...A History of the Forest Service's Eastern Region*. <https://foresthistor.org/wp-content/uploads/2017/01/The-Land-We-Cared-for-A-History-of-the-Forest-Service-Eastern-Region.pdf>

Methods²³

In order to construct a timeline (excluded from this report to respect data sovereignty) of the 10-year time period during which the Forest Service was strategizing to acquire the Wachacha parcels, original records were scanned and then transcribed from archives located at 1) the Cheoah Ranger District Forest Service Office (1070 Massey Branch Rd, Robbinsville, NC 28771)²⁴ and 2) the Graham County Register of Deeds (12 North Main Street Robbinsville, NC 28771). The majority of these records are letters between USFS officials across various local, regional, and federal offices between 1932-1940. Maps (excluded from this report to respect data sovereignty) of Weeks Act acquisition parcels surrounding the Wachacha lands were also examined to determine who - whether it was private individuals or logging and mining corporations - owned the neighboring parcels that were also acquired by the Forest Service. These maps gave context to the broader Sale Area, which contained the Wachacha parcels and was a target acquisition area of special interest because the Forest Service intended to incorporate these lands into the proposed Memorial Forest.

Key findings from a review of these public records include:

1. Inconsistencies in USFS records regarding whether or not government officials recommend that the Wachacha land legally can or should be condemned under the authority of the Weeks Act. Two major threads include:
 - a. **Discounting Indigenous food systems and food sovereignty**
 - i. An early description of the land as “wild mountain land” that “does not yield any income” (which was used to justify one guardian’s opinion that it would be in the best interest of his wards - five underage Wachacha heirs - to sell it) is inconsistent with later documentation by the Regional Law Officer of “continuous possession, cultivation, and occupancy on this area for approximately forty-five years” and an allowance of 6 months after the sale to “remove any crops they then have planted.” Why would crops need to be removed if the land was not being used for any purpose?
 - ii. In separate documents appraising the financial value of that same “wild mountain land,” it is instead described as “recreational land” of significantly higher value (\$38/acre vs. the standard \$3.50-5.00/acre) than surrounding lands because 1) most of it borders the stream and 2) it is “all fairly level and suitable for summer home sites.” This acknowledgement of the land being flat and therefore suitable for summer homes but not for growing crops - which is just one of many reasons that the Wachacha family valued this land - reveals that the US government at best failed to

²³ Methods were approved by the University of Michigan Institutional Review Board (IRB) and the EBCI Cultural Review Board.

²⁴ The Cheoah Ranger District Office Records were accessed under the close guidance of Angelina Jumper - Cultural Resources Supervisor at the Junaluska Museum - and with the generous assistance of Kelsey Schmitz, Zone Archeologist for the Nantahala National Forest.

recognize Indigenous food systems, or at worst intentionally discounted them in order to acquire this land.

b. Potential issues with the legality of the condemnation

- i. While this report is not a legal analysis, this appraisal - which highlights the utility of this land for building summer homes - does not align with the Weeks Acts' purpose of "regulation of the flow of navigable streams" or "the production of timber," highlighting the need for further research regarding the legality of this condemnation under the specific authority of the Weeks Act.
 - ii. There is a lack of clarity regarding the status of the land before it was condemned, specifically whether it was Fee or Trust land. This is another avenue for future research.
2. The lack of clarity regarding Wachacha family consent to the land transfer. While the earliest records of this deal in 1937 claim that the nine Wachacha heirs of legal age had already signed onto the agreement, records of any direct correspondence with Wachacha heirs are missing, at least from the Wachacha parcels folder at the Cheoah Office. "X's" and "Seals" serve as stand-ins for signatures from all of the Wachacha heirs of legal age. Instead, the USFS engaged with two men who were not descendants of the Wachacha family - one man who married into the family and another man who served as a Guardian of five underage Wachacha heirs who held a total of 2/11 claim to the land - regarding the sale of the Wachacha parcels.
3. Inability to obtain a sale option for the land after years of negotiation, which led to its ultimate condemnation for \$10/acre (for a total of \$2,491.90 for 249.19 acres) via the 1939 court case: *United States v. 351.61 acres of land in Graham County, North Carolina, Willick Wachcha Heirs et. al.* A major factor allowing the land to be condemned was the government's inability to track down two claimants to the land, who together held 2/6 claim to one of the Wachacha parcels and were written off as moving "out West" where they could not be contacted for their consent of the sale. Furthermore, mention of the Wachacha land as part of an "Olmstead land grant" requires further research into whether the Wachacha land was treated differently (i.e. condemned vs. not, fairness of the sale price, etc.) compared to other Olmstead land grants held by white landowners.

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United States v. 351.61 acres of land in Graham County, North Carolina, Willick Wachacha Heirs et. al, Oct. 31, 1939; Book 43, p. 328; Graham County Register of Deeds; 12 North Main Street Robbinsville, NC 28771.

Summary of Treaties and Land Cessions in Western North Carolina

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04/23/2024

Methodology

Each entry on the cessions and treaties discussed below contains the following:

1. **Overlaps with:** A list of land designations overlapping the treaty or cession territory, among EBCI Trust Lands, Joyce Kilmer-Slickrock Wilderness Area, Snowbird Wilderness Study Area, Nantahala National Forest, Cherokee National Forest, Chattahoochee-Oconee National Forests, and Great Smoky Mountains National Park.

These lists were determined by comparing (1) the boundaries of treaties and cessions on the USDA/U.S. Forest Service Tribal Connections Viewer ArcGIS web application¹ and (2) the boundaries on the U.S. Forest Service's "Tribal Lands Ceded to the United States" feature layer² with (3) the boundaries of these land designations on the U.S. Forest Service ArcGIS Hub.³ This first resource translated the 67 Royce maps from "Indian Land Cessions in the United States" (among them those shown in Figures 1a and 1b) as compiled by Charles C. Royce and published in the Eighteenth Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution, 1896-1897.⁴

2. **Present-day Tribe Name(s):** A list of Tribes affected by the treaties. Up until removal, treaties with the Cherokee would list all three federally recognized Cherokee Tribes: the Eastern Band, Cherokee Nation, and United Keetoowah Band.
3. **Royce Schedule:**⁵ The Tribal Connections Viewer cession entries each display a link to the Royce Schedule entry and treaty text for the cession.
 - a. **Description of cession or reservation:** Information from this column of the Royce Schedule typically describes the boundaries of the cession. Most of the below entries omit the exact locations and boundaries, as they can be found at the links provided.
 - b. **Historical data and remarks:** Information from this column of the Royce Schedule typically describes additional conditions of the boundaries drawn. On occasion, it will explicitly name ambiguity in the process of defining boundaries or the terms and processes of convening and ratifying the treaty or cession.
4. **Treaty Text Highlights:**⁶ This section transcribes portions of treaty text that could indicate treaties were abrogated or ratified under false pretenses. These highlights are largely shown as direct quotes to retain the original language for accurate interpretation.

¹ U.S. Forest Service. (2015) *Tribal Connections Viewer*.

<https://www.arcgis.com/apps/webappviewer/index.html?id=fe311f69cb1d43558227d73bc34f3a32>

² U.S. Forest Service. (2015). *Tribal Lands Ceded to the United States*. (April 19, 2018) [Feature layer]. U.S. Forest Service. URL: https://data-usfs.hub.arcgis.com/datasets/e4e788be8cfc4d1f8ff280a81ffaa69c_0/explore

³ U.S. Forest Service. (2015). *FS National Forests Dataset (US Forest Service Proclaimed Forests)*. (February 2, 2021) [Feature layer]. U.S. Forest Service. URL:

<https://hub.arcgis.com/datasets/3451bcc41dbc45168ed0b3f54c6098d3/explore?location=23.655781%2C72.146300%2C2.87>

⁴ U.S. Forest Service Press Office. (2015). *Forest Service Releases Interactive Tribal Connections Map*. Washington, D.C. 1 October 2015. URL:

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⁵ Smithsonian Institution Bureau of American Ethnology. (1895). *Annual report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution*. Boston Public Library (bplgovdocs). Washington: U.S. Govt. Print. Off. Vol 18 (1896-97) pt. 2. URL: <https://archive.org/details/annualreportofbu218smit/mode/1up>

⁶ Kappler, C.J. (1904). *Indian affairs: laws and treaties* [catalog record]. Clerk to the Bureau of Indian Affairs. Washington: Gov. Print. Off. Vol. 2 (TREATIES). URL: (<https://hdl.handle.net/2027/uc1.31210003349790>)

Summary: Cessions and U.S. Public Lands

Table 1: Summary of EBCI and US public lands intersecting with cessions, with the cession numbers corresponding as such: Hopewell Treaty 1785 (3), Holston Treaty 1791 (8), Treaty of Tellico 1817 (42), Treaty of Washington 1819 (103), Treaty of New Echota 1835 (203), and Act of March 3 *Stat. L., XVIII, 446* 1875 (580).

Cession #	3	8	42	103	203	580
EBCI Trust Lands		X	X	X	X	X
Joyce Kilmer-Slickrock Wilderness Area + Snowbird Wilderness Study Area					X	
Nantahala National Forest			X	X	X	X
Pisgah National Forest	X	X	X	X		
Great Smoky Mountains National Park		X	X	X	X	X
Cherokee National Forest	X	X		X	X	
Chattahoochee-Oconee National Forests					X	

A. Hopewell Treaty with the Cherokee - Cession #3 (1785)

Stat. L., VII, 18.

Overlaps with: Pisgah National Forest, Cherokee National Forest (small area)

Present-day Tribe Name(s): Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; United Keetoowah Band of Cherokee Indians in Oklahoma

Royce Schedule

Description of cession or reservation: Article IV fixes the following boundary between the hunting grounds of the Cherokee and the lands of the U.S.

Historical data and remarks: “The Cherokee ceded to the U.S. all claim they had to the country lying N. and E. of this line. The country thus ceded comprised a tract in North Carolina lying W. of the Blue Ridge and also a tract in Tennessee and Kentucky lying S. of Cumberland river.

The third clause in the description is somewhat ambiguous. Construed literally and directly it would imply that the "NE. line" should be run (south westward) from a point on Cumberland river 40 miles above Nashville; and in his exhaustive discussion of the treaty in his memoir, “The Cherokee Nation of Indians” (Fifth Annual Report of the Bureau of Ethnology, 1887, p. 153), Royce intimates that it was in order to take advantage of the Indians that a less direct construction was adopted... [*details on language omitted*] Actually the line was not run for a dozen years, and meantime the indirect construction was affirmed by the language used in the treaty of 1791. When the line was finally surveyed by General Winchester, in the autumn of 1797, it would appear that the usual discrepancies between the boundary as defined on paper and that traced on the ground were introduced.

After much research Royce was able to retrace Windiestcr's devious line with satisfactory accuracy, and makes use of it as the boundary on his map (loc. cit.. plate viii); but since the direct line is more nearly in accord with the language of the treaty, and since no material interests are now involved, it has been adopted in the accompanying map. To facilitate comparison, the Winchester line is retained, and to permit ocular comparison between the boundaries as defined by the two constructions of the ambiguous clause, the line defined by the direct construction is introduced also.”

Treaty Text Highlights

- Article III requires all Cherokee tribes and towns to “acknowledge [they are] under the protection of the United States of America, and of no other sovereign whatsoever.”
- Article V restricted US citizens from settling on lands west or south of the allotted boundaries “hereby allotted to the Indians for their hunting grounds...”
- Article IX assigns to the US Congress the “sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as they think proper.”

Comments:

Georgia officials initiate agreements with the Cherokee that began the ultimate dispossession of their claims to the land. Concluded at Hopewell, Georgia, the treaty established boundaries for Cherokee hunting grounds and erected limitations on culturally significant land. The treaty concludes that “the hatchet” is “forever buried,” re-establishing peace and friendship.⁷

North Carolina protested the Hopewell Treaty with Congress and refused to recognize the treaty, openly violating it with militias encroaching on Cherokee territory.⁸ Secretary of War Henry Knox regarded this as an “informal war” of white settlers against the Cherokees. These militant settler treaty violations become a common pattern in the treaties to come, but this fact is frequently played down in the preambles of treaty text.

⁷ University of Houston (2021). Digital History: Indian Removal Timeline. URL:

https://www.digitalhistory.uh.edu/active_learning/explorations/indian_removal/removal_timeline.cfm

⁸ Bridgers, B.O. (1980). *An Historical Analysis Of The Legal Status Of The North Carolina Cherokees*. 58 N.C. L. Rev. 1075 (1980). Available at: <http://scholarship.law.unc.edu/nclr/vol58/iss6/2>

B. Holston Treaty with the Cherokee - Cession #8 (2 July 1791)

Stat. L., VII, 39.

