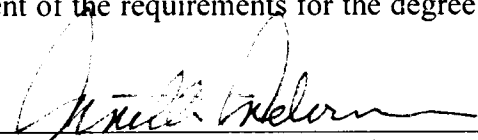
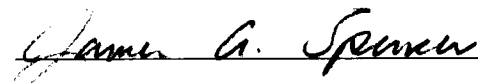


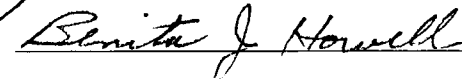
To the Graduate School:

I am submitting herewith a thesis written by Lisa Marie Valdez entitled "At the End of the Road to Nowhere: An Analysis of the North Shore Road Conflict In Swain County, North Carolina." I have examined the final copy of this thesis for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Science, with a major in Planning.


Annette Anderson, Major Professor

We have read this thesis
and recommend its acceptance:





Accepted for the Council:


Associate Vice Chancellor and
Dean of The Graduate School

At The End of the Road to Nowhere:
An Analysis of the North Shore Road Conflict In
Swain County, North Carolina

A Thesis
Presented for the
Master of Science in Planning Degree
The University of Tennessee, Knoxville

Lisa Marie Valdez
May 1998

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DEDICATION

As my first published work, this thesis is dedicated to my parents,
Richard and Sybil,
who have supported me emotionally, spiritually and financially
throughout my travels in life.

This is also dedicated to the memory of my grandfather,
James Schwaller,
who always asked that I be a practical environmentalist, and remember that sometimes
the people are more important than saving a few trees.

ACKNOWLEDGEMENTS

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Special thanks to Annette Hardigan of the National Park Service for her help at the library and archives of the Great Smoky Mountains National Park. Also, special thanks to people in Swain County - friends and friends of friends - who shared their thoughts, resources and memories with me before this even became a thesis.

Lastly, to those special friends who have pulled, and sometimes pushed me through this process – those who told me I could make it through, those who yelled at me to sit down and write, and those who stayed up with me to the late hours of the morning to finish. There are too many to mention. Two who cannot go unmentioned are my dear friends, Brian and Kathryn Buff. Without them, I may have never discovered the Road to Nowhere.

ABSTRACT

An agreement among Swain County, the State of North Carolina, the Department of the Interior and the Tennessee Valley Authority was signed in 1943 as part of the Fontana Dam project. In this contract, it was agreed that the Department of the Interior would build a road connecting Bryson City (NC) to the Fontana Dam area. This would be done after World War II ended and as soon as Congress appropriated funds. To date, only 6.53 miles have been completed. The National Park Service has no plans to complete the road due to environmental and economic concerns. This road is referred to as the North Shore Road, or the Road to Nowhere by local residents.

Through the review of historical literature, this research identifies the stakeholders in the North Shore Road conflict. It also identifies the major issues which have prevented resolution. An additional purpose of the research was to review the method of principled negotiation used for conflict resolution, and the applicability of this method to the North Shore Road conflict.

It was concluded from the research that the primary stakeholders are the Swain County residents, the Swain County government, and the National Park Service. Other stakeholders include environmental organizations, state legislators, and Swain County interest groups. Several key issues hindering resolution of the conflict were identified as being environmental, economic, and values conflicts, among others. Finally, it was concluded that the principled negotiation method could be applied in this controversy because of its various benefits and lesser constraints.

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Chapter 1

Introduction

Within the boundaries of Swain County are located the Smoky Mountain Park, the Cherokee Reservation, Nantahala Gorge, the Blue Ridge Parkway, Nantahala National Forest and Fontana Lake. It has four rivers, the Little Tennessee, the Nantahala, Tuckaseegee, and the Oconoluftee; the county should be the playground of the United States. - Tom Robbins, Heritage of Swain County

Bordered by the southeastern edge of the Great Smoky Mountains National Park and the North Carolina counties of Graham, Jackson, Haywood and Macon, Swain County is located in the Southern Appalachian region of western North Carolina. It is a rural county of approximately 11,000 people, with the nearest metropolitan city being Asheville, North Carolina, sixty-five miles away. Bryson City is the county seat and the only incorporated town in the county. The county is a place rich in history since its beginnings in March 1871 (Thomasson 1965; 5).

In most ways, Swain is characteristic of other counties in the Southern Appalachian region. It has little developable land due to its mountainous terrain. The majority of residents have lived in the area their entire lives, as did generations before them. Historically, it has depended on its vast supply of natural resources for survival. Economically, it is one of the poorest counties in the state of North Carolina; approximately 28 percent of the 11,000 people living in the county in 1990 lived in poverty (Economic Development Administration 1997). Uncharacteristic of other counties in the region is the large amount of land owned by the federal government.

Eighty-four percent of the land in the county is federally owned, distributed among the Cherokee Indian Reservation, Nantahala National Forest, Tennessee Valley Authority (TVA) developments, and the Great Smoky Mountains National Park (Swain County Genealogical and Historical Society 1988).

Statement of the Problem

In the early 1940s, the Tennessee Valley Authority began building Fontana Dam in Swain and Graham Counties. The predominate purpose of Fontana Dam was power generation to aid in the production of aluminum in nearby Alcoa, Tennessee, for the war effort; however, as with other dams of the TVA system, its purpose was also flood control. An agreement among Swain County, the state of North Carolina, the Department of the Interior, and the Tennessee Valley Authority was one of many things to result from the Fontana project. The agreement was intended to compensate for the flooding of NC Highway 288, which served many small communities of Swain County and connected Bryson City (NC) and Deals Gap (TN). Highway 288 would be flooded by the reservoir and the expense of relocating the poorly constructed road was considered prohibitively expensive. The agreement reached in July of 1943 stipulated that upon availability of funds, the National Park Service would build a new road connecting Bryson City to Fontana Dam (TVA 1950; 43-44). The National Park Service has built only six miles of the road; this six-mile spur ends just outside a tunnel constructed in 1970. The tunnel was the last effort made to build the road.

It is known locally as the "Road to Nowhere", but formally it is referred to as the North

Shore Road. The National Park Service has no plans to complete the road for environmental and economic reasons. Various efforts have been made in the recent past towards the settlement of this issue, but no settlement has been reached (Great Smoky Mountains National Park 1996). Early efforts at settlement included road alternatives proposed by the National Park Service, but more recently a cash settlement has been offered to the county.

The people of Swain County feel as though the federal government has reneged on a promise. A sign posted at the beginning of the road reads, "The Road to Nowhere, A Broken Promise". Local people gave up their land, families were relocated, and regular access by residents to family cemeteries is difficult. These factors have led to a feeling of bitterness towards the government. Locals believed their sacrifice was made for the war effort and that they would be compensated with the replacement of Highway 288 after the war ended. Over fifty years later and with an incomplete road, they feel as though their interests have been placed second to those of the national park and the environment. This feeling has sparked an anti-environment attitude among the locals because in their opinion, the interests of the people are not the priority of the government (Williams, 1995, 159). This issue has generated conflict both internally in the county and in the National Park Service, as well as between the county and the National Park Service.

The Department of the Interior underwent negotiations in the late 1970s with Swain County. Then Secretary of the Interior, Cecil Andrus, established a committee to find a solution to the problems surrounding the settlement of this issue (Hensley August 20,

1980). In December of 1980, a settlement was reached between the Department of the Interior and Swain County. Both parties agreed upon a federal package, which included a cash settlement of \$9.5 million. Unfortunately, the settlement never made its way through Congress. It was halted with the adjournment of the 96th Congress (Hensley Dec 14, 1980). Within the past decade, Senator Jesse Helms has proposed legislation several times which would require the federal government to complete the road along the north shore of Fontana Dam and pay \$16 million to Swain County. The National Park Service opposes the building of any road, but supports a cash settlement (Associated Press, September 29, 1996).

Methodology

The approach taken for this research is two-part; it is a historical review and a qualitative analysis of the process used in past settlement attempts of the North Shore Road issue. Methods included a review of historical documents pertaining to the issue in order to develop a full understanding of the controversy. Documents included local newspapers, National Park Service archive documents and relevant legislation.

A thorough review of the literature was done to understand values conflicts which exist between stakeholders. Also, a literature review on the method of principled negotiation was done. The positives and negatives of this application were included in an analysis of the method and its feasibility in this issue. Additionally, interviews were conducted as necessary with stakeholders in the settlement of the issue, specifically current and retired employees of the National Park Service, local county government officials,

representatives of local interested parties and residents, and North Carolina state representatives and senators.

Literature Review

There are vast amounts of historical documentation on the subject of the North Shore Road. Since the agreement was signed in 1943, considerable controversy about the building of the road has itself been building. This controversy has contributed the most to the body of literature pertaining to the North Shore Road. Newspaper articles have been devoted to the topic. Editorials have preached the wrongs of the federal government for not fulfilling the agreement and others have declared residents ignorant for not accepting cash settlements. Many groups have been involved in the controversy, and thereby added to the literature: the National Park Service, conservation groups, cemetery associations, local residents, and politicians. However, none of this literature fully documents the various factors and issues that have impacted the attempts at settlement of this conflict, nor does it evaluate the methodology used in past attempts at settlement.

In addition to this literature, it is also necessary to review literature on the method of principled negotiation. Previous research has shown that traditionally when public conflict arises in a community project, it is typically solved in one of two ways, the agency with the authority makes the decisions, sometimes involving little or no public input, or the two parties go to court (Madigan 1990; 10). Occasionally there is a third way, neglected by Madigan, and that is public opposition defeats the agency's proposal. In the case of the North Shore Road, the conflict has both generated public opposition

and gone to court.

The Harvard Negotiation Project of the early 1980s developed a specific method for negotiations which result in win-win situations, principled negotiation. It is a method of negotiation which differs from other methods in that it is neither “hard” nor “soft”, but both. In the book, *Getting to YES*, Roger Fisher and William Ury define “hard” negotiators as those who try to take the most extreme side and hold out the longest because they think they will fare better in the end. On the other end are “soft” negotiators who try to avoid personal conflict and give in easily so as to make everyone happy (1990; xviii). The book, *Getting to YES*, is the most prominent literature on the method of principled negotiation. It is reviewed for the purpose of this study and how it applies to the conflict at hand.

Also, literature is reviewed on issues of values conflicts. Specific to the North Shore Road issue are the conflicts which exist between the values of the local people of Swain County and the values of the National Park Service. The mission of the NPS to preserve and conserve the natural environment can often cause controversy when it opposes local traditional values. The values of all stakeholders must be understood before principled negotiation can be utilized to reach settlement.

Chapter 2

Chronology of the North Shore Road

We are building this dam to make the power to roll the aluminum to build the bombers to beat the bastards. –Caption of Poster at Fontana Dam Site

Preceding the North Shore Agreement of 1943, there were certain events which led to the need and development of Fontana Dam. As mentioned previously, the primary reasons for the dam were flood control and hydroelectric power generation. However, the latter reason was the driving force in building this dam at this site at this time. When negotiations began for the Fontana project, the United States had not yet entered World War II; even so, there was an increased demand for metals and chemicals to support defense efforts. This demand was only compounded when the United States joined Allied forces in December of 1941.

Events Preceding the Building of Fontana Dam

The Aluminum Company of America located in eastern Tennessee had long been in the industry which produced and manufactured the metals and chemicals needed for defense efforts. Before the Tennessee Valley Authority (TVA) was created in 1933, the Aluminum Company had already built three hydroelectric dams in the Tennessee Valley region. The purpose of these three dams – Cheoah, Calderwood, and Santeetlah – was to generate power for the company's production. The Aluminum Company was interested in an additional dam site on the Little Tennessee River, and began acquiring shoreline

property as early as 1917. The company had considered building two dams between Bryson City and Fontana, but later planned for one dam at the site where the dam now stands (TVA 1950; 1-2). Discussion of Fontana dam began to appear in the local paper, the *Bryson City Times*, in 1939. At this time, it was suggested that TVA was contemplating another dam project to be located on the Little Tennessee River; however, it was expected to be a somewhat complicated situation because of current Aluminum Company development (*Bryson City Times* Feb. 1939).

In fact, negotiations between TVA and the Aluminum Company had begun in 1935. Complications arose in negotiations because whichever party controlled Fontana in the end would also control the Aluminum Company dams downstream. Critics questioned whether a private company should have that kind of monopoly over the Little Tennessee River. The authorization required from Congress to build Fontana was denied in May of 1936; a month later negotiations between the two parties were put on hold (TVA 1950; 2,6).

By the early 1940s, a new urgency was apparent for electrical power because of the advancement of World War II. In April of 1941, the TVA began negotiations again with the Aluminum Company. The much needed aluminum supply could not be produced without an additional 395,000 kilowatts. Four months later, an agreement was signed between the two parties which would become effective as soon as the dam was put into operation. Interestingly enough, this agreement was considered a milestone between government and business because it was the first time in United States history that “a

privately owned generating system was to be regulated by a public agency on the basis of an agreement arrived at by *negotiation* [emphasis added].” This agreement, commonly referred to as the Fontana Agreement, gave the TVA control of the storage and release of the reservoir, and the Aluminum Company would receive allotments of power. This agreement had several key points (TVA 1950; 7):

- All of the land acquired by the Aluminum Company for the building of Fontana dam was transferred to the TVA. There were approximately 400 tracts, almost 15,000 acres.
- The TVA did not pay any cash to the Aluminum Company.
- The TVA was given control of the storage and release of water at all Aluminum Company plants in the Little Tennessee River basin.
- The Aluminum Company would be furnished with 11,000 kilowatts of primary power.

With the signing of this agreement, the Fontana project continued. Due to the circumstance of war and the crucial need for defense production, the bill appropriating funds passed through the Congress with no controversy and little testimony. The first appropriation by Congress was made on December 17, 1941 (TVA 1950; 9-10). As part of the TVA’s third wartime emergency program, construction began January 1, 1942. It was completed January 20, 1945, at a total cost of \$70,420,688.48 (TVA 1950; 13,47).

While the building of Fontana dam was important to defense, it was also important for flood control. At the time it was built, the Little Tennessee River drained an area “experiencing the heaviest rainfall not only in the Tennessee Valley but in the U.S. –

except for the Pacific Northwest” (TVA 1950; 23). The site provided an area with the storage capacity to control the runoff from the Nantahala and Tuckaseegee tributaries. It was the only site in the valley where it was physically, as well as economically, possible to build such a dam (TVA 1950; 17,19). The Bryson City area experienced the worst flood in decades in September of 1940; the Tuckaseegee River reached its highest stage ever remembered by residents at the time, causing extensive damage to the western North Carolina region (*Bryson City Times* Sept. 1940). For the purpose of flood control, Fontana dam was a necessity for the region where annual rainfall reaches 75 to 80 inches a year (TVA 1996).

Flooding of NC Highway 288

As would be expected with a construction project of this magnitude, problems arose. The majority of the problems related to the acquisition of land and the relocation of roads and railways. Most of these difficult problems were dealt with in a timely fashion; however, the problem of replacing Highway 288 still is unresolved.

North Carolina State Highway 288 connected Bryson City with Deals Gap (TN). It stretched across the land north of the Little Tennessee River between the river and the boundary of the national park. The bulk of this land was privately owned. The families that occupied this area were served by Highway 288. This highway was the only safe method of transportation out of this area of many of the isolated coves. Built in the early 1920s at a cost of \$600,000 from bonds, it was a crooked, narrow, poorly surfaced road that fell below the reservoir line. It would be flooded when the reservoir was filled. To

replace it with an equivalent road, the cost was estimated to be approximately \$1,200,000. According to the Tennessee Valley Authority, "In August [of] 1940 Swain County assumed the then outstanding principal of \$459,000, together with accrued interest of \$235,000" (1950;43). The North Shore Road Agreement was to be the solution to this difficult problem.

The North Shore Road Agreement of 1943¹

On July 30, 1943, the North Shore Road Agreement was signed. It is an agreement among four parties, the State of North Carolina, the Department of the Interior, the Tennessee Valley Authority, and Swain County, North Carolina. Even though it is now commonly referred to as the North Shore Road Agreement, the agreement itself was a contract for more than simply the building of a road to replace Highway 288. Perhaps more importantly, it was a contract that transferred an additional 44,400 acres of land to the National Park Service expanding the Great Smoky Mountains National Park. There were three main points of the agreement based on several circumstances.