Overlaps with: Great Smoky Mountains National Park, Pisgah National Forest, Cherokee National Forest, EBCI Trust Lands (Qualla) (small area)

Present-day Tribe Name(s): Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; United Keetoowah Band of Cherokee Indians in Oklahoma

Royce Schedule

Where or how concluded: On Holston river, near mouth of French Broad.

Description of cession or reservation: “The Cherokee cede and relinquish to the U.S. all land to the right of the line described and beginning as aforesaid.”

Historical data and remarks: “The boundary of the territory ceded by the Cherokee under this treaty was not determined until 1797, when it was fixed by Hawkins and Pickens, as shown in accompanying map.”

Treaty Text Highlights:

- Article II requires that the Cherokee nation must acknowledge themselves “to be under the protection of the said United States of America, and of no other sovereign.” This mirrors the language used in Article III of the Hopewell Treaty (1785).
- Article IV confirms that the United States will deliver “certain valuable goods” and an annual \$1000 payment [increased in the supplemental treaty (1792) to \$1500] to the Cherokee nation in exchange for the undersigned representatives to “release, quit-claim, relinquish and cede, all the land” covered in the treaty on behalf of the whole Cherokee nation, their heirs and descendants.
- Article VII promises to “guarantee to the Cherokee nation, all their lands not hereby ceded.”
- Article XIV discounts the Cherokees’ land management and foodways by offering gifts to develop husbandry in the interest of leading the Cherokee “to a great degree of civilization, and to become herdsman and cultivators, instead of remaining in a state of hunters.” By this Article, the United States also promised to send up to four interpreters to increase communication.

Comments:

Encroachments by white settlers continued despite the Holston Treaty. After the supplemental treaties below were ratified, Congress prohibited settlements that violated the Holston Treaty lines, withdrawing support of settler claims and authorizing military force to remove settlers. To this, the Tennessee legislature protested to Congress, much like North Carolina’s responded to

the Hopewell Treaty, denying that Cherokees had rights to the land.⁹

Supplement: Treaty of Philadelphia (17 June 1792)

Updated the terms of the annuities to be paid by the United States to the Cherokee annually per the Treaty of Holston.

Supplement: Treaty of Philadelphia (26 June 1794)

Reaffirmed Treaties of Hopewell and Holston, particularly land cession provisions.

⁹ Bridgers, B.O. (1980). *An Historical Analysis Of The Legal Status Of The North Carolina Cherokees*. 58 N.C. L. Rev. 1075 (1980). Available at: <http://scholarship.law.unc.edu/nclr/vol58/iss6/2>

C. Treaty of Tellico - Cession #42 (2 Oct 1798)

Stat. L., VII, 62.

Overlaps with: EBCI Trust Lands (Qualla), Great Smoky Mountains National Park, Pisgah National Forest, Nantahala National Forest

Present-day Tribe Name(s): Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; United Keetoowah Band of Cherokee Indians in Oklahoma

Royce Schedule

Where or how concluded: Tellico, Tennessee.

Description of cession or reservation: “The Cherokee nation cedes to the U.S. all lands within the following boundaries,” the proceeds to describe the three separate boundaries comprised in the cession.

Historical data and remarks: Describes again the “three detached tracts,” two of which are entirely within the borders of Tennessee, and one of which spans over the border of both Tennessee and North Carolina.

Treaty Text Highlights:

- Preamble addresses the aftermath of the boundary adjustments between the Holston Treaty and supplemental Treaties of Philadelphia. Settlers entered where the previous boundaries had not yet been marked, and the U.S. insisted the Cherokees needed to cede new lands to properly acknowledge the protection the U.S. granted them.
- Article IV describes the cession territories, and that the Cherokee relinquish and cede them “for the protection of the United States, and for the considerations hereinafter expressed and contained.”
- Article VI promises the United States “will continue the guarantee [to the Cherokees] of the remainder of their country for ever, as made and contained in former treaties.”
- **Article VII** dictates, “In consideration of which it is hereby agreed on the part of the United States, that until settlements shall make it improper, the Cherokee hunters shall be **at liberty to hunt and take game** upon the lands relinquished and ceded by this treaty.”

Comments:

The Treaty of Tellico satisfied the Tennessee settlers by acquiring the land they had contentiously settled in the years of the Holston Treaty. However, the settlers only wanted to acquire more and more land and remove all Cherokees west of the Mississippi.¹⁰

Because of a series of "misunderstandings" detailed below, these boundaries and other terms of compensation were extended and changed in the following 3 supplemental treaties.

¹⁰ Bridgers, B.O. (1980). *An Historical Analysis Of The Legal Status Of The North Carolina Cherokees*. 58 N.C. L. Rev. 1075 (1980). Available at: <http://scholarship.law.unc.edu/nclr/vol58/iss6/2>

Supplement: Treaty of Tellico (24 Oct 1804)

Stat. L., VII, 228. Ceded land. Concluded at Tellico Garrison, on Cherokee ground.

Supplement: Treaty of Tellico (25 Oct 1805)

Stat. L., VII, 93. Ceded land previously also lived on by the Chickasaw who had just ceded it by treaty in the same year, including for the Federal Road/Georgia Road. Concluded at Tellico, Tennessee.

- “From the foregoing cession the Cherokees reserve a small tract lying at and below the mouth of Clinch river... so as to secure the ferry landing to the Cherokees up to the first hill...”
 - This reserve was ceded to the U.S. by treaty of Feb. 27, 1819. Although claimed to be reserved for the Cherokee, it was really intended for a Cherokee chief, Doublehead (Chuquacuttage, signed onto the treaties), who leased it to Thomas N. Clark for 20 years. Clark was granted the land in 1820 by the state of Tennessee.
- “The Cherokees also reserve a tract of 1 square mile at the foot of Cumberland mountain, at or near the Turnpike gate.”
 - This reserve was ceded to the U.S. by treaty of Feb. 27, 1819. Taluntiski leased the tract to Clark for 8 years, and Clark purchased it in 1816 from “Robert Bell, who claimed title under a grant from North Carolina to A. McCoy in 1793. It had also been granted by North Carolina to J.W. Lacket and Starkey Donelson, Jan. 4., 1795. By the foregoing treaty this reserve was ostensibly for the Cherokee nation.”
- “The Cherokees also reserve a tract of 1 square mile on the N. bank of Tennessee river, at the present residence of Cherokee Talootiske.”
 - “Taluntiski sold this tract to Rober King, and, by mesne conveyances, it became vest in Mr Lilwee, who also claimed title under a grant from North Carolina to Lackey and Donelson, dated Jan. 4, 1795.” This tract was also for the use of the Cherokee nation and was ceded to the U.S. in 1819.
- “...it may become expedient...that a tract of 3 square miles is reserved for particular disposal of the U.S. on the N. bank of the Tennessee, opposite to and *below* the mouth of Hiwassa.”
 - This tract was ceded to the U.S. by treaty of Feb. 27, 1819. “[The] actual understanding and intention of the parties to the treaty was to locate it *above* the mouth of the Hiwassee... A secret article of this treaty gave this tract to Doublehead, John D. Chisholm, and John Riley. Colonel McLung, under a grant from North Carolina, claimed and won it in the courts of Tennessee. Riley, in 1838, made a claim for compensation, but the Attorney-General decided the secret article was no part of the treaty, as it had never been submitted to the Senate for its approval.”

Supplement: Treaty of Tellico (27 Oct 1805)

Ceded land for the state assembly of Tennessee.

Stat. L., VII, 95. Ceded land, “reserving to themselves the ferries,” including the first island in the Tennessee (Holston) river; the Cherokees also agree that U.S. citizens can freely use a road from Tellico to Tombigbe. Concluded at Tellico, Tennessee.

- “This purchase was made on the theory that it would be needed as a site for the state capital of Tennessee, a committee from the state assembly having viewed the same.”

D. Treaty of the Cherokee Agency - Cessions # 83-86 (8 July 1817)

Stat. L., VII, 156.

Overlaps with: Chattahoochee National Forest (Cession 83 only)

Present-day Tribe Name(s): Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; United Keetoowah Band of Cherokee Indians in Oklahoma

Royce Schedule

Where or how concluded: Cherokee agency, Tennessee.

Historical data and remarks: Describes 3 cession tracts in Georgia (cession #83, Tennessee and bordering states (cession #84), and Alabama (cession #85 and 86) which includes “all right to the reservations made to Doublehead and others by the treaty made at Washington city, Jan. 7, 1806.”

Treaty Text Highlights:

- Preamble adds that in a visit to Washington, D.C. in 1808, “the deputies from the lower towns...wish to remove across the Mississippi river, on some vacant lands of the United States,” to which the U.S. President issued an exploring party to look for this land “on the waters of the Arkansas and White rivers, and the higher up the better.”
- Article 1 describes the cession of lands to the U.S. in exchange for other lands.
- Article 3 stipulates a census of Cherokees be taken.
- Article 5 stipulates giving the group of Cherokees who sought removal to the Arkansas and White rivers “as much land on said [rivers] as they have or may hereafter receive from the Cherokee nation east of the Mississippi.
- Article 6 describes that those removed “whose improvements add real value to their lands, the United States agree to pay a full valuation for the same.” Article 7 explains these terms further, including that “the said Cherokee nation shall not be called upon for any part of the consideration paid for said improvements at any future period.”
- Article 8 stipulates 640-acre “**reservations for heads of Indian families**” in exchange for U.S. citizenship, as enacted through the Washington Treaty of 1819. The reservations were to be “in a square... with a reversion in fee simple to their children, reserving to the widow her dower, the register of whose names” are filed in the census (Article 3). However, **if any heads of families remove, “the right to revert to the United States.”**

E. Treaty of Washington - Cession #103 [101-109] (27 Feb 1819)

Stat. L., VII, 195.

Overlaps with: EBCI Trust Lands (Qualla), Nantahala National Forest, Great Smoky Mountains National Park, Cherokee National Forest, Pisgah National Forest

Present-day Tribe Name(s): Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; United Keetoowah Band of Cherokee Indians in Oklahoma

Royce Schedule

Where or how concluded: Washington, D.C.

Description of cession or reservation: Describes the tracts included in cessions #101-109, then adds per Articles II and III that “from the above cession 31 tracts of 640 acres each were reserved for individuals; it was also agreed that every head of an Indian family who would become a citizen of the U.S. should receive 640 acres.”

Treaty Text Highlights:

- Preamble says as context that this treaty addresses the “greater part of the Cherokee nation” who want to remain east of the Mississippi in exchange for the tracts “at least as extensive as that which they probably are entitled to under its provisions.” This treaty represents a final adjustment to the Treaty of 1817.
- Article 3 reaffirms “that a reservation, in fee simple, of six hundred and forty acres square... shall be made to each of the persons whose names are inscribed on the certified list annexed to this treaty, **all of whom are believed to be persons of industry**, and capable of managing their property with discretion, and have, with few exceptions, made considerable improvements on the tracts reserved. The reservations are made on the condition... that [the recipient writes to] the agent for the Cherokee nation, within six months after the ratification of this treaty, that it is their intention to continue to reside permanently on the land reserved.”
- Article 3 goes on to describe the location of 640-acre reservations for a fraction of the total recipients, naming them in the treaty text.

Comments:

- The case of *Euchella v. Welsh* (1824) in which Euchella claimed title to his 640-acre reservation first recognized Indigenous Peoples’ rights to hold land in North Carolina via federal treaty.¹¹ This decision went against precedence which relied on the doctrine of discovery and typically interpreted treaties and statutes in the context of Indigenous Peoples being without title and limited to only a “temporary right of occupancy.” Under the Treaties of 1817 and 1819, the *Euchella* decision converted this Indian title to a fee ownership over the 640-acre reservation under a 1783 North Carolina land claims statute.

¹¹ Bridgers, B.O. (1980). *An Historical Analysis Of The Legal Status Of The North Carolina Cherokees*. 58 N.C. L. Rev. 1075 (1980). Available at: <http://scholarship.law.unc.edu/nclr/vol58/iss6/2>

F. Treaty of New Echota - Cession #203 (29 Dec 1835)

Stat. L., VII, 478.