The first main point of the agreement was to pay Swain County \$400,000 which would be put into a trust fund for the county. This money was to be used exclusively for the payment of the bonds assumed by the county for the flooded highway. The Tennessee Valley Authority (referred to as the *Authority* in the agreement) was to pay the county this amount upon execution of the agreement.

¹ The following section is a summary of the 1943 Agreement; the text of the agreement is included in the Appendix.

The second main point of the agreement was for the Authority to acquire an area of land, said to be 44,400 acres more or less, belonging to Swain County. This area is described in detail in the agreement, but simply, it is the land between the southern border of the Great Smoky Mountain National Park, north of the Little Tennessee River, between Deals Gap and Bryson City. An area within this land was excluded until six months following World War II. This area was approximately 2,100 acres owned by the North Carolina Exploration Company. It was excluded from the initial acquisition because of the importance in mining its copper to aid the war effort. The 44,400 acres was to be immediately turned over to the National Park Service for inclusion into the Great Smoky Mountain National Park. With this, the boundary of the national park was extended to the Fontana reservoir.

The third main point, and the most important for the purpose of this study, is the clause which obligated the Department of the Interior to build a road between Fontana and Bryson City along the north shore of the Fontana Reservoir (Figure 1). Construction standards for the road required it be built to "a minimum standard finished throughout its length with a dustless surface not less than twenty (20) feet in width" (1943). The construction of this road was contingent upon the appropriation of funding from Congress. The agreement stated that the failure of Congress to appropriate funds would not be considered a breach or violation of the agreement by the Interior Department. Upon completion of the road, the National Park Service would have sole discretion over use of the road, mainly barring commercial traffic.

The agreement also required the state of North Carolina to build a spur of the road from U.S. Highway 19 in Bryson City to a point on the eastern boundary of the national park as designated by the NPS. Once the Department of the Interior began construction of the park road described above, the state was to begin acquiring easements and rights of way no less than two hundred feet in width outside the corporate city limits.

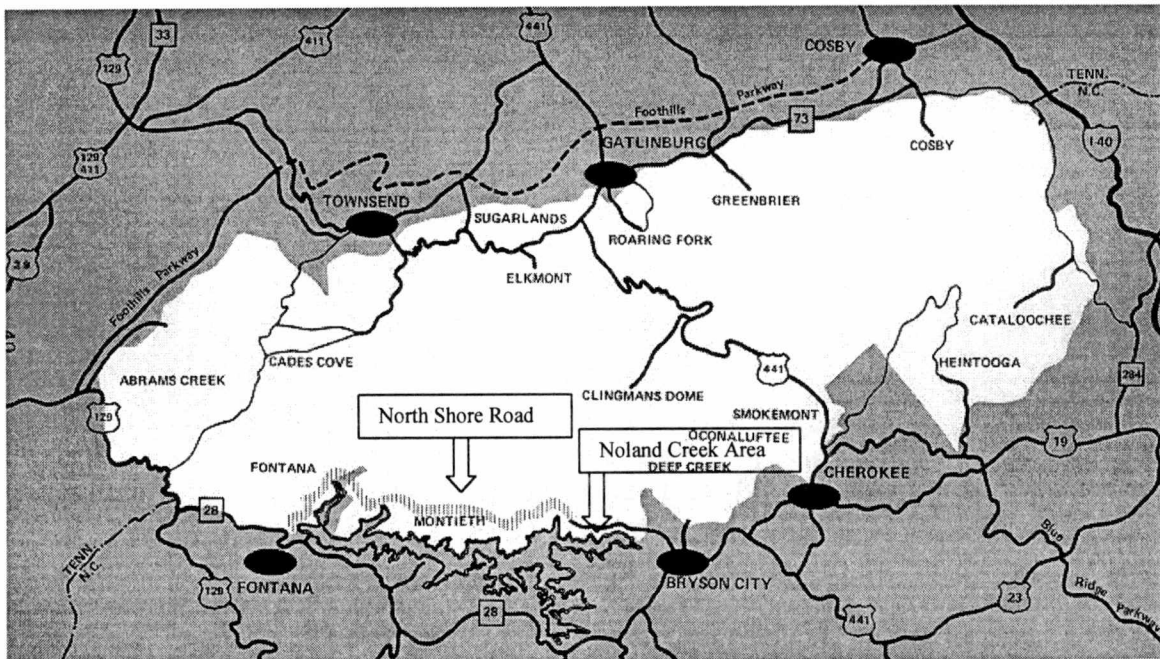


Figure 1 The North Shore Road (National Park Service 1974)

Additionally, the agreement states that this park road would be an important link in plans for an “around the Park” road. The original master plan for the development of the park called for a “circle around the Smokies”, and this park road linking Fontana and Bryson City would be a section of that road. The Foothills Parkway on the Tennessee side of the park was also to be an important link in this road system.

Timeline of Events, 1943 to Present

Any and all funding for the North Shore Road was dependent on the ending of World War II. By 1947, the Tennessee Valley Authority had paid Swain County the \$400,000 required by the 1943 agreement to pay off the bonds for Highway 288. They had also purchased the area of 44,400 acres and transferred the land to the National Park Service. Also by 1947, the boundary of the Great Smoky Mountain National Park had been extended to include this land (National Park Service 1986). In 1948, the NPS initiated the construction of the North Shore Road at the western end. A 0.9 mile spur was built from Fontana dam at a cost of \$295,538 (U.S. Department of the Interior 1971; 57).

As required by the agreement, the state of North Carolina began building the spur of road from Bryson City to the park boundary in 1957. The construction of this road section would fulfill the state's obligation in the 1943 agreement. In 1959, the state completed this portion of the road. Because of this, state and county officials strongly urged the NPS to complete the North Shore Road (U.S. Department of the Interior 1971; 57). In 1957, it was agreed in a meeting between the NPS, the county and state that construction would be scheduled as early as 1960 for the portion of the road to Noland Creek.

In February of 1960, the Swain County Board of Commissioners passed a resolution which conveyed their frustration with the North Shore Road issue. The resolution stated that North Carolina had met its obligation in building the road to the park boundary, but until the NPS fulfilled its obligation and continued the road through to Fontana dam, the spur stood as a "tragic waste of public money" (1960). The resolution also stated the

commissioners' discontent with the use of appropriated funds by the National Park Service. The resolution suggested that the NPS had diverted funds appropriated by Congress for the construction of the road to other areas of the park, and had no intentions of ever completing the promised road (Swain County Board of Commissioners 1960).

A similar document prepared by the Board of Commissioners of Swain County somewhere in the mid to late 1960s (exact date unknown) made the same accusations toward the NPS. This document was a brief prepared for the Honorable Luther Hodges, the governor of North Carolina. This document was written to urge the governor to request the completion of the proposed road (Swain County 196_).

At the same time, opposition was developing from conservation groups. Concern was growing for the possible intrusion into the wilderness of the national park. Additionally, the state had improved Highway 28, which follows the south shore of Fontana reservoir. With this improved highway, conservationists and opponents of the road saw little need in a road on the north shore of the reservoir. On April 26, 1960, the Interior Department appealed to the governor of North Carolina. In light of this improved highway and circumstances at hand, what did the state desire in regard to the 1943 agreement? The governor responded on September 1, 1960; the Interior Department should honor the obligation and commitment it had to Swain County (U.S. Department of the Interior 1971; 57).

In August of 1963, the first section of road on the eastern side of the park was completed.

This section was 2.5 miles long and began at the park boundary where the state highway had ended. Two years later, the second section was completed; it was 2.1 miles long. The final section constructed was an additional 1.6 miles and a 1200-foot tunnel which was completed in September 1970 (U.S. Department of the Interior 1971; 57). This was the last construction of any part of the North Shore Road.