Overlaps with: EBCI Trust Lands, Joyce Kilmer-Slickrock Wilderness Area, Snowbird Wilderness Study Area, Nantahala National Forest, Cherokee National Forest, Chattahoochee-Oconee National Forests, Great Smoky Mountains National Park (small area)

Present-day Tribe Name(s): Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; United Keetoowah Band of Cherokee Indians in Oklahoma

Royce Schedule

Where or how concluded: New Echota, Georgia.

Description of cession or reservation: “The Cherokee nation cede to the U.S. all the lands owned, claimed or possessed by them E. of the Mississippi river, and agree to remove W. of that river.

The Cherokees fearing that the land granted to them by the U.S. as described in the treaties of May 6, 1828, and Feb. 14, 1833, will prove insufficient for the accommodation of their whole nation, the U.S. therefore agree to convey the said Indians and their descendants, by patent in fee simple, the following additional tract of land situated between... The U.S. agree to extinguish for the benefit of the Cherokees the titles to the reservations within their country made in the Osage treaty of 1825...”

Historical data and remarks: “This is the tract commonly known as the Cherokee Neutral Land. It was ceded in trust to the U.S. by treaty of July 19, 1866, with the condition that it should be sold for the benefit of the Cherokee.” (see cession #490 in Kansas as well)

Treaty Text Highlights:¹²

- Preamble described that the Cherokee nation had “full power and authority to conclude a treaty with the United States” and stipulated to “submit to the Senate to fix the amount which should be allowed the Cherokees for their claims and for a cession of their lands east of the Mississippi river, and did agree to abide by the award of the Senate.” This amount came to “a sum not exceeding five millions of dollars be paid to the Cherokee Indians for all their lands and possessions east of the Mississippi River.”
- The Cherokees had refused to propose amounts to Congress, insisting that they consult within the nation first.
- The commissioners informed the Cherokees that they would “be prepared to make a treaty with the Cherokee people who should assemble there and those who did not come they should conclude gave their assent and sanction to whatever should be transacted.”
 - This provision—that any Cherokees not present were seen as consenting to the

¹² Tribal Treaties Database. (n.d.) “Treaty with the Cherokee, 1835” Oklahoma State University. <https://treaties.okstate.edu/treaties/treaty-with-the-choerokee-1835-0439>

agreements made at New Echota—appears to violate consent and the way that the Cherokees against the Treaty may have understood how their absence would be interpreted by the commissioners.

- Article 1 addressed the Cherokees' ceding, relinquishing, and conveying all lands owned, claimed, or possessed by them, and "hereby release all their claims upon the United States for spoliations of every kind..." Indigenous spoliation is an illegal act of depredation committed for private ends by public officials or private individuals.¹³ There was also disagreement between Cherokees and commissioners over whether the Senate's proposed compensation included claims for spoliation, which would affect the payment amount.
- Article 2 claims "the United States further guaranty to the Cherokee nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extend: *Provided however* That if the saline or salt plain on the western prairie shall fall within said limits prescribed..."
- Article 3 declares that the U.S. will always have the right to building military roads and forts in Cherokee country "...provided that if the private rights of individuals are interfered with, a just compensation therefor shall be made."
- Article 4: "The United States also stipulate and agree to extinguish for the benefit of the Cherokees the titles to the reservations within their country made in the Osage treaty of 1825" and that "... It is understood that the United States are to pay the amount allowed for the reservations [of Harmony Mission missionaries] and not the Cherokees."
- Article 5 describes lands permanently ceded to the U.S., as opposed to any individual state.
- Article 6 promises "perpetual peace and friendship" between the Cherokee nation and U.S., a common phrase across the treaties, as well as the U.S. promise to "protect the Cherokee nation," another common phrase tied to the legal relationship established through *parens patriae* doctrine.
- Article 7 stipulates "a delegate [from the Cherokee nation] in the House of Representatives of the United States whenever Congress shall make provision for the same." To this day this, this has never been upheld.¹⁴
- Article 8 promises what we know was not the case, that Removal wagons would be comfortably furnished, "so as not to endanger their health."
- Article 9 discusses the U.S. deployment of agents to "make a just and fair valuation of all such improvements now in the possession of the Cherokees as add any value to the lands."
- **Article 12** discusses the "Provision respecting Cherokees averse to removal." Those "who are qualified or calculated to become useful citizens shall be entitled, on the certificate of the commissioners to a preemption right to one hundred and sixty acres of land or one quarter section at the minimum Congress price" and "shall, on receiving their pre-emption certificate be entitled to the right of preemption to such lands as they may select not already taken by any person entitled to them under this treaty," i.e. another

¹³ Kofele-Kale, N. (1995) Patrimonicide: The International Economic Crime of Indigenous Patrimonicide: The International Economic Crime of Indigenous Spoliation. *28 Vanderbilt Law Review* 45. 1 Jan 1995. URL:

<https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1873&context=vjtl>

¹⁴ Teehee, K. (2023). "Uphold the Promise of the Treaty of New Echota: Seat the Cherokee Delegate." PBS Native America. 20 Oct 2023. URL: <https://www.pbs.org/native-america/blog/uphold-the-promise-of-the-treaty-of-new-echota-seat-the-choerokee-delegate>

Cherokee.

- **Article 13** discusses the “Settlement of claims for former reservations,” that:
 - “all the Cherokees and their heirs and descendants to whom any reservations have been made under any former treaties with the United States, and who have not sold or conveyed the same by deed or otherwise and who in the opinion of the commissioners have complied with the terms on which the reservations were granted as far as practicable in the several cases; and which reservations have since been sold by the United States shall constitute a just claim against the United States and the original reservee or their heirs or descendants shall be entitled to receive the present value thereof from the United States as unimproved lands.
 - “And all such reservations as have not been sold by the United States... they or their heirs or descendants shall be entitled to the same.
 - “They are hereby granted and confirmed to them — and also all persons who were entitled to reservations under the treaty of 1817 and who as far as practicable in the opinion of the commissioners, have complied with the stipulations of said treaty, although by the treaty of 1819 such reservations were included in the unceded lands belonging to the Cherokee nation are hereby confirmed to them and they shall be entitled to receive a grant for the same.
 - “And all such reservees as were obliged by the laws of the States in which their reservations were situated, to abandon the same or purchase them from the States shall be deemed to have a just claim against the United States for the amount by them paid to the States with interest thereon for such reservations and if obliged to abandon the same...
 - “but in all cases where the reservees have sold their reservations or any part thereof and conveyed the same by deed or otherwise and have been paid for the same, they their heirs or descendants or their assigns shall not be considered as having any claims upon the United States under this article of the treaty nor be entitled to receive any compensation for the lands thus disposed of.”
- Article 15 names the Cherokees who were removed west since June 1833 as entitled to all benefits of the final treaty, and the Cherokees east be paid for their improvements to the land, as compared to the valuation of the land prior (per Article 9).
- Article 17 highlights that “All stipulations in former treaties which have not been superseded or annulled by this shall continue in full force and virtue.”

Supplement: Treaty of New Echota (1 March 1836)

Appearing to go back on the terms of the initial treaty, the “President of the United States has expressed his determination not to allow any pre-emptions or reservations his desire being that the whole Cherokee people should remove together and establish themselves in the country provided for them west of the Mississippi river.

- Article 1 declares the Preemption Rights void: It is therefore agreed that all the preemption rights and reservations provided for in articles 12 and 13 shall be and are hereby relinquished and declared void.
- Article 2 claims the value of Cherokee lands east of the Mississippi river were

- “not intended to include the amount which may be required to remove them.”
- Article 3 stipulates an “Allowance in lieu of preemptions,” that “all claims of every nature and description against the Government of the United States not herein otherwise expressly provided for, and to be in lieu of the said reservations and preemptions and of the sum of three hundred thousand dollars for spoliations described in the 1st article of the above-mentioned treaty.”
 - Article 5 states that agency reservations are “not intended to interfere with the occupant right of any Cherokees should their improvement fall within the same.”

Comments:

Following the initial treaty’s ratification in 1835, the Governor of Georgia called for the full removal of Cherokees, else threatening a clash between the state and federal government. According to Ben Osher Bridgers, “the final removal of the Cherokees and the validity of the Treaty of New Echota — a document not signed by any officer of the Cherokee nation’s government”— were not only issues of clashes between the Cherokees and settler expansion, but also an issue of states’ rights and authority.¹⁵ This underlined statement is also key for understanding how many of the devastating terms of the treaty and its supplement above possibly came to be presented, accepted, and ratified.

From the Treaty of New Echota to the Act of July 27, 1868, the Eastern Band occupied an exceptional position as non-members of the Cherokee nation, subject to North Carolina state law, without land title. The Act of July 27, 1868 effectively reinstated the U.S. treating the Cherokees who refused removal as wards of the state.¹⁶

¹⁵ Bridgers, B.O. (1980). *An Historical Analysis Of The Legal Status Of The North Carolina Cherokees*. 58 N.C. L. Rev. 1075 (1980). Available at: <http://scholarship.law.unc.edu/nclr/vol58/iss6/2>

¹⁶ Cohen, F.S. (1979). “Letter from Felix S. Cohen, Acting Solicitor, Department of Interior, to Harry McMullan, Attorney General of North Carolina (August 25, 1942),” reprinted in DEPARTMENT OF INTERIOR, 2 OPINIONS OF SOLICITOR OF DEPARTMENT OF INTERIOR RELATING TO INDIAN AFFAIRS 1163.

G. Act of the 43rd Congress - Cession #580 (3 Mar 1875)

Stat. L., XVIII, 447.

Overlaps with: EBCI Trust Lands (Qualla), Great Smoky Mountains National Park, Nantahala National Forest

Present-day Tribe Name(s): Eastern Band of Cherokee Indians of North Carolina

Royce Schedule

Where or how concluded: Act of Congress.

Description of cession or reservation: “Funds appropriated by act July 28, 1848, to be expended in perfecting Cherokees’ title to their lands in North Carolina. The courses and distances of this tract are too numerous to be given here. The plat as given is copied from that accompanying ‘H.R. Ex. Doc. 128 of Fifty-third Congress, second session.’”

Historical data and remarks: “See act of Aug. 14, 1876. The bulk of the lands secured to the Indians as the result of this legislation comprise what is commonly known as the Qualla boundary. Some other small detached tracts were also secured.

Comments:

Trust-fund of North Carolina Cherokees. In 1849, prior to the passing of this act, the U.S. set aside treasury funds through the act, “An act making appropriations...for fulfilling treaty stipulations with the various Indian tribes, for the year ending [June 30th, 1849]” applied for the use and benefit of EBCI, “to perfect the titles to their lands recently awarded to them by a decree of the circuit court of the U.S.; ... to purchase and extinguish the titles of any white person or persons within the general boundaries allotted to them by the said decree of said court; and for the education, improvement, and civilization of the said Indians.”

End of Treaty-Making. Following the Indian Appropriations Act of 1871, Indigenous people could no longer enter into treaties with the United States as they were no longer seen or treated as independent nations in the eyes of the law of the United States. Henceforth cessions came in the form of acts of Congress like this one. Later, in 1887, the Dawes Act, or General Allotment Act, would authorize the U.S. to break up reservations into small allotments distributed to individuals registered on Tribal roll. This emphasis on restructuring Tribes through individualism and citizenship over collective ownership and identity dominated the Allotment period. While in the treaty period the U.S. government paid goods and annuities to Tribal leaders, in the Allotment period, these transfers were made directly to individual Tribal members on roll.¹⁷

¹⁷ Bridgers, B.O. (1980). *An Historical Analysis Of The Legal Status Of The North Carolina Cherokees*. 58 N.C. L. Rev. 1075 (1980). Available at: <http://scholarship.law.unc.edu/nclr/vol58/iss6/2>

H. Act of Congress (14 August 1876)

Stat. L., XIX, 139.

Overlaps with: No public lands.

Present-day Tribe Name(s): Eastern Band of Cherokee

Royce Schedule

Where or how concluded: Act of Congress.

Description of cession or reservation: “Commissioner of Indian Affairs authorized to receive certain lands in payment of judgments in their favor.”

Historical data and remarks: “See [Act of March 3, 1875](#)” – which stipulates “funds appropriated by act July 29, 1848, to be expended in perfecting Cherokees’ title to their lands in North Carolina... ‘H.R. Ex. Doc. 128 of the Fifty-third Congress, second session.’”