In 1965, an amendment to the 1943 agreement was made. The amendment would substitute a transmountain road for the North Shore Road by building a road which would connect Bryson City and Townsend, Tennessee. Both the state and the county approved this amendment, but the National Park Service reserved its decision until after Wilderness Act hearings in 1964 through 1966 (U.S. Department of the Interior 1971; 58). The transmountain road was one of many road solutions proposed by the Interior Department. Secretary of the Interior Udall announced on December 10, 1967, that he did not approve the transmountain road. At the same time, he directed the NPS to continue construction on the North Shore Road to Montieth Branch. Also, he further directed for the NPS to look for a compromise in settling their legal obligation to the county and state. Months later, congressional delegations from North Carolina and Tennessee requested that Secretary Udall reconsider his decision to abandon the transmountain road amendment, but later that year the Secretary reconfirmed his decision (U.S. Department of the Interior 1971; 58).

A document published in the early 1970s outlined possible solutions for settlement of the North Shore Road issue. The document, titled Transportation Concepts, was published

by the National Park Service in response to a request by the former Secretary of the Interior Hickel. He requested that the NPS develop and analyze solutions to the building of the road as required by the 1943 agreement. The transmountain road, already denied by Secretary Udall, was one of eleven solutions. The following are the other ten given in the document:

1. The North Shore Road – Comply with the 1943 agreement by completing the remainder of the road. At this point in time, 5.6 miles had been completed and the estimated cost of completion was \$39,000,000.
2. Blue Ridge Parkway Extension – It was proposed in the summer of 1968 to extend the Blue Ridge Parkway from its ending point at Ravensford to Bryson City. The estimated cost at this time was \$18,000,000, and the majority of the road would lie within the border of the national park. Governor Moore of North Carolina presented this solution. The Interior Department would only accept this solution if it totally relinquished the Department of any and all obligations to build the North Shore Road; however, this was not acceptable to the county, nor the state.
3. Foothills Parkway Extension (within Park) – Extend the Foothills Parkway inside the park boundary from its western endpoint at Chilhowee to a Blue Ridge Parkway extension near Bryson City. The estimated cost was \$69,000,000.
4. Foothills Parkway Extension (outside Park) – This solution was proposed by conservation organizations. The road would be constructed entirely outside the park boundary except for the point at which it would cross over the Fontana reservoir to connect with the already constructed portion of the North Shore Road. The cost was an estimated \$62,500,000.

5. Improvement of Existing Cross-Mountain Road (Rt 441) – Improve Newfound Gap Road by adding two additional lanes. However, this solution was noted to potentially cause severe damage to the natural environment already bisected by this road.
6. Relinquish Title to 44,000 acres – It was considered to return the lands which were acquired as part of the 1943 agreement to the TVA or the original owners, but only if this would release the Interior Department of all its obligations from the agreement. In September 1970, the Secretary's Advisory Board on National Parks, Historic Sites, Buildings and Monuments reported that in their opinion, this was the only alternative to honoring the 1943 agreement.
7. Construction of North Carolina Route 28 – Some parties contend that the construction and improvement of NC 28 released the Department of the Interior from its obligation because it provided access to Fontana dam from Bryson City. However, this argument was unacceptable to the state and county.
8. Montieth Developed Area – As mentioned previously, Secretary Udall denied the transmountain road proposal on December 10, 1967. He then directed the NPS to continue construction of the North Shore Road toward Montieth Branch. The North Shore Road would end at Montieth Branch where a marina and other recreational facilities would be built. The Interior Department suggested this would relieve them of their obligations in the 1943 agreement.
9. Bryson City Intercept Center – Another solution suggested by conservation groups, as well as other interested parties, was to build a visitor center at Bryson City. From here, guided tours from the NPS would be provided up into the Montieth Branch area and Deep Creek. Additionally, the city would be promoted as a "take off point" to

the Great Smoky Mountain National Park. This solution had several benefits according to the NPS. First, Bryson City's poor economic situation would improve, while at the same time provide an economical way for the national park to meet its obligations. Secondly, it would prevent the building of more interior roads in the park. Lastly, it would justify the segment of the North Shore Road already completed by using it for visitors to the Montieth area.

10. Beltway Using Existing Roads – As briefly mentioned earlier, the original intent of the North Shore Road was that it would be an important link in an original plan to create a "circle around the Smokies." The solution of placing a beltway around the park using existing roads would provide this circle, but do so without placing roads within the park boundary. Several points were made with this solution in order to make it feasible; federal money would be used to upgrade the state and federal roads, and this money would likely be money appropriated for the building of the North Shore Road. These roads would then be designated as scenic highways. The most controversial point of this solution was the phasing out of private vehicles on Highway 441/Newfound Gap. Part of the goal for phasing out cars on 441 was to begin to promote visits to the communities and to the park, and not simply visits through the park via 441. This solution was supported by the Tennessee State Legislature in May of 1969 by resolution. This solution was also suggested as a means to release the Interior Department from its obligations in the 1943 agreement.

Many of these solutions were suggested in combination with each other. For instance, the Foothills Parkway Extension in combination with the Montieth Branch improvements would constitute a more efficient use of funds because it would provide a destination

point at the end of the parkway extension (U.S. Dept of the Interior 1971; 12-32).

In the early 1970s, geologic studies revealed that further construction of the North Shore Road would result in unstable conditions and cause environmental damage to the park. It was also discovered that there were Anakeesta rock formations that would be cut and exposed by road construction. Anakeesta rock, when exposed, produces sulfuric acid because of its iron pyrite content; this would contaminate nearby streams and endanger wildlife (National Park Service 1982; 125). In 1973, a master plan for the park was initiated. This plan included National Environmental Policy Act requirements (National Park Service 1986).

A three-year process began in 1978 by Secretary of the Interior Andrus. He established a committee to work together to evaluate options for the resolution of the problems arising from the 1943 agreement. The committee included representatives from the Interior Department, the state of North Carolina, and Swain County. David Felmet, chairman of the North Carolina Park, Parkway, and Forest Development Council, was chosen to head this committee (National Park Service 1986). It was during this three-year period, and through the work of this committee, that the issue of the North Shore Road came closest to being settled. According to newspaper articles, in December of 1980 an amendment attached to a spending bill passed the Senate; the amendment called for a \$9.5 million cash settlement to be made to Swain and was designed to implement the settlement reached by Andrus's committee. Unfortunately, in the last days of the congressional session the House requested that the Senate rescind the amendment, which it did. With

this, the amendment died because the representative who had worked so hard to get it passed had not been reelected (Hensley December 14, 1980).

In 1983, Helen Vance, along with twenty-six others, filed suit against the Tennessee Valley Authority, the Department of the Interior, the state of North Carolina and Swain County. The suit was filed in order to gain road access to their family cemeteries which were located in the 44,400 acres added to the national park after World War II (known as the Fontana Addition). Most of the people filing suit were members of the North Shore Cemetery Association (Ayers May 27, 1983). In November later that year, the suit was dismissed on the basis that the twenty-six citizens had "no greater claim to a road than any other citizens of the county and state under the 1943 agreement" (Ayers November 16, 1983).

Throughout the 1980s and 1990s there have been at least five bills before the Congress for settlement of this issue. Many have involved wilderness designation, and all have proposed a cash settlement to Swain County. Senator Jesse Helms has actively pursued the passing of his bill at least four times in the past decade. His bill would require a cash settlement to the county as well as the road promised in the original agreement.

Current Status of the North Shore Road

According to the General Management Plan, 6.53 miles of the North Shore have been completed to date. Almost five and a half miles of this road extend from the park boundary to just outside the tunnel completed in 1970 (1982; 126). The most recent

briefing statement from the national park repeats the current status of the road, as well as the position of the National Park Service: to not build the road for environmental and economic reasons. The Park Service supports a cash settlement in lieu of the road. As of April 1997, the Clinton Administration had not responded to this issue (National Park Service 1997).

Chapter 3

Major Stakeholders in the Issue

For us poor mountain people they don't have a care but must a home for the wolf, lion and the bear... When we reach the portles of glory so fair the Wolf cannot enter neather the lion or bear... And no Park Commissioner will ever dar to desturbe or molest or take our home from us there. - Louisa Walker, the poet of the Walker Sisters of Little Greenbriar

The original stakeholders in this controversy were involved far before it ever became a controversy. The 1943 Agreement to build the North Shore Road was an agreement among the State of North Carolina, Swain County, the Department of the Interior and the Tennessee Valley Authority. In all practical senses, two of the original stakeholders are removed from the controversy - the Tennessee Valley Authority and the State of North Carolina.