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- U.S. Forest Service. (2015). *Tribal Lands Ceded to the United States*. (April 19, 2018) [Feature layer]. U.S. Forest Service. URL: https://data-usfs.hub.arcgis.com/datasets/e4e788be8cfc4d1f8ff280a81ffaa69c_0/explore
- U.S. Forest Service Press Office. (2015). Forest Service Releases Interactive Tribal Connections Map. Washington, D.C. 1 October 2015. URL: <https://www.fs.usda.gov/about-agency/newsroom/releases/forest-service-releases-interactive-tribal-connections-map>

Appendix A: Compilation of Resources

Resources on treaty interpretation.

Note: all are published by U.S. government

1. Bureau of Indian Affairs. (2022). “Best Practices For Identifying And Protecting Tribal Treaty Rights, Reserved Rights, And Other Similar Rights In Federal Regulatory Actions And Federal Decision-Making.” 30 Nov 2022. URL: https://www.bia.gov/sites/default/files/dup/inline-files/best_practices_guide.pdf
 - Resource on treaty interpretation, case law, and consultation parameters
2. U.S. Forest Service. (2023). “Resources for Implementing Joint Secretarial Order 3403: Information for Tribes on New Forest Service Programs and Landownership Authorities” Dec 2023. URL: https://www.fs.usda.gov/sites/default/files/fs_media/fs_document/JSO-3403-resources.pdf
 - Section “Resource on Landownership Adjustment Authorities for the National Forest System” (pp.8-12)
3. Schwartz, M.A. et al. (2023). “Legal and Procedural Matters Related to Seating a Cherokee Nation Delegate in the House of Representatives.” *Congressional Research Service*. 19 Jan 2023. URL: <https://crsreports.congress.gov/product/pdf/R/R47391>
 - Section “Principles for interpreting treaties with Indian Tribes” (p. 2)
 - Section “The Possibility of Ineffectiveness or Abrogation” (pp. 11-15)

Treaty databases.

4. [Oklahoma State Tribal Treaties Database - Cherokee Treaties](#)
5. [American Indian Treaties: Catalog Links | National Archives](#)
6. [University of Houston Digital History: Indian Removal Timeline](#)
7. [Yale University Avalon Project](#)
8. [Broken Treaties With Native American Tribes: Timeline | HISTORY](#)

Tools and archives used to identify land cessions.

9. [U.S. Forest Service Tribal Connections Viewer](#)
10. [U.S. Forest Service Tribal Lands Ceded to the United States \(Feature Layer\)](#)
11. [Schedule of Indian Land Cessions - Internet Archive](#)

Implications Of Select Federal Land-Management Designations For EBCI Land-Stewardship Initiatives

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Purpose: This brief report provides an overview of select federal land-management designations that could be relevant for advancing the land sovereignty interests of the Eastern Band of Cherokee Indians (EBCI). The report is provided at the request of the EBCI Department of Natural Resources (DNR), the Elohi Dinigatiyi (Earth Keepers), and the Junaluska Museum. As EBCI works with The US Forest Service, The National Park Service, and other partners toward increased recognition of the tribe's land rights, this report aims to provide a useful reference regarding the management and land stewardship implications of each of these federal land management designations.

Context: This information is presented with the understanding that the relationships between federal land management agencies and tribes are at a unique point in their long, complicated, and often challenging history. Through executive order, federal land-management agencies have been directed to increasingly recognize the sovereignty and land rights of Native American Tribes on federally managed lands ([Order No. 3403](#)). These policy shifts represent a unique opportunity for tribes to advance their land sovereignty rights across the federal land management system. This report also highlights several land-return and co-management efforts which have been successful in less politically advantageous conditions. This demonstrates both 1) the importance of the present moment and timely actions that capitalize on the opportunity window presented, and 2) the importance of long-term planning and sustained efforts toward incremental change independent of shifts in political conditions.

Methods: Information for this report was compiled from federal land management agency publications, tribal governments and organizations, conservation organizations, legislative documents, government press releases, a review of the relevant academic literature, and direct feedback from USFS employees. Designations reviewed were selected for their perceived relevance to the current land stewardship interests of EBCI. A significant portion of the general information included here is derived from the Congressional Research Services Publication: "[Federal Land Designations: A Brief Guide](#)" [Updated May 19, 2023](#), information not otherwise cited in the land designation table is attributed to this report.

Structure: The table represents a selection of the most relevant designations to EBCI's current interests, as understood by the authors. It is meant to provide an overview of the possible implications of each designation. Hyperlinked resources are provided throughout the table for quick access. Additional designations which were considered to be noteworthy are addressed following the table in short paragraph form. Further analysis, clarifications, and strategic considerations are included after the list of designations. A list of references is provided at the end of the report.

Legal Designation	Official Purpose of Designation	Access Rights and Restrictions	Relevance for Tribal Co-Management	Relevance for Land Ownership	Designation Process
<p>Wilderness Area (USFS, NPS, BLM, FWS)</p>	<p>To preserve lands “where the earth and its community of life are untrammelled by man.”</p> <ul style="list-style-type: none"> ❖ Protecting land from development. ❖ Preventing industrial and commercial uses. ❖ Preserving opportunities for reflection in nature. ❖ Conserving remnants of natural ecosystems. <p>(Wilderness Act 1964)</p>	<p>Generally Restricts:</p> <ul style="list-style-type: none"> - Group size - Motorized Use - Mechanized use - Bikes and Horses* - Any commercial use - Road building <p>Permits <u>personal</u>:</p> <ul style="list-style-type: none"> ❖ Hunting and fishing ❖ Dispersed camping ❖ Hiking ❖ Harvesting of plants (but not trees) <p>(USFS Manual 2320)</p> <p><i>*Horses have been selectively permitted in NC</i></p>	<p>Tribal co-management of Wilderness legally <u>can</u> include:</p> <ul style="list-style-type: none"> ❖ Fire management ❖ Insect management* (Cherokee NF Wilderness Fire Mgmt Plan) <p>Managed with <i>minimal use</i> of mechanical equipment; to promote wilderness qualities. (USFS Manual Excerpts, What about wilderness?)</p> <p>*Insect management usually focuses on invasive species</p>	<p>Wilderness Areas are generally federally owned. The Blue Lake was a part of the Carson National Forest that was returned to the Taos Pueblo as a “Tribal Wilderness” in 1970 (Taos Pueblo). The tribe secured cultural access and exclusive management rights of the area. (Hansen 2007)</p>	<p>Agencies survey lands for Wilderness Qualities such as:</p> <ul style="list-style-type: none"> ❖ Size* ❖ Mostly natural ❖ Proximity to other protected areas ❖ Public input <p>Qualifying areas are “recommended” in agency plans; congress determines formal designation. (Wilderness.net)</p> <p><i>*Larger areas are preferred</i></p>
<p>Wilderness Study Area (USFS, NPS, BLM, FWS)</p>	<p>Areas designated by congress for further study for their “suitability for preservation as wilderness.”</p>	<p>Similar to Wilderness Areas; but with lesser legal protections and regulatory clarity. (Norton v. SUWA)</p>	<p>Agencies manage WSAs “to promote wilderness qualities.” Co-management potential similar to WAs, with greater flexibility.</p>	<p>No examples found of transfer to tribal ownership. Meant to be temporary, resulting in WA designation or delisting after study.</p>	<p>Congress designates Wilderness Study Areas (e.g. Snowbird WSA Designation 1983)</p>
<p>Special Management Area (USFS)</p>	<p>Designated areas for special management within the US Forest Service system. (Kerr) (e.g. <i>Botanical Area, Geological Area, Historical Area, Paleontological Area, Recreational Area, Scenic Area, or Zoological Area</i>)</p>	<ul style="list-style-type: none"> ❖ Access varies based on specific area. ❖ Can restrict or promote public access. (USFS Manual) 	<p>Special Management Areas can be created on the basis of tribal interest and co-management. e.g. Badger-Two Medicine</p>	<p>Special Management Areas remain in federal ownership or are transferred to federal ownership.</p>	<p>Local official can recommends areas; Regional Forester may designate areas less than 100,000 acres. The Secretary of Agriculture designates 100k acres or more. (USFS Personal Communication, April 2024)</p>

Legal Designation	Official Purpose of Designation	Access Rights and Restrictions	Relevance for Tribal Co-Management	Relevance for Land Ownership	Designation Process
<p>National Monument (BLM, NPS, USFS, FWS)</p>	<ul style="list-style-type: none"> ❖ Preserving natural and cultural sites of national significance. ❖ Protecting places that contain historic landmarks, structures, or other objects of historic or scientific interest. ❖ Reserve “the smallest area compatible with the proper care and management of the objects to be protected” (54 U.S.C. §320301(b)). (Antiquities Act) 	<ul style="list-style-type: none"> ❖ Allowed uses vary according to the establishing proclamation, and the managing federal agency. ❖ In Bear’s Ears tribal access rights are central to creation of the monument. ❖ National Monuments don’t always include tribal access, even when they are protecting tribal cultural assets. (University of Colorado) 	<ul style="list-style-type: none"> ❖ e.g. Canyon de Chelly: Co-management with Navajo who live in the monument. ❖ e.g. Bears Ears: Co-managed by BLM, five Tribes of the Bears Ears Commission ❖ e.g. 2023 Footprints ...NM: FS MGMT; plans co-stewardship with regional tribes. ❖ e.g. 2023 Avi Kwa Ame: BLM Management, co-management not publicly mentioned. 	<p>A National Monument will remain in federal ownership under current agency mgmt. Monument status stands unless the monument is abolished by congress (nps.gov); usually reflects a loss of designating qualities.</p> <p>Presidents can reduce the size of national monuments through Executive Order, however a president has never abolished a National Monument. (Brookings)</p>	<p>Under the Antiquities Act of 1906:</p> <ul style="list-style-type: none"> ❖ Established by Presidential executive order ❖ Agency collaboration needed ❖ Can be managed by any federal land mgmt. agency <p>In addition to restoring Bear’s Ears, Biden has designated 5 new National Monuments, 2 with direct tribal interest: (White House Fact Sheet)</p>
<p>National Historical Park (NPS)</p>	<ul style="list-style-type: none"> ❖ Preserve areas of national historical significance. ❖ Can include structures and natural features. 	<p>Emphasis is on historic preservation, and heritage tourism. (National Historical Parks)</p>	<p>NPS has legal consultation requirements for heritage sites, including National Historical Parks. (NPS CNRC)</p>	<p>Most NHPs are managed by NPS, one is managed by USFS. All are federally owned.</p>	<p>Formally Established by Congress, usually as a result of local advocacy and support. e.g. Chaco Culture NHP)</p>
<p>National Heritage Area (NPS)</p>	<ul style="list-style-type: none"> ❖ Preserve historical, cultural, and natural resources. ❖ Covers a broad land area, multiple agencies, and multiple owners. (Blue Ridge National Heritage Area) 	<p>Heritage Areas are not associated with specific access rights or restrictions, promoting heritage tourism and preserving cultural resources. (NPS NHAs)</p>	<ul style="list-style-type: none"> ❖ NHA are intended to reflect the interests of the communities which they include. ❖ NHAs can include tribal representation on governing boards. (Blue Ridge Heritage Area Board of Directors.) 	<ul style="list-style-type: none"> ❖ Run by community led nonprofits; ❖ financial/technical aid from NPS. ❖ Land ownership remains unchanged within the Heritage Area. (NPS NHAs) 	<p>Formally Established by Congress, usually as a result of local advocacy and support.</p>

Additional Federal Land Management Designations:

Cultural Heritage Area (Proposed for Forest Service and BLM, Not Implemented)

“Cultural Heritage Area” is a novel designation which has been proposed to protect cultural sites which are sacred to tribes, but it has not yet been implemented. It was proposed via two separate pieces of legislation ([SB 1404](#)) ([Fernandez](#)) to protect both the Chaco Canyon and the Badger Two-medicine Area. For both sites, tribes advocated for permanent protection of their sacred sites from development through recognition of their unique cultural heritage. Chaco Canyon was instead designated as a National Historic Park (See Table). Badger Two-Medicine remains in Forest Service Management and is currently designated as a “Roadless Area.” The area was protected from gas leases through a series of federal actions and a final lawsuit which terminated the last gas lease held in the area. ([NARF 2023](#)) It is possible that the Blackfeet and their allies will still advocate for this designation, or one with a similar effect, in order to achieve “permanent protection” of their sacred lands ([Glacier Two-Medicine Alliance](#)).