The TVA fulfilled its obligation to the agreement when the north shore land was turned over to the Department of the Interior and included in the Great Smoky Mountain National Park. The 44,000 acre tract north of the Fontana reservoir, which was acquired by TVA for the building of the dam, is commonly referred to as the north shore land. The State of North Carolina fulfilled its obligation after completion of the road spur, which connects Bryson City to the park boundary, in the mid 1950s. Since that time, the State, in respect to its governors, has taken a less than active role in pushing the federal government to complete the North Shore Road. Governor Jim Hunt in the late 1970s was the only exception. However, both federal and state legislators have taken an active role

since the 1970s in proposing legislation to Congress for settlement of this conflict.

Today, more than the two remaining stakeholders have emerged. The people of Swain County have emerged as major stakeholders, represented as residents and interest groups. The county government, represented by the County Board of Commissioners, is also a major stakeholder in the resolution of the conflict. Since the construction of the road began, environmental organizations have played a role as supporters of the National Park Service and its stance against the completion of the road. State and federal legislators entered the controversy when it became clear in the 1970s that the road would not be completed. It is clear that there are many players in the North Shore Road conflict; however, the ones that stand to gain or lose the most are the residents and governmental units of the county and the National Park Service.

Swain County Residents

In the county, there are several schools of thought on the Road to Nowhere, as they refer to it. Some residents believe it should be completed, and some believe it will never be completed and a cash settlement should be taken when offered again. No matter what residents think about the actual completion of the road, it is clear that they agree on one thing, that the federal government has broken a contract with the people of Swain County. As of this writing, the residents have waited 53 years for a road which was promised as soon as funds were appropriated after World War II. For a people who believe more devoutly than most that they live in the greatest country on earth, it is difficult for them to believe their government would renege on a promise they thought

was made in good faith. These thoughts of the community were made clear through various newspaper editorials and letters throughout the past decades.

The most vocal advocates have been the editors of the *Smoky Mountain Times* (Bryson City, NC). In May of 1962, the newspaper published an editorial that accused the federal government of using every "scheme" possible to not complete the road and fulfill its contract. It also stated how the people's faith and confidence in their government and National Park Service had been undermined. The editors were quite strong in their convictions, stating that it would be "a cold day in h... before Swain signs another agreement with the Department of the Interior" (*Smoky Mountain Times* May 31, 1962).

Almost twenty years later, a resident of Bryson City, Nathaniel Macon, Jr., wrote a letter to the editor in the *Asheville Citizen Times*. In the letter, he stated that the people of Swain County had been "burned for going on 40 years", and that he was "ready to go for another 40 if that is what it takes to right a small portion of the wrongs which have been done to the people of the county" (Macon December 16, 1980). His remarks were in response to an impending cash settlement to be made to the county in lieu of the road and comments by the *Asheville Citizen Times* that the county would be unwise to decline the offer [The offer was never approved by Congress].

In another letter to the editor in the *Maryville Daily Times*, Mr. and Mrs. Henry Posey, who have relatives in cemeteries in the north shore area, reiterated the basic principle that the government should fulfill the contract it signed years ago. They also reiterated the

feelings the people have towards the federal government, that they were taught to honor and respect their government (Posey October 19,1983).

In her research on the folklife of the region, Michael Ann Williams suggests further reasons for the feelings of the residents. She suggests in her book, *Great Smoky Mountains Folklife* (1995), the people of the region are bitter about their removal from the north shore region for various reasons, and this bitterness is only compounded by the removal of residents for the national park ten years earlier. These people gave up their land for the federal government during wartime. They were provided assistance in relocation, far more than residents were for the Great Smoky Mountains National Park. However, they were not able to lease their land back from the government. Also, it was difficult for them to return to the area for homecomings because the TVA flooded portions of Highway 288. The 1943 Agreement promising a road along the north shore of the Fontana reservoir was the only comfort given to them. She suggests the Road to Nowhere has become a "symbol for some former residents of the bad faith of the government" (Williams 1995; 158). It is in all likeliness that the road will never be completed, mainly for environmental reasons. For this reason, residents feel their needs have been placed second to the environment and preservation. Their bitterness has increased because the original sacrifice was not made for the environment, but for the good of the nation during wartime (Williams 1995; 159).

Swain County Interest Groups

Two groups have emerged from this conflict, both of which are proponents of the road,

but for different reasons - the North Shore Cemetery Association and the Citizens Against Wilderness. The North Shore Cemetery Association was formed between 1976 and 1978 with the first homecoming to the Hazel Creek cemeteries. It is an organization made up of former residents of the Hazel Creek community and other communities from the north shore area, as well as their relatives. Their interests are historical as well as lobbying to complete the North Shore Road in order to have access to family cemeteries (Smith 1995; 158). The organization has had the backing of Senator Jesse Helms in Congress for the past two decades. Since its formation, the president/spokesperson for the organization has been Helen Vance, who was a small child when the TVA acquired her parents' land for the dam site.

As mentioned in the previous chapter, in May of 1983, twenty-six people filed suit against the Tennessee Valley Authority, the U.S. Department of the Interior, Interior Secretary James Watt, Swain County and the state of North Carolina. The majority of the plaintiffs were members of the North Shore Cemetery Association. The suit listed many complaints, but primarily was filed to gain access to family cemeteries located in the north shore land acquired by the TVA in 1943. The suit accused the federal government of "barring reasonable access" to the cemeteries, and also that they had been "denied the ability to worship because maintenance of cemeteries and cemetery decorations are a part of their religious doctrine" (Ayers May 27, 1983).

Later that year, the suit was dismissed by U.S. District Court Judge Woodrow W. Jones on the basis that this group had no greater claim to the road than any other citizen of the

county or state did. Part of the judge's ruling was based on information from the original relocation of families by the TVA in the Fontana project. According to the judge's opinion, the nearest surviving relatives (many of them who were named as plaintiffs in the suit) were given the option by the TVA to have their relatives' remains relocated from the cemeteries. The judge made reference to agreements signed by surviving relatives in the 1940s in which it was made clear that the TVA would provide no access if relocation was not the option chosen. However, the group and their attorney, Russell McLean III, disagreed and filed for appeal in the 4th U.S. Circuit Court of Appeals in Richmond, Virginia. The appeal was later denied, and the suit dismissed (Ayers Nov. 16, 1983).

The second organization, the Citizens Against Wilderness was formed in the early 1980s. The main interest of this group has been to fight the proposed wilderness designation of the Great Smoky Mountains National Park. The majority of the group members are Swain County residents, and according to the group's president, there are thousands of members. The formation of the group was the direct result of the wilderness bill by Jamie Clarke, Representative from Tennessee. His bill was among the strictest of the wilderness bills in the eyes of this group. They launched a campaign against the proposal through mass mailings and phone calls. Many members have testified before Congress on behalf of the group (Hogue 1998). Because of the possible impact wilderness designation could have on the completion of the Road to Nowhere, the road became another issue the group became active in.

It should be made clear that the members of this group are not against the environment

and the beauty of the Smokies. What they are against is the increased federal control over land in their area. This organization sees the wilderness designation of the Great Smoky Mountain National Park as a threat to Swain County (Hogue 1998). The impact of designated wilderness on the issue is further discussed in the next chapter.

Swain County Government

The Swain County Board of Commissioners has consistently pushed for the resolution of this issue over the past several decades. Early in the controversy, they urged the federal government to complete the North Shore Road. As stated in the previous chapter, the Board adopted a resolution in 1960 expressing their discontent with the handling of the situation by the federal government. By the late 1970s, the Board had changed its stance in search of a settlement that would bring about the fairest resolution for the county, not necessarily including a completed road.

The Board worked closely towards a resolution with Secretary of Interior Andrus beginning in 1978. The settlement package which resulted from that deal proposed improvements to the Deep Creek area of the national park, which is within miles of Bryson City. Proposed improvements included a 1.8 mile paved road, a new bridge and parking area, as well as 1.5 miles of hiking trails. The package also included the construction of a visitor's center at Deep Creek. Additionally, it included the development of a picnic area at Laurel Branch where the North Shore Road terminates. The area would include picnic shelters, a comfort station, and a trail system. The cash settlement amount finally agreed upon by both the Interior Department and the Board of

Commissioners was \$9.5 million. The settlement did not offer completion of the road (Hensley Sept. 5 1980). This settlement package was the closest that negotiation ever came to resolving the issue; unfortunately, it failed when the 96th Congress convened without passing it through both Houses.

Since that time, Boards of Commissioners of Swain County have continued to support a cash settlement in lieu of the road; however, interest groups pushing for the road, namely the North Shore Cemetery Association and the Citizens Against Wilderness, have had the support of Senator Jesse Helms. The support of long time Senator Helms carries quite a bit of weight in today's Congress. He has continually proposed a bill to the Congress to settle the issue by completing the road and making a cash payment to the county. Now, the current Board would like to see a settlement that is fair to all residents. They would like all parties to work together for a fair settlement, and according to the current Chairman, Bill Lewis, a little over half the residents want the road completed while the rest would take a cash payment to settle the issue (Lewis 1998).

National Park Service

As the unit of the Department of the Interior that is responsible for the Great Smoky Mountains National Park, the National Park Service is a major stakeholder in this issue. If the road is completed, the park is immediately responsible for its maintenance. It is responsible for providing access to the family cemeteries since the land lies within the park boundaries. Next to the residents and the county as a whole, it has the most to gain or lose in the settlement of this issue.

Per the General Management Plan, the NPS has no plans to complete the road. Its environmental costs are too great. The current position of the NPS is the support of a cash settlement in lieu of the road (National Park Service 1997).

Environmental Organizations

Three environmental organizations have opposed this issue in various degrees. From the beginning, the Wilderness Society has been actively involved in pursuing the designation of wilderness for the entire park. It is a national environmental organization of over 50,000 members. Since the park was proposed as wilderness, the society has lobbied for the wilderness inclusion of at least 467,000 acres. The Society vehemently opposed the building of a transmountain road which would cut the park in two, any road in the Fontana area, and the extension of the Blue Ridge Parkway. The Society has been actively against the North Shore Road since construction began. It formally stated their position during the scoping process of the environmental impact statement for the *General Management Plan* (National Park Service 1982).

Local chapters of the Sierra Club have also been involved. During the same scoping process mentioned above, the Joseph LeConte Chapter of the Sierra Club expressed its same concern over further road construction into the park. It opposed the building of the North Shore Road because they "are all extremely destructive roads which would slice into vast sections of wilderness... [and would] provide easy access to those wild areas and further destroy them by overcrowding" (National Park Service 1982). During the wilderness hearings in 1984, regional director of the Sierra Club, Ted Snyder, stated that

his group realized a moral obligation to the people of Swain County in the completion of the North Shore Road, but not a legal obligation (Smoky Mountain Times March 22, 1984).

Lastly, the National Parks & Conservation Association also stated the same opinion during the same scoping process. It supported the same acreage to be included in the national park, and also felt strongly that the North Shore Road should not be continued; however, it recommended other means of settling the dispute. The Association felt no financial obligation should be placed on the National Park Service. Also, it endorsed the completion of the Foothills Parkway and its incorporation into the Circle-the-Smokies system (National Park Service 1982).

All three environmental organizations took virtually the same stance. Because they felt the entire 467,000 acre tract should be included as designated wilderness, this meant they also felt there should be no road construction allowed within the park boundaries. Therefore, these organizations have pursued the issue of designated wilderness for a large portion of the Great Smoky Mountain National Park, and fought hard against the completion of the North Shore Road.

Legislators

There have been many congressional legislators to come and go over the 53 years of this controversy. By far, the two that have had the most influence and the passionate are Representative Lamar Gudger and Senator Jesse Helms. Oddly enough, they were on

opposite sides of the political spectrum, Gudger being Democrat and Helms being Republican. They are stakeholders because their constituents are stakeholders.

In regards to the North Shore Road issue, Representative Gudger first sought the attention of Secretary of the Interior Andrus in 1978. It was then that he urged the Secretary to visit the site in Swain County. The governor of North Carolina at the time of Gudger's term, Jim Hunt, commended him for his "tireless efforts on behalf of his constituents" (Hensley Dec. 5, 1980). He was a key player in the establishment of the committee in 1978, which Andrus appointed to find an equitable settlement to resolve the 1943 Agreement. An interesting question to pose is whether the proposed settlement would have been resolved had Gudger been reelected. The answer will remain unknown, but not since has any other settlement been agreed upon by so many people.

The second legislator who has been most passionate is Senator Jesse Helms. The North Shore Cemetery Association and the Citizens Against Wilderness regard him as their champion in the fight to complete their Road to Nowhere. He has aggressively pushed for the passing of legislation which would provide Swain County with a \$16 million cash settlement in addition to the road originally promised in 1943, to no avail. He has not given up, but has promised to fight for the interests of his constituents.

Chapter 4

Major Issues and Values Conflicts Preventing Resolution

Make no mistake about it, the radical environmentalists will not be satisfied until all of western North Carolina is locked up and the key is thrown away... I made a commitment to the people of western North Carolina years ago. I promised to fight for their interest. If I lose, the Government will lose the respect and confidence of thousands of North Carolinians. - Senator Jesse Helms, Congressional Record January 26, 1993

As described in the previous chapter, the North Shore Road issue is a conflict among different groups of people – Swain County residents, the federal government, the National Park Service, environmental groups, as well as state and local governments. On the surface, all of these people can be divided into two camps – those who want the road and those who do not. While it is very simple to put it into these terms, the views behind these two camps are by no means simple. There are those who want the road because it was a promise made by the federal government to local people as part of a mutual agreement. On the other hand, there are those who feel the obligation of the government to build a road linking Bryson City and Fontana has been met. There are those that feel the road would bring economic prosperity to the impoverished Swain County, and there are those who believe the cost of building the promised road is extreme and unnecessary. The conflict is in no way simple; if it were, it would have been resolved decades ago. It is complex, and the issues that have prevented its resolution are complex. There are economic considerations, environmental concerns and conflicts between local values and conservation values.

Economic Reasons

The 1943 Agreement promised the building of the North Shore Road after World War II ended and as soon as Congress appropriated funds. There are two sides to the economic issue preventing resolution. First is the great expense of constructing a road through the wilderness. The most recent estimation for the construction of this road is \$136 million (National Park Service 1997). However, the second is the argument by many of the residents that this road will bring economic prosperity to their rural county. For this reason, they will continue to fight for a settlement which is not simply a payment of cash in lieu of the road, but also a road as originally agreed upon.

The National Park Service cites the *General Management Plan* of the Great Smoky Mountains National Park in its periodic briefing statements to the public. It cites the plan as giving two reasons for not completing the road, economic and environmental. However, the *General Management Plan* makes no mention of economic reasons for the incomplete state of the North Shore Road other than the lack of appropriated funds. In a letter from park superintendent, Boyd Evison (1975-1978), the amount of funds appropriated for the construction of the road between 1948 and 1975 was given as \$6,189,300 (Evison August 11, 1975). No later appropriations have been made and no further construction has taken place since that time. In related documents, the final impact statement for the plan states that construction of the road would increase costs to the National Park Service not only through construction, but also for maintenance and upkeep of the road. It also states that the construction of the road would "provide a short

term stimulus to business in Cherokee and Swain counties” (National Park Service 1982).

It has been a long-standing argument of those in favor of the road that its construction would bring economic prosperity to Swain County. In a brief prepared by the Swain County Board of Commissioners, it is stated that the construction of the road would, “In some measure allow Swain County to recover some of its economy sustained by its loss of approximately 65% of its taxable acreage by Government acquisition” (19__). The interest group, Citizens Against Wilderness, has actively fought for the road because of the economic equity they believe it would bring to the North Carolina side of the park. The group feels economic development on the Tennessee side of the park has repeatedly been given more attention by both the TVA and the National Park Service. According to CAW, this is apparent by the economic success of Tennessee communities such as Pigeon Forge, Gatlinburg, Sevierville, and Townsend, while Cherokee is really the only economic “success” story on the North Carolina side. The group considers themselves nonpartisan; however, they have actively sought and held the support of staunch conservative senator, Jesse Helms (Taylor 1996; 185-186). Many proponents of the road, including the CAW, feel that a road linking Fontana Dam and Bryson City will increase the number of tourists visiting Swain County.