Roadless Areas (Forest Service)

Inventoried Roadless Areas are managed under the Roadless Area Conservation Rule of 2001 (36 CFR 294). In Western North Carolina, these US Forest Service lands ([Regional IRA Map](#)) were inventoried under the agency’s second Roadless Area Review and Evaluation in 1979 (43 CFR 19.3). Under the ‘Roadless Rule’, commercial logging, large-scale mining and drilling, and permanent roadbuilding are prohibited, but a wide spectrum of uses and management are present. ([USFS Wilderness and Roadless Area Questions](#)) Examples: “Boulder-White Clouds Roadless Area (Sawtooth National Forest, ID) Mount Bailey Roadless Area (Umpqua National Forest, OR), Badger-Two Medicine Roadless Area.”

National Scenic Areas (Forest Service)

“Congress has designated 12 scenic areas within the NFS, each with distinct management direction. These areas generally contain outstanding scenic characteristics; recreational values; and geologic, ecological, and cultural resources. “National Scenic Area, National Scenic Research Area, National Scenic Recreation Area, National Scenic and Wildlife Area” Access is variable depending on the specific area type. Tribal lands may be included in National Scenic Areas. A National Scenic area could be a potential mechanism for tribal co-management. In general, scenic areas with increased tourism access and visitation. Tribal members could potentially benefit from increased access and funding associated with scenic area designation. Forest Service "Columbia River Gorge National Scenic Area (OR, WA), P.L. 99-663 Mono Basin National Forest Scenic Area (CA), P.L. 98-425, Title III "Only Congress can establish an entirely new unit of the NFS, although the President and Secretary of Agriculture have various authorities to modify existing NFS units."

National Historic Trails (NPS, USFS, BLM)

National historic trails identify and protect travel routes of national historic significance. They may be designated by the Secretaries of the Interior and Agriculture with the consent of the federal agency, state, or locality that manages the land. A National Historic Trail could be co-managed between a federal agency and a tribe. National Trail systems are often co-managed by multiple local and regional partners along with federal agencies. The Trail of Tears is a national Historic Trail which EBCI is actively working to co-manage along with NPS and USFS in western North Carolina. NPS Manages the trail of tears through a “partnership with the Trail of Tears Association, the Cherokee Nation, the Eastern Band of Cherokee Indians, federal, state, county, and local agencies, interested groups, and private landowners.” ([NPS Trail of Tears Management](#))

Heritage Corridor - (Forest Service) Land Management Plan Management Area

While the Trail of Tears is managed by the National Park Service, much of the immediately adjacent land is managed by the US Forest Service. 40.9 miles of the Trail of Tears and the 8.8 mile National Millennium Trail Unicoi Turnpike run through the Nantahala National Forest. USFS states that “tribes will be consulted prior to planning any activities within a distance of ½ mile on either side of the Trail of Tears and Unicoi Turnpike, specifically alerting them if a proposed undertaking is within the mile wide trail corridor.” Both trails are additionally protected by a 750’ buffer on either side, which is consistent with NPS standards and tribal consultation per the Nantahala and Pisgah National Forest Management Plan. ([USFS NPNF Revised Land and Resource Management Plan, p.249-251](#))

Wild and Scenic Rivers (FS, NPS, BLM, FWS, States)

"Wild and scenic rivers (WSRs) are administered to preserve the rivers' free-flowing condition and to protect and enhance the values for which the rivers were designated. The WSR Act established three classes of WSRs— wild, scenic, and recreational—reflecting the characteristics of the rivers at the time of designation." Federally assisted water resources projects that would have specified effects on a designated WSR are prohibited. All projects licensed by the Federal Energy Regulatory Commission are prohibited. WSRs may be located on federal or nonfederal land. "Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. §§1271 et seq.), plus individual statutes"* "Black Butte Wild and Scenic River (CA), P.L. 109-362, §7 Eightmile Scenic River (CT), P.L. 110-229, §344 Missisquoi & Trout Recreational River (VT), P.L. 113-291, §3072" Congress, Secretary of the Interior.

National Historic Site (NPS, USFS)

Most sites feature buildings of historical interest, such as the homes of notable individuals, public buildings where significant events occurred, or military forts. The designation has been applied to both federally and non federally owned sites. National Historic Sites are largely protected for the ongoing appreciation and interpretation of significant historic events. Tribally owned lands, or lands formerly held by the tribe, could be designated as a National Historic Site. A Tribe could partner with the NPS in the co-management of a historic site specific to the tribe's heritage. The USFS has also adopted National Historic Sites, including the recently designated “Cradle of Forestry” National Historic Site. ([National Forests in North Carolina: Cradle of Forestry](#))

Further Considerations on Land Designations

Generally speaking, federal land management designations have arisen out of the desire to protect places of national cultural or environmental significance. All federal designations involve the protection of resources to some extent, however some designations are more exclusively focused on preservation whereas others attempt to strike a balance between conservation and use. (“[Protective Designations on Federal Lands...](#)”). Therefore the most advantageous federal designation for advancing EBCI’s land stewardship interests will vary on an area to area basis depending on the Tribe’s objectives in a given area. Balancing the need to protect tribal cultural resources with access for tribes (and other visitors) will be an important consideration on a site-by-site basis. NPS includes a significant focus on preserving cultural and environmental resources in its mission to “preserve unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations” ([NPS What We Do](#)). USFS also includes an emphasis on preserving cultural resources as a part of its mission, and special designations within the USFS system can be used to preserve cultural resources, but USFS pursues a multi-use mission which makes it more flexible in terms of the type of use permitted on Forest Service lands.

Fire suppression and the return of cultural burning to the landscape

The overapplication of fire suppression and the lack of prescribed burning on the landscape is now commonly understood to be one of the fundamental flaws of US land management practices over the last two centuries, and Tribes have been actively involved in the restoration of fire regimes on some public lands in response ([Knight et al. 2022](#)), ([Ojibwe firefighters restore fire to the Cloquet Forestry Center](#)). The possibility of the reinstitution of fire on the landscape is variable among federal land designations, but it has been carried out in National Parks, National Forests, and Wilderness Areas ([Lake et al.](#)). Prescribed burning is legally possible in any of the aforementioned areas, however local management plans and conditions may prevent it from occurring in some cases. The reinstitution of tribal cultural burning through co-management agreements is an area where tribal management, ecological objectives, and resource conservation objectives tend to coincide.

Advancing Cherokee food sovereignty on public lands

In western North Carolina, a significant portion of the land that traditionally contributed to Cherokee food sovereignty is now managed by various federal agencies. Traditional Cherokee food systems involved the management of the entire landscape and relied on an active and reciprocal relationship with natural systems (Personal Communication, Tribal Elders). National Forests present the most viable option for advancing food sovereignty on public lands through the cultivation of indigenous food systems due to their multi-use mission and their demonstrated efforts to consult with EBCI and other tribes ([PNFLMP 2024](#)). Hunting, fishing, and plant harvesting (gathering) are permitted for personal use on generally managed Forest Service Lands, however any “commercial-scale” use of forest products is generally prohibited without a permit. EBCI’s ongoing efforts to ensure cultural plant access represent a significant step toward advancing food sovereignty on Forest Service lands at a communal and/or commercial scale. It may be possible to further advance food sovereignty through co-management agreements which designate specific parts of the National Forest as special management areas where tribes are able to actively cultivate traditional food systems. While the NPS would likely be more resistant to active use of National Park lands for food production, it may be possible to advance the awareness of traditional Cherokee food systems through updating the language used in interpretive signage and displays in visitor centers at National Park Sites. This type of an effort may have beneficial downstream implications by building public awareness of the extent and scale of traditional Cherokee food systems.

Advancing EBCI's economic interests through commercial forestry

While it is still relatively common for people to think of Native American tribes as fixed in pre-colonial times and traditions, the reality is that tribal land sovereignty includes the right of tribes to manage land for modern-day economic interests. EBCI has benefited to some degree from visitation and tourism associated with its proximity to GSMNP and the Pisgah-Nantahala National Forest, however tourism may not be the only economic benefit which EBCI can derive from its proximity to public lands. The Forest Service allows for commercial timbering on general Forest Service lands in keeping with the Forest Service's mixed use policy. EBCI could likely pursue commercial timber permits with the Forest Service if the tribe is interested in pursuing commercial forestry. Some tribes, like the Menominee, are well known for their sustainable forest management practices, ([Warnock, 2003](#)), and the Intertribal Timber Council is actively promoting tribal forestry and "sound, economic management of Indian forests" ([Intertribal Timber Council](#)). Among the land designations reviewed, only National Forests typically permit contracts for commercial forestry. National Parks, National Monuments, Wilderness Areas, and other special USFS land management designations generally prohibit commercial forestry.

Potential for co-management in designated Wilderness Areas

In terms of management, Wilderness Areas are often characterized as being "unmanaged, or hands-off," and are closely associated with a preservationist approach to land stewardship which excludes human presence from the landscape. This association, and the history of the word "wilderness" being used to displace indigenous peoples from their homelands perpetuates the notion that tribes have no place in Wilderness Areas, which discourages co-management efforts in these areas. Despite associated notions of pristine and untouched nature, Wilderness Areas are managed to promote the "wilderness qualities" which they preserve. Wilderness Areas can legally be managed for fire prevention and the prevention of insect outbreaks per the text of the Wilderness Act ([The Wilderness Act](#)). These sorts of management interventions are carried out at the discretion of the Regional Forester and with the minimum use of motorized or mechanized equipment possible. It is also within the authority of the Regional Forester to implement prescribed burns to promote ecological conditions and other wilderness qualities. EBCI could be actively involved in such prescribed burns in Wilderness Areas, however the goals of such burns in a federal Wilderness Area would need to align with the legal requirements of the Wilderness Act: restoring or conserving natural habitat, preventing invasive insect outbreaks, or preventing catastrophic wildfire. ([Reimagining What is Necessary: Using Active Management in Wilderness Areas to Mitigate High-Loss Wildfires](#))

Excerpt on Wilderness from the Nantahala and Pisgah National Forests Land Management Plan (pp. 269-270):

"In Wilderness, preservation of the natural environment free from human influences predominates. Timber harvest is not utilized as a management tool; however, prescribed fire or wildland fire use may occur where beneficial in maintaining historic fire regimes, perpetuating fire-dependent ecosystems, or reducing fuel loading which may pose a risk to adjacent private lands. Integrated pest management favoring biological controls may occur when used to eradicate or suppress non-native invasive pests. Non-commercial felling of trees with hand tools may also occur when used to construct or maintain trails. Hunting and fishing are permitted consistent with NC state game laws and Wilderness values. Motorized and mechanized uses are generally prohibited, although exceptions are made in emergency circumstances that threaten human life and safety."

Additional Resources on Federal Land Management Designations:

Federal Land Management Agency Publications:

National Park Service: Office of Native American Affairs <https://www.nps.gov/orgs/1015/whatwedo.htm>

National Park Service Tribal Heritage Grants: [National Park Service: Grant Programs - Competitive Grants- Tribal Heritage](#)

NPS Wilderness and Cultural Resources: [NPS Access to Wilderness Cultural Resources](#)

US Forest Service: [Strengthening Tribal Consultations and Nation to Nation Relationships](#)

US Forest Service: [Implementing Secretarial Order 3403](#)

US Forest Service: [Eastern Region Tribal Relations](#)

US Forest Service Historic Preservation: [USFS Laws, Regulations and Executive Orders authorizing historic preservation.](#)

US Forest Service: [US Forest Service California: Nature's Benefits: Tribes](#)

US Forest Service: [USFS Policy and Procedures Review: Sacred Sites](#)

US Forest Service: [FS What about wilderness?](#)

US Forest Service: [Wilderness Regulations](#)

US Forest Service: <https://www.fs.usda.gov/main/nfsnc/passes-permits/forestproducts>

[USDA ANNUAL REPORT ON TRIBAL CO-STEWARDSHIP Implementation of Joint Secretarial Order 3403: Fulfilling the Trust](#)

[USDA: STRENGTHENING TRIBAL CONSULTATIONS AND NATION-TO-NATION RELATIONSHIPS A USDA Forest Service Action Plan
Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters](#)

Relevant Legislation and Executive Orders

[Order No. 3403 Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters
Executive Order on Strengthening the Nation's Forests, Communities, and Local Economies](#)

[Interior Department Issues Guidance to Strengthen Tribal Co-Stewardship of Public Lands and Waters: 09/13/2022
Executive Order 13007](#)

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The Snowbird Wilderness Study Area: Contextual Analysis to Support EBCI Decision Making

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Introduction

During our visits to the Qualla Boundary and the Snowbird Community, and throughout our communications with members of the Eastern Band of Cherokee Indians (EBCI), the prevalence of Wilderness Areas in the surrounding region has been consistently brought forward as a significant point of interest in the Tribe's land-stewardship planning efforts. One area in particular, the Snowbird Wilderness Study Area (WSA) was brought to our attention early on both by tribal members and non-tribal allies as a site that is of fundamental importance to the Snowbird Community. Members of the Snowbird Community have historic and ongoing relationships with the Snowbird WSA and the surrounding landscape which are largely unrecognized by its current land management designation, and EBCI is interested in advocating for a different designation which recognizes tribal heritage and ongoing cultural management of this area. This paper analyzes the Snowbird WSA in terms of its designation status, its ongoing cultural relevance to the Eastern Band, and its conservation policy and planning context. Because the Snowbird WSA is now "Recommended Wilderness" per the USFS planning process, and because Wilderness Areas are prevalent in the region, the report also provides a brief overview of how the term "wilderness" and Wilderness Areas have affected tribes across distinct historical periods. It then provides examples of how some tribes have successfully navigated "wilderness" in order to restore tribal presence, land-management, and legal protections to their ancestral homelands.

The Wilderness Act primarily defines a Wilderness as a place "in contrast with those areas where man and his works dominate the landscape, [...] *where the earth and its community of life are untrammelled by man, [...]* where man himself is a visitor who does not remain." Embedded within the text of the law is the non-indigenous cultural assumption that a given landscape must either be pristine nature, where people are only "visitors," or it must be a degraded landscape which people have "dominated." In contrast, the Cherokee people lived throughout the entirety of their homelands for thousands of years in a way which did not "dominate" the "earth and its natural community of life," but rather helped it to flourish and grow through sacred and reciprocal relationship with its human inhabitants. While it is true that modern development and western land-use patterns have disrupted the earth's natural systems and ability to support diverse lifeforms, this is not true of traditional Cherokee land-management practices and human-nature relationships. The Wilderness Act was intended to preserve some remnant of the rich ecological landscapes of pre-colonial and pre-industrial North America. We understand today that these landscapes were largely shaped through the widespread application of traditional indigenous land-management practices. (Lake et al, 2017) A contemporary interpretation of the Wilderness Act which recognises the benefits of past, present, and future indigenous presence and land-management practices on these landscapes has the potential to significantly correct past and present harms.

Snowbird WSA Cultural Significance to the Snowbird Community

The Cherokee People have cultural and natural ties, connections, and land-shaping relationships to the Snowbird region which long predate the relatively recent passage of the Wilderness Act of 1964 and the designation of the Snowbird WSA in 1984. Members of the Eastern Band, particularly those in the Snowbird Community, are working to maintain, restore, and protect those connections for current and future generations. (*Elohi Dinigatiyi Resolution*) The distribution of EBCI Territories immediately surrounding the Snowbird WSA, as well as the area's proximity to the Trail of Tears and other key cultural sites (See Figure 1) reveals that within the surrounding landscape which is entirely the ancestral territory of the Cherokee people, the Snowbird WSA has particularly important cultural and historical significance.

Many of the archival resources at the Junaluska Museum, as well as the accounts of tribal elders convey the cultural and spiritual significance of the Snowbird region to the Cherokee people before, during, and after the Indian Removal Act. The Cherokee religion includes direct ties to the landscape of the Snowbird region which are rooted in thousands of years of tradition. (Personal Communications, Tribal Elders) Important tribal figures who were instrumental to the Eastern Band’s efforts to remain in place on their ancestral territories are directly associated with the Snowbird region as well, including both Tsali, and Junaluska. (Junaluska Museum Archives)

Furthermore, the traditional land-management practices of the Cherokee people were applied for thousands of years throughout this region, shaping the landscape for the wellbeing of the Cherokee people and their surrounding natural community of life. The Cherokee religion defines community inclusively amongst people, animals, plants, and natural bodies like rivers and mountains. (Earth Keepers Mission Statement) In Cherokee cosmography, mountains, rivers, and other natural features are considered to hold personhood rather than being considered inanimate objects, and all living beings are considered relatives. (Tribal Elder Tom Belt, Remarks during: “Cultural Foundations and Strategies for Securing Sacred Lands”) The name Snowbird itself is likely derived from the Cherokee accounts of a giant bird which once occupied the region according to custom. (Tribal Elder, Personal Communication)

Figure 1. Snowbird Wilderness Study Area: Surrounding Land Areas and Context

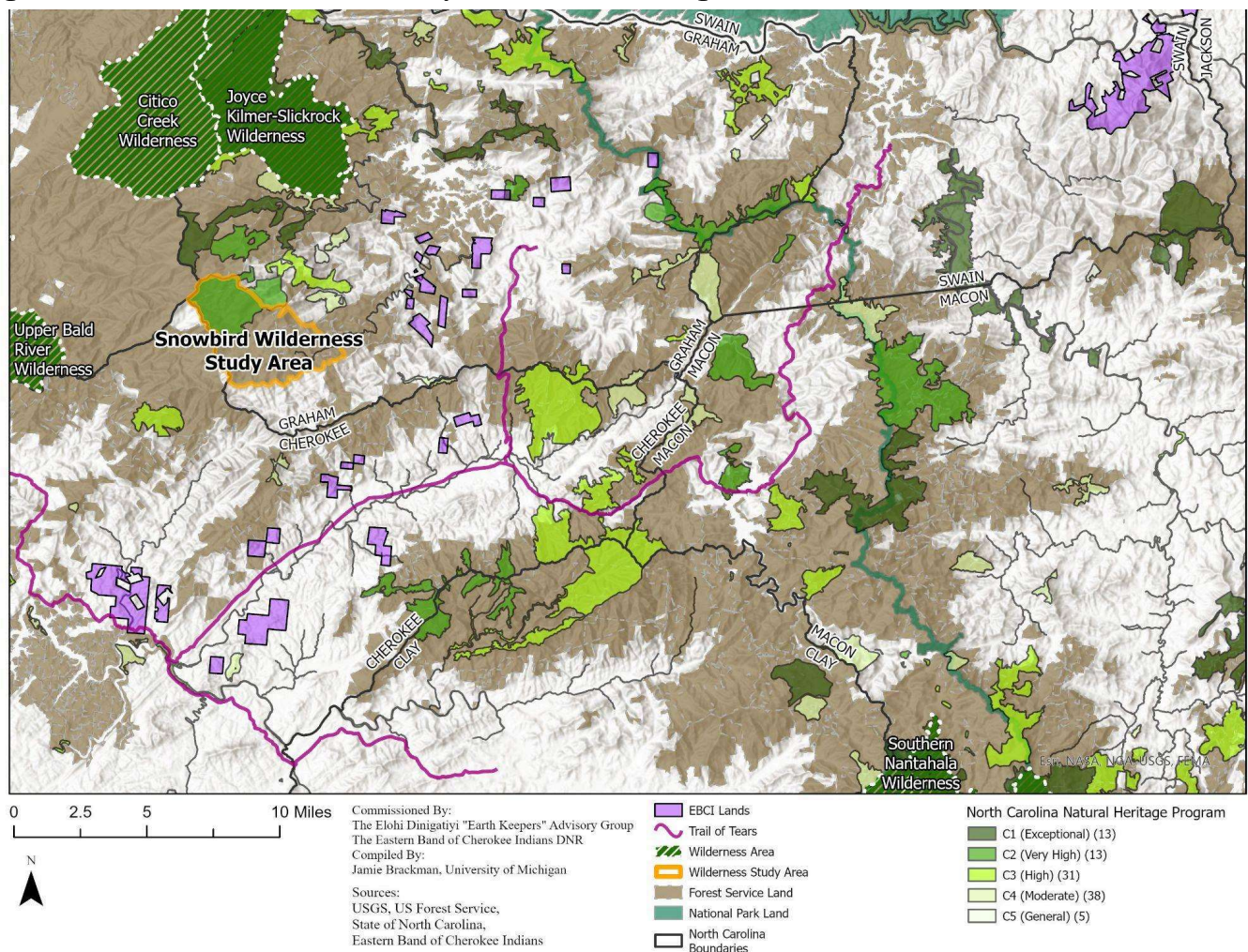
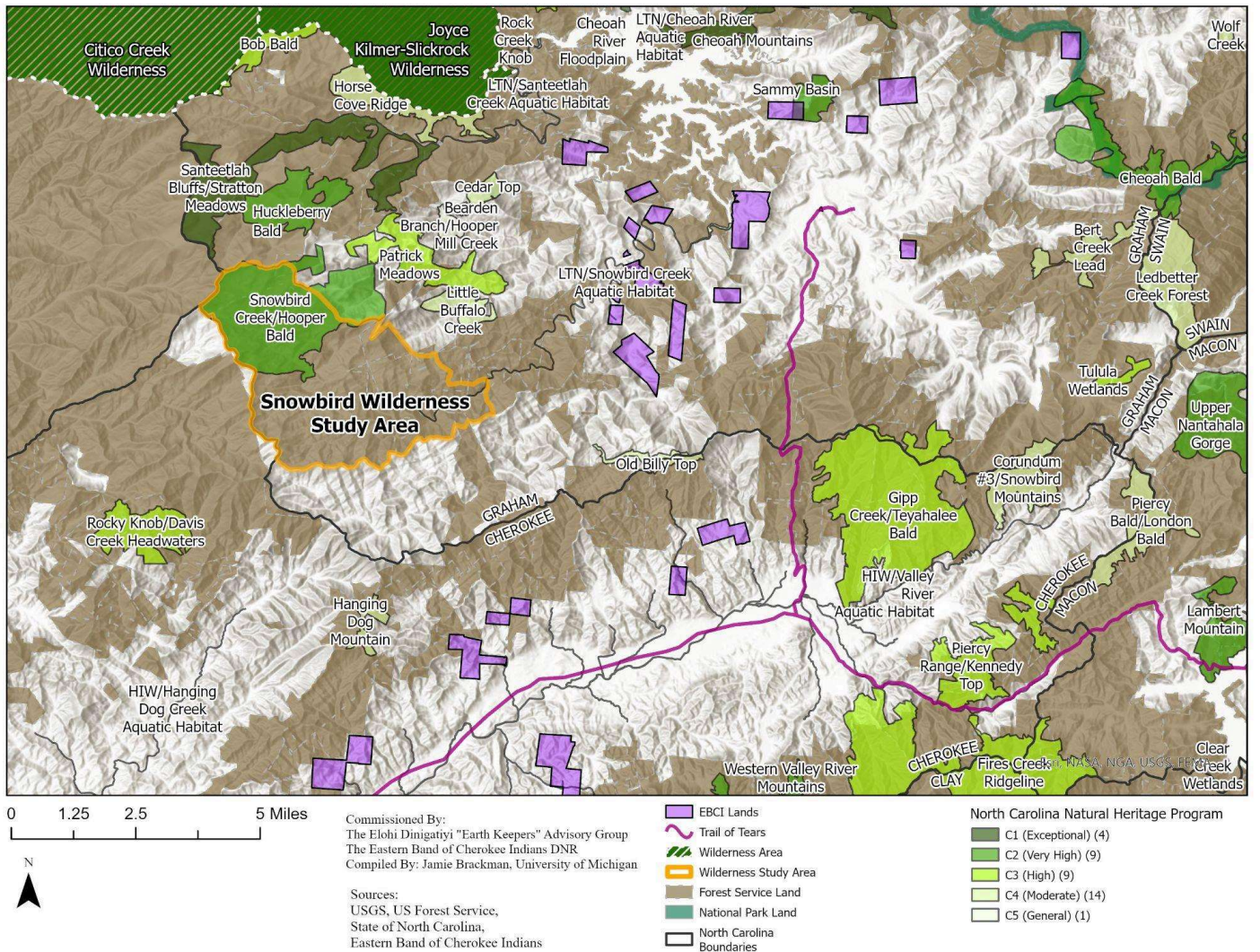


Figure 2. Snowbird Wilderness Study Area: Immediate Land Areas and Context



Each of the sites labeled on this map are inventoried as a part of the North Carolina Natural Heritage Program. Each of these sites have names in the Kituwah language, but they are represented here with their English names. Through ongoing community mapping efforts, the Elohi Dinigatiyi, the EBCI Department of Natural Resources (DNR), and the Junaluska Museum are developing a list of priority areas for Tribal preservation, access, and cultural use across the Snowbird Region. (*Elohi Dinigatiyi Resolution*)