Whether a road linking the two places would increase tourism for Swain County is debatable. It could increase tourism traffic in western North Carolina. It is important to note that the majority of visitors to the Great Smoky Mountain National Park are “drive through” visitors – not hikers and campers. This would suggest that tourists of the park

might use another road in the park as a scenic detour from one site to another, thereby increasing tourism and revenue to Swain County. However, the flip side of this is that if the road is completed, it will lie within the border of the national park. This prevents any development from occurring along the road. Also, neither the county nor the town of Bryson City currently have the infrastructure to support the type of increased tourism proponents of the road desire.

Environmental Reasons

Over all other issues, the debate over completion of the North Shore Road can predominantly be considered an environmental one. While it is by no means the only issue in this conflict, the environmental debate certainly has the strongest lobby fighting the construction of the road. Conservation groups and environmentalists have been fighting the road since the late 1950s and early 1960s. At this time, conservationists oppose any road which would invade the wilderness of the park. Not only was their opposition based on the invasion of the park's wilderness, but also that the state had recently improved NC 28, which runs south of the Fontana reservoir between Bryson City and Fontana Dam. With the improvement of this road, conservationists saw no need for the completion of the North Shore Road.

The environmental impact statement done for the national park's General Management Plan of 1982, states that early on in the construction of the eastern side of the North Shore Road there was environmental damage occurring. Because of the steep topography of the area, landslides were frequent. Extensive cuts were necessary for the construction of

a road through the mountainous terrain. It was at this time that it was discovered that the intended path of the road would cut into Anakeesta rock. As stated earlier, Anakeesta rock is primarily made up of iron pyrite and when exposed to the air, produces sulfuric acid. The runoff from this would contaminate the soils and nearby streams (National Park Service 1982; 125-126).

Due to the extreme environmental costs associated with completing the North Shore Road, the National Park Service has judged completion of the road as impractical (National Park Service 1982; 126). While many of the proposed alternatives outlined in Chapter 2 were judged just as impractical by conservationists, none were fought as hard as the transmountain road proposal (See Figure 2).

Conservationists argued that the alternative of building a road from Bryson City to

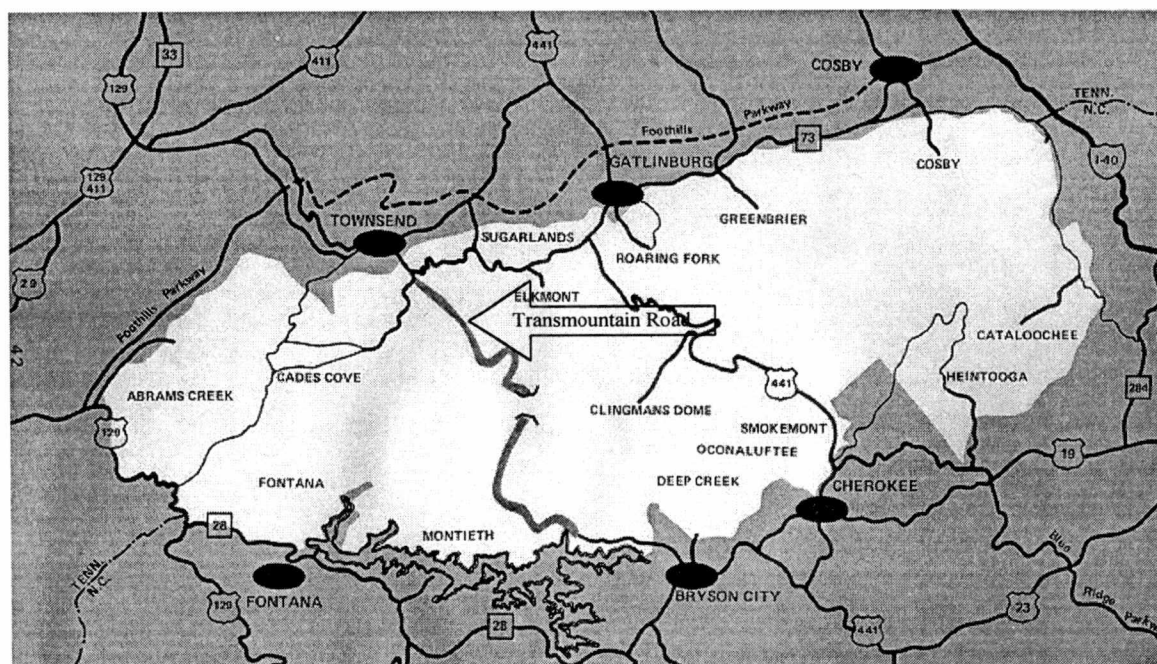


Figure 2 Transmountain Road connecting Townsend (TN) and Bryson City (NC) (National Park Service 1982)

Townsend (TN) was really no alternative at all. It was in fact worse than the proposed North Shore Road because it would bisect the park just as Newfound Gap Road had done. A transmountain road would allow automobile traffic into areas of the park that were considered pristine wilderness.

Conservationists were more inclined to support the "circle around the Smokies" idea of having a road system which would loop around the national park. They supported this mainly because it was feasible to have this road system without creating any new roads inside the park boundary - only outside the park boundary. The original proposal supported by environmentalists (known as proposal B in *Transportation Concepts*) called for the circle around the Smokies and the eventual closing of Newfound Gap/Highway 441. George Hartzog, director of the NPS in the late 1960s, was the strongest supporter of the transmountain road, but after Interior Secretaries Udall and Hickle indefinitely killed the transmountain road, his support swayed to Proposal B. File notes of a National Park Service employee suggest that environmentalists supported this proposal because they knew it was politically impossible; while politicians and constituents may support a park loop, there would certainly be little support for the closing of Newfound Gap Road. So in effect, environmentalists would save face and win by having both proposals killed - further protecting the park. Of course, the north shore conflict still was not solved (Gilbert 1989; 3).

In the environmental impact statement done by the NPS for *the General Management Plan*, there are two construction routes detailed for the North Shore Road, the shoreline

route and the highline route. The shoreline route was given by the Federal Highway Administration in February of 1972; however, the highline route follows more of the original route from the 1944 Bureau of Public Roads (See Figure 3). The shoreline route is described as follows:

The route for the North Shore Road following a shoreline alignment ... would begin at the west portal of the Forney Ridge tunnel, cross Forney Creek by a bridge, follow the west side of Forney Creek to the shore of Fontana Lake, go along the lakeshore to Montieth Branch, then turn inland across the Montieth Peninsula to the lakeshore at Chambers Creek. From there it would run along the lakeshore, using portions of old route 288 and crossing the Hazel Creek arm with a 1,400-foot-long bridge, then continue along the lakeshore to the Eagle Creek arm of the reservoir, and cross the Eagle Creek arm with a 1,300-foot-long bridge 0.5 mile upstream. The route would then proceed along the shoreline to connect with existing section 9D [the 1 mile spur completed at Fontana dam]. (National Park Service 1982;126)

Several environmental problems are associated with this route according to the NPS:

- Aesthetically, the road would be seen from NC 28, especially during the nine months of the year when the TVA lowers the reservoir level. The EIS suggests it would look like "a scar at the top of a 150-foot-high band of mud banks, tree stumps, and rock slopes" (National Park Service 1982; 128).
- Second-growth forest would be removed (approximately 315 acres).
- If Anakeesta rock was disturbed again, aquatic animals would be severely impacted downstream. There would be improved access to creeks which would increase fishing activity.
- Animal habitats would be severely impacted, and poaching would increase.
- Increased automobile traffic would decrease air quality. There would be increased surface runoff from the road and increased siltation problems from construction. This would negatively impact the water quality downstream.