Snowbird Wilderness Study Area Designation and Management

The Joyce-Kilmer-Slickrock Wilderness Area was originally designated through the passage of the 1975 Eastern Areas Wilderness Act, and was among the first Wilderness Areas designated east of the Mississippi river (PUBLIC LAW 93-622 Jan. 3rd, 1975). The Eastern Areas Wilderness Act set the precedent for identifying areas with “wilderness qualities” in the Eastern US. These designations included the recognition that these lands were significantly affected by human activity, making them distinct from Wilderness Areas designated in the Western US. The Eastern Wilderness Act is also significant in that it allowed smaller areas to be designated as wilderness than the original 5,000 acre minimum. ([TWS Key Laws](#))

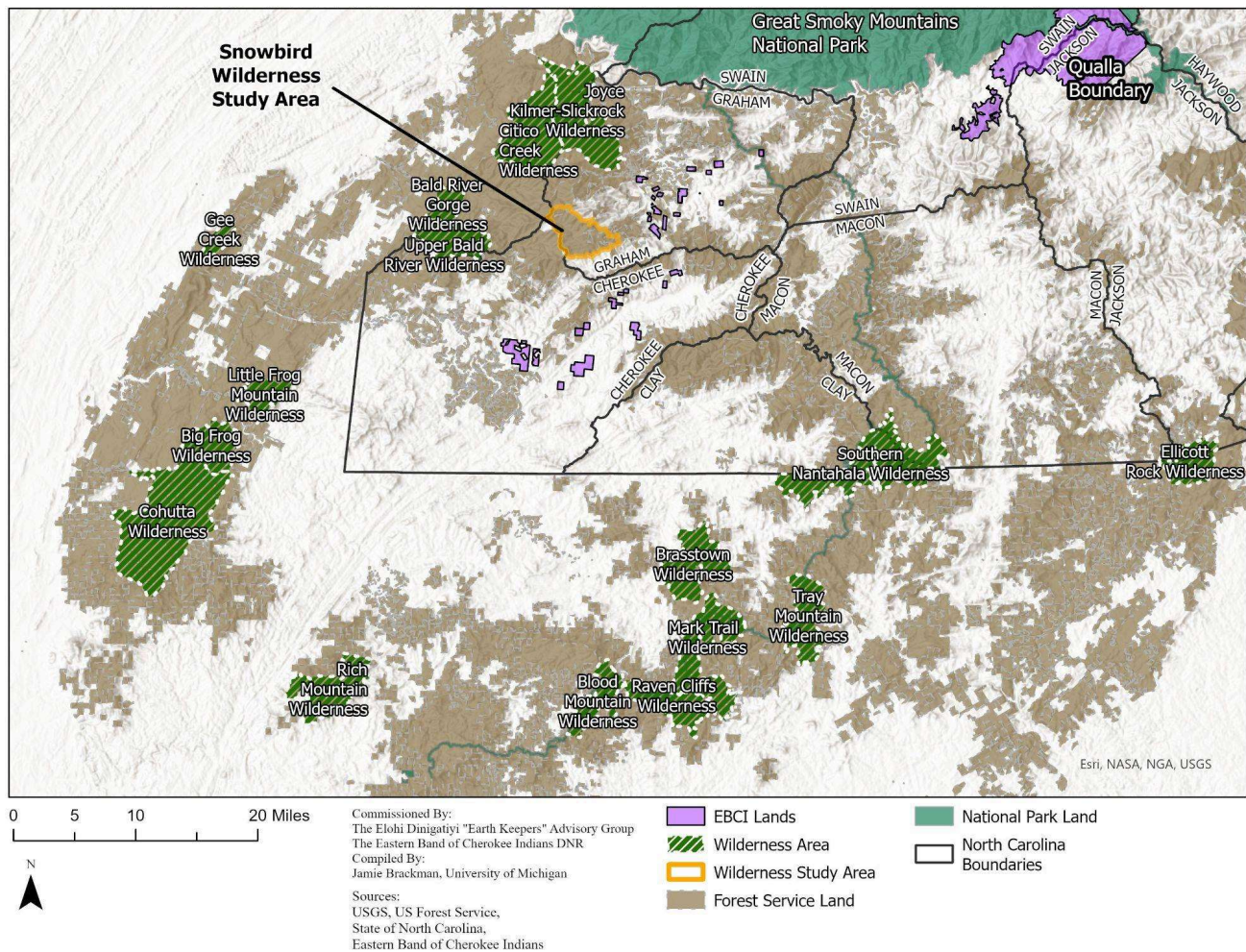
The Snowbird WSA was designated in the 1984 North Carolina Wilderness Act. (PUBLIC LAW 98-324 June 19th, 1984) The WSA designation is intended to be temporary, and it represents a lower level of regulatory clarity when compared with designated WAs. Since being designated as a WSA, the area has been maintained “to promote wilderness qualities,” but not as a designated WA. This means that the protections and restrictions associated with WA designation are applied selectively in the WSA based on community input through the USFS planning process. 5,900 of the 8,900 acres of the Snowbird WSA have also been designated as ‘Inventoried Roadless Areas,’ and are managed under the Roadless Area Conservation Rule of 2001 (36 CFR 294). These US Forest Service lands ([USFS Regional IRA map](#)) were inventoried under the agency’s second Roadless Area Review and Evaluation in 1979 (43 CFR 19.3). Under the ‘Roadless Rule’, commercial logging, large-scale mining and drilling, and permanent roadbuilding are prohibited, but a wide spectrum of other uses and management activities are present. ([USFS Wilderness and Roadless Area Questions](#))

The Snowbird WSA is sometimes referred to in USFS documents as the “Snowbird Backcountry Area,” or simply the “Snowbird Area.” The USFS web publication “National Forests in North Carolina - Snowbird Backcountry Area” describes the Snowbird WSA as follows: “[...] *Frequently used by fishermen, and less so by backpackers, this roadless area encompasses the entire upper watershed of the creek, including the major tributaries Sassafras Branch and Meadow Branch. [...] well-known for its trout fishing. The Bemis Hardwood Lumber Company logged the valley in the early 1930’s. [...] most of the hemlock was left, and magnificent specimens, though dying, are scattered throughout the watershed. Some large American chestnut trees remain at the upper end of the valley. Above High Falls, the creek supports a reproducing population of native brook trout. Hooper Bald, one of the largest balds in the Southeast, lies adjacent to the upper boundary of the area. [...] The area has several beautiful waterfalls. Camping is allowed anywhere except at the trailheads, but Leave-No-Trace Principles should be followed to protect the pristine creeks.*”

Wilderness and Conservation Planning Context

Conservation groups regularly advocate for WSAs and other wilderness-adjacent designations to be “uplisted” to WAs in order to increase the level of federal protection over these landscapes. In part as a result of these advocacy efforts, the recently published “*The National Forests in North Carolina Final Land Management Plan: January 2023*” has listed the Snowbird WSA as “Recommended Wilderness” in all of its planning scenarios. The plan includes a total of 49,098 acres of Recommended Wilderness across the Nantahala and Pisgah National forests. (Nantahala and Pisgah National Forests Land Management Plan p276) Wilderness recommendation from the USFS does not lead directly to consideration for Wilderness Area designation. Wilderness Areas are typically only designated as a result of prolonged advocacy efforts. (ELPC, 2021)

Figure 4: Concentration of Wilderness Areas surrounding southwestern North Carolina



Wilderness areas account for 2% of the total land area of the continental United States, and are a relatively small portion of federal land holdings at large, (Wilderness Designation FAQs) but they are relatively more common in western North Carolina and the surrounding region: “The Nantahala and Pisgah National Forests have 66,337 acres (6%) of congressionally designated wilderness and 27,907 acres (2.5%) of congressionally designated Wilderness Study Areas [...] out of the 1.1 million total acres.” (USFS “What about Wilderness?”) Considering its connectivity with other protected areas, this region is possibly the most significant wilderness complex east of the Mississippi River, making it a major place of interest for wilderness advocates. (See Figure 4)

Ideological groundings of Wilderness Areas and indigenous perspectives

Wilderness advocates and Tribes share a common interest in maintaining right relationships between people and the earth, (Himrod, 2021) yet there are significant differences in terms of how that right relationship might be understood between and among these groups. (Kalamandeen and Gillson, 2007) Indigenous Peoples’ perspectives on human-nature relationships are increasingly being recognized as an essential element in restoring and stewarding the natural world through close and mutualistic relationships across the entire landscape. (Kimmerer, 2013) In terms of conservation planning in the United States, Wilderness Areas are perhaps the most prominent example of a “land-sparing” approach, which focuses on preventing negative

human impacts on natural areas. Proponents of land-sparing have advocated for half of the earth's habitable surface to be set-aside explicitly for biodiversity conservation purposes. (Vettesse et al., 2022) Conversely, proponents of the "land-sharing" approach advocate for conservation strategies which emphasizes the benefits of indigenous land-management practices and agroecologically sustainable food systems in promoting biodiversity conservation across the entire landscape. (Fischer et al, 2011) (Verschuuren 2018) The tension between these two conceptions of conservation-based planning has significant implications for management decisions on public lands across the US.

Brief History of "wilderness" and Wilderness Areas

The term "wilderness" has commonly been used in the forced removal and erasure of Native American Tribes, and western legal frameworks have often justified the seizure of tribal territories through claims that indigenous peoples kept their lands "wild" and "uncultivated." (Witgen, 2021) The forced removal of Native American communities eliminated the broad application of indigenous land-management practices on the North American landscape, which resulted in the disruption of indigenous food systems and their interdependent ecosystems on a continental scale. (Spence, 1999) The full extent of social and ecological damages resulting from this land-loss and the associated disruption of indigenous governance structures remains incalculable. (Farrel et al, 2021) Having evolved from earlier concepts of wilderness, Wilderness Areas are a federal land management designation that emphasizes preventing modern human developments in protected areas, and are commonly understood by ecologists and conservation planners to be an important element in preserving biodiversity and natural communities. (Watson et al., 2016) Nevertheless, Wilderness Areas have often been criticized for their failure to acknowledge the historic and ongoing presence of indigenous peoples, (Kantor) and a lack of recognition of human influence over natural areas in general. (Cronon, 1996) While the myth of the "unpeopled wilderness" and the earlier myth of the "indian wilderness" are historically distinct from the passage of The Wilderness Act, Wilderness Areas had the effect of perpetuating the myth that indigenous people had no historic or ongoing presence on their ancestral lands, particularly in the Western United States. (Sutter and Cronon) Notably, the Snowbird WSA and other Wilderness Areas in the region were created through the 1975 Eastern Areas Wilderness Act, (PUBLIC LAW 93-622 Jan. 3rd, 1975) which is distinct from the 1964 Wilderness Act in that it does not emphasize "pristine" nature and has a greater emphasis on recognizing present and historic human presence in designated Wilderness Areas when compared with Wilderness Areas in the West. ([TWS Key Laws](#)) While TWS and other Wilderness Advocacy organizations remain committed to preserving and stewarding areas for their wilderness qualities, there is increasing recognition that these values can be consistent with tribal presence and management in the United States, and certain wilderness advocacy organizations like The Wilderness Society (TWS) are beginning to recognize tribal rights and historic influence over lands that are designated as Wilderness Areas through advancing partnerships with tribes. ([TWS Native Lands Partnerships](#)) This is illustrated by TWS's funding and support for the Earth Keepers and for their ongoing dialogue with EBCI regarding the Snowbird WSA and other EBCI land-stewardship initiatives.

Examples of Tribal land sovereignty and concepts of wilderness in the US

Despite the challenging historical and socioecological context surrounding the term “wilderness,” there are some examples of federally recognized Tribes and intertribal organizations advocating for wilderness-adjacent designations both on tribal lands and on neighboring public lands. Tribal advocacy for wilderness has most often been in the context of protecting lands from commercial development, and overexploitation by non-tribal members. It has also been used as a means of protecting ongoing cultural connections of Tribes to their ancestral territories. Some tribes have adopted the term “wilderness” as a means of advancing their land sovereignty across various land-management contexts. In these cases, Tribes have successfully asserted their unique cultural connection to the lands in question, and have gained access, protection, and in some cases ownership over important cultural sites. In all cases, these efforts have codified the ability of tribes to practice cultural management in “wilderness,” although the exact parameters of access and use vary. (Watson et al, 2011)

Blue Lake: Land return through the creation of a “Tribal Wilderness”

The return of the Blue Lake to the Taos Pueblo is the first and only example of Forest Service lands being returned to tribal ownership and management as a “Tribal Wilderness Area.” On signing the law in 1970, President Nixon stated, “This is a bill that represents justice, because in 1906 an injustice was done in which land involved in this bill, 48,000 acres, was taken from the Indians involved, the Taos Pueblo Indians. (Taos Pueblo) (Nixon Library) While Nixon’s speech indicates that it was the benevolence of the US federal government that resulted in the return of Blue Lake, in reality the Taos people struggled for 64 years to have their sacred connection to the site recognized and protected after President Theodore Roosevelt proclaimed the Blue Lake as part of the Carson National Forest in 1906. After years of advocating for tribal access through various agreements and attempted legislation, ultimately full ownership of the site was restored to the Taos Pueblo. Central to restoration of the site was the recognition that the Taos had a “unique” claim to this territory based on the practice of their religion. Counterarguments against the land return noted that other tribes could certainly make similar claims regarding their ancestral territories, which would create a “dangerous” precedent. (Boudine) The Blue Lake area was returned to the tribe for their spiritual practices as a “Tribal Wilderness,” mostly consistent with the legislation of the Wilderness Act. The Taos Pueblo advocated for this designation because it was in their view the most reliable means of protecting the Blue Lake from development and intrusion by non-tribal members. Today, only members of the Taos Pueblo or those that they directly accompany are permitted entry to the Blue Lake Area, and the area is not always referred to as a wilderness. (What is Blue Lake) The USFS sometimes partners with the Tribe to shut down connected parts of the adjacent USFS managed lands in order to ensure the Taos Pueblo’s sacred ceremonies remain undisturbed. (Taos News)

Mission Mountains: Protection of Tribal Land through the creation of a “Tribal Wilderness”

The Confederated Salish and Kootenai Tribes were the first Native American Tribe to set aside a portion of their Tribal Trust Lands as a formal “Tribal Wilderness.” In this case, the BIA had authority to manage tribal forest lands, and had made plans to log the Mission Mountains Area. The Tribe advocated for the Tribal Wilderness designation in order to prevent commercial forestry in the area and protect their sacred connection with the Mission Mountains. (Confederated Salish and Kootenai Tribes) The tribal law which created the designation for

the Tribal Wilderness mimicked the language of the Wilderness Act almost exactly, however it added language which clarified that indigenous land management practices were consistent with, and necessary for, the maintenance of a wilderness. (Confederated Salish and Kootenai Tribes) Today the Mission Mountains Tribal Wilderness is open to the public in a manner that is consistent with standard Wilderness Area protection, however visitors must acquire a permit from the tribe in order to access the Wilderness Area. Management of the area is led by the tribe, and includes cultural use, though the nature of that use is unspecified in public documents. Collaboration between the Tribe and the USFS has had a significant impact on the management of neighboring Forest Service Lands, Wilderness Areas, and Tribal lands. (Krahe, 1995)

InterTribal Sinkyone Wilderness Council: indigenous co-management and land back through reinstating indigenous land-management in “wilderness”

The InterTribal Sinkyone Wilderness Council (ISWC) is an intertribal coalition which “works in the coastal rainforest and marine environments of California’s North Coast to protect culturally important lands, waters, animals, trees, and plants within the traditional Sinkyone Tribal territory and beyond.” The ISWC is a cultural land trust established by and for the benefit of local Tribes. ISWC was formed after a lawsuit “Environmental Protection Information Center, Inc. (EPIC) v. Johnson (216 Cal.Rptr. 502,170 Cal.App.3d 604) resulted in the return of some 4000 acres of Sinkyone land from private ownership by the Georgia-Pacific Corporation to tribal control and stewardship. “Although the people and the land have suffered tremendous losses from genocide and ecocide, both the Tribes and the ecosystem are resilient and can recover. Both have been here for countless generations and are able to adapt and to heal. The Indian people believe that the Earth recalls how the ancestors once walked and lived here in a sacred manner. Memories of the people’s traditional songs, prayers, dances, and ceremonies are forever embedded in the Earth. As these ways are brought back to Sinkyone, the healing of the land and the people is being realized.” (Rosales, 2010) ISWC continues to protect land areas and return them to tribal stewardship for ecological management and restoration of the coastal region of California which are the ancestral homelands of ISWC’s member tribes. ISWC’s ongoing work has resulted in even more land being returned to tribal stewardship, cultural management, and ownership throughout the region represented by ISWC’s member Tribes. (The InterTribal Sinkyone Wilderness Council)

Key Takeaways from these Cases

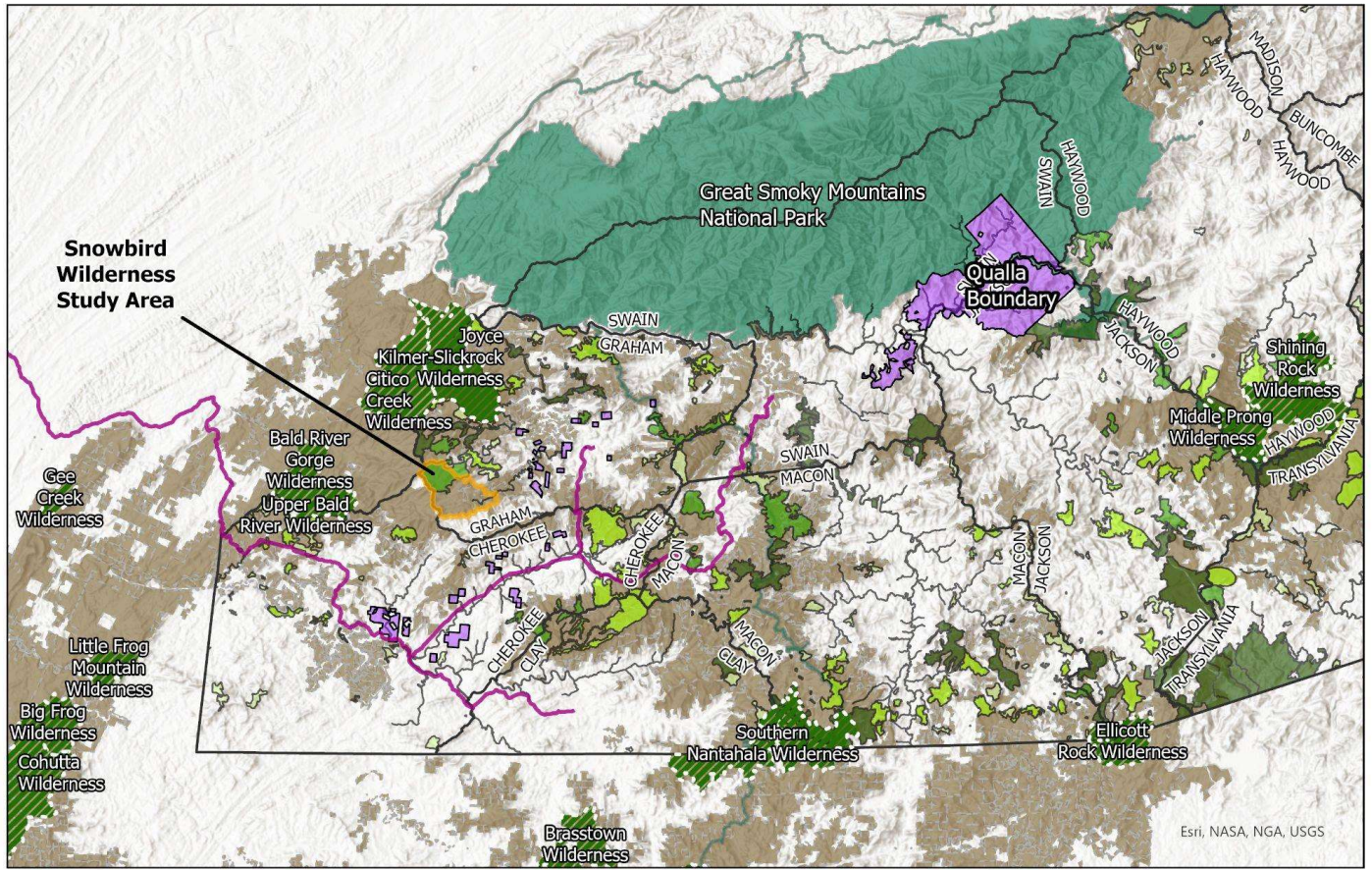
Here, we can only present a brief summary of the complex reality of each of these cases and their potential implications for EBCI. All three tribes leveraged the term wilderness in order to support their land-stewardship goals, but they did not advocate for designated Wilderness Areas on federal lands. In all three cases, the essential element which allowed for increased tribal influence over their ancestral lands was the recognition of each tribe's *unique* historic, cultural, and spiritual connection to the lands in question. In all three cases, Tribes now have a greater influence over significant portions of their ancestral territories, and are able to permit or exclude visitation from these lands as they see fit. Both the Blue Lake and the Mission Mountains Tribal Wilderness illustrate cases where Wilderness-style protections that exclude or limit visitation by outsiders without tribal consent can be a useful mechanism for protecting both tribal cultural relationships and their associated natural communities. The ISWC’s experience illustrates that intertribal coalitions can be effective in strengthening tribal land stewardship initiatives, and also illustrates the potential benefits of collaboration with non-tribal environmental groups in supporting the land-stewardship and land-back interests of tribes.

Conclusion

In the case of the Snowbird WSA, EBCI may likely be able to successfully advocate for a federal designation or land agreement which is more naturally consistent with Tribal interests than a designated Wilderness Area. One possible designation, the “Cultural Heritage Area” could be an option for codifying EBCI cultural management and presence onto the Snowbird WSA, however this designation has never been legally adopted by any land management agency in the US and would require the passage of a unique law in the US congress (see land management designation report for more detail). Forest Service Special Management Areas can be created at the agency level, and could potentially be an option for creating a tribal management agreement at a more local level. While the Snowbird WSA is now “Recommended Wilderness” per the USFS forest planning process, this does not mean that its designation as a Wilderness Area is inevitable. Any permanent change in designation of the Snowbird WSA will most likely be a result of public advocacy and campaigning, and ultimately congressional action. EBCI is extremely well positioned to advocate for a land-management designation and/or agreement which better acknowledges EBCI’s cultural connection to the site. The Snowbird WSA’s temporary designation status and the broad support of non-tribal parties present a unique opportunity for EBCI to advance its land stewardship interests over this area. Evidence suggests that the recognition of “unique” cultural, historic, and spiritual ties to the site will be of central importance in terms of the US federal government’s willingness to recognize EBCI’s land sovereignty rights. Ongoing community mapping efforts have the potential to provide documentation of EBCI’s unique cultural connections on this site and throughout the Snowbird Region as a whole.

In places where Wilderness Areas have already been designated, the path toward EBCI’s land-stewardship vision seems less clear, however, given the prevalence of Wilderness Areas in the region, reconciling Wilderness Area management with EBCI’s land-stewardship vision remains a significant opportunity. As EBCI advances their “land-forward” vision, it may be possible to further separate the management of Wilderness Areas in EBCI’s ancestral homelands from notions of the “unpeopled” wilderness. The land-stewardship efforts of the Taos Pueblo, The Confederated Salish and Kootenai Tribes, the InterTribal Sinkyone Wilderness Council, and many other tribes not listed here, illustrate that contemporary notions of wilderness can and should be informed by traditional indigenous land-management practices and sacred traditions. Commitments to recognize tribal sovereignty amongst federal land management agencies and wilderness advocacy groups also support this notion. A contemporary understanding of wilderness should include indigenous leadership, and EBCI is uniquely positioned to provide that leadership in western North Carolina and across its ancestral territories.

Figure 5: Snowbird Wilderness Study Area - Regional Land Context



0 5 10 20 Miles



Commissioned By:
The Elohi Dinigatiyi "Earth Keepers" Advisory Group
The Eastern Band of Cherokee Indians DNR
Compiled By:
Jamie Brackman, University of Michigan
Sources:
USGS, US Forest Service,
State of North Carolina,
Eastern Band of Cherokee Indians

- EBCI Lands
- Trail of Tears
- Wilderness Area
- Wilderness Study Area
- Forest Service Land
- National Park Land
- North Carolina Boundaries

- North Carolina Natural Heritage Program
- C1 (Exceptional) (35)
 - C2 (Very High) (23)
 - C3 (High) (71)
 - C4 (Moderate) (117)
 - C5 (General) (43)
 - C? (Unranked) (1)

Esri, NASA, NGA, USGS

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