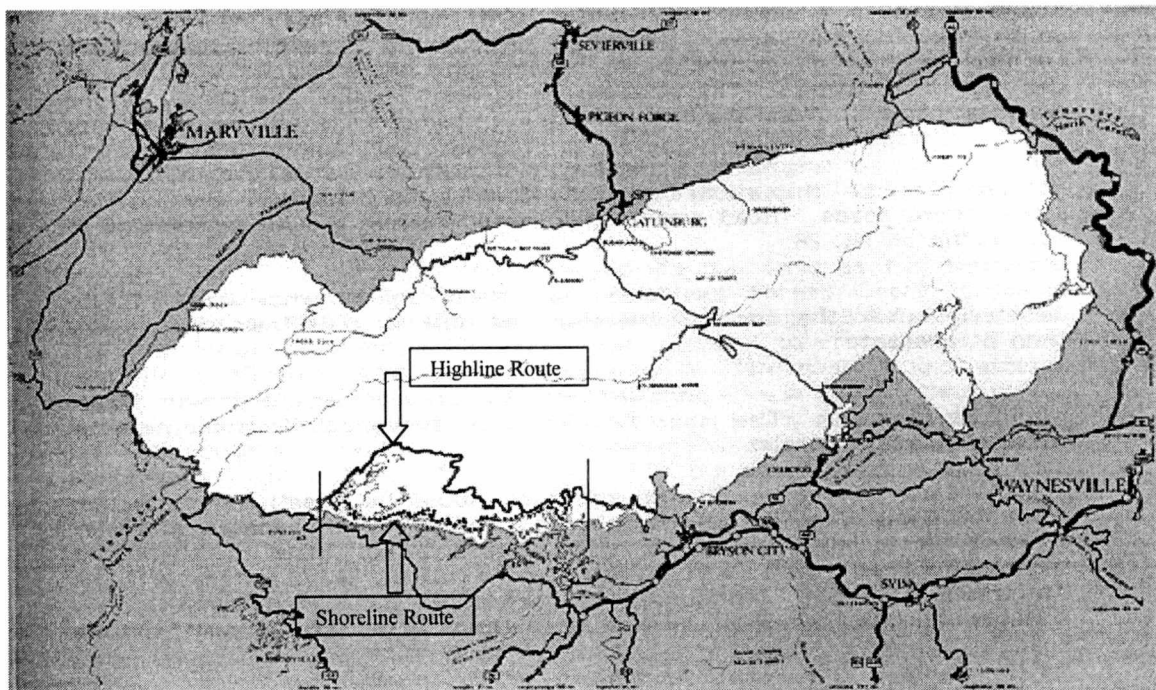


Figure 3 North Shore Road Alternatives (National Park Service 1982)

The highline route is described as follows:

The route would be the same as the shoreline route from the tunnel to Forney Creek. From Forney Creek it would traverse the southern flank of Welch Ridge, ascending 1,300 feet to cross Pullback Ridge at about 3,000 feet, then descend to cross Hazel Creek near its confluence with Bone Valley Creek. The route would ascend Sugar Fork through Pickens Gap, descend to Pinnacle Creek, then follow Pinnacle Creek and Eagle Creek to the western shore of the Eagle Creek arm of Fontana Lake. It would traverse the lower slopes of Little Shuckstack to join the existing section 9D of the North Shore Road 1 mile from Fontana Dam. (National Park Service 1982; 129)

Environmental problems are also associated with this route according to the NPS; however, the concern with this route is that it would disturb land which is farther into the park. Additionally, this is land which was previously logged, but has "recovered" according to the NPS. The environmental problems are the same as the shoreline route - increased runoff, siltation, habitat disturbance, decreased water quality. The amount of

acreage of second-growth forest which would be impacted is significantly larger; 550 acres would be cleared. A detailed archeological site survey was not completed for the shoreline route, but is believed there are no sites which would be impacted. The highline route would negatively impact at least two archeological sites, and ten sites have been identified within 1,000 feet of the route. Neither route was surveyed for endangered and threatened species (National Park Service 1982; 128-130).

In 1969, Congress passed the National Environmental Policy Act which required agencies to prepare environmental impact statements (EIS) for major projects funded with federal money. The impact statement is designed to identify all negative and positive impacts on the surrounding environment that could occur for all alternatives. The alternatives must include a "no action" alternative; this identifies what would happen if nothing was done. Based on this, the NPS must complete an EIS for any actions it intends to undertake because 1) it is a federal agency, and 2) its projects are federally funded. This explains the environmental stance the National Park Service has taken in completing the North Shore Road. As shown above, the EIS done for the *General Management Plan of 1982* outlines several negative impacts of either North Shore Road route. The NPS would be obliged to mitigate these impacts if construction is to continue; however, the statement clearly states that "completion of the North Shore Road has repeatedly been judged impractical due to its severe environmental costs" (National Park Service 1982; 126).

Designation of the Great Smoky Mountains National Park as Wilderness

The Wilderness Act of 1964 set the stage for the most recent issue in this controversy - whether the road would be completed based on the park becoming *designated wilderness*. When areas established for the protection of natural resources, such as national parks and national forests, are designated as wilderness, their management becomes law rather than just administrative. As long as the park management is administrative, it can be changed with the changing of the administration. A substantial portion of the Great Smoky Mountains National Park was proposed for wilderness designation in 1974, and since this time these natural areas of the park have been managed as designated wilderness. The designated areas of the park must be managed as wilderness as long it remains proposed wilderness until a bill is passed to officially designate it as such, or until it is withdrawn from wilderness consideration. For this reason, since 1974, the park has been managing the designated areas as "defacto wilderness" (Great Smoky Mountains National Park 1987; 1).

The designation of wilderness area in the park would change for the visitor experience according to park administration. There would be no changes to visitor access, campgrounds, or visitor activities in non-wilderness areas. Motor boats would still be permitted on Fontana Lake since the lake would not be included in the designated wilderness. Motorized equipment is not allowed in the "backcountry", except for emergencies such as fire or human rescue. For the Smokies, the following areas are excluded from wilderness designation - existing public access roads, developed areas,

historic districts, administrative areas, Mt. LeConte Lodge and cabins, and Andrews & Gregory balds. Designation would not affect land uses in surrounding communities or any adjacent property owners (Great Smoky Mountains National Park 1987; 2,4).

How does the wilderness designation play a role in the North Shore Road conflict? If the area where the proposed North Shore Road is to be constructed is included in the park's wilderness area, then the road will not be constructed. Future developments will be permitted only in areas excluded from wilderness designation (Great Smoky Mountains National Park 1987; 3). Cemetery access would still be provided just as it has previous to designation. This has been the issue where much of the legislative controversy that prevents the settlement of the North Shore Road has centered.

In the mid 1980s, there were three bills for the proposed wilderness. The bills are referred to commonly by their writers, 1) the Sasser/Baker bill, 2) the Clarke/Duncan bill, and 3) the Helms/East bill. The three bills are essentially the same with different contingencies; all bills supported a payment to the county and relief for the county from a Farmers Home Administration loan.² First, the Sasser bill would require 467,000 acres of the park be designated as wilderness area, payment to Swain in lieu of the North Shore Road, and maintaining the current access to cemeteries. The Clarke bill required the same things, but wilderness designation would be contingent upon Swain's receipt of the payment.

² The FHA loan, used to build Swain County High School, was an outstanding debt of \$2 million in 1984.

The third bill (Helms) supported the inclusion of 400,000 acres as designated wilderness. This excluded the 44,000 acre tract added to the park by TVA after WWII and the completion of Fontana dam - the area in which the North Shore Road is to be constructed. Helms also supported a payment to Swain and continued access to the cemeteries. However, Helms additionally proposed the construction of a primitive road along the north shore of the reservoir for cemetery access, and that wilderness designation be contingent upon the completion of this road (Great Smoky Mountains National Park 1987; 4; Ayers March 15, 1984).

While Senator Helms's bill had the support of the North Shore Cemetery Association and other proponents of the North Shore Road, it was Senator Sasser's bill that had the support of both the Swain County Board of Commissioners and the Bryson City Town Board. Swain County and Bryson City supported the Sasser bill mainly for two reasons. The Boards felt the Sasser bill was more likely to pass than the Helms bill; in their opinion, the strong environmental lobby was likely to stop the Helms bill, just as it had in the past. Also, the Boards considered the Sasser bill better for Swain County in that it would resolve the 1943 Agreement, it would relieve their debt for the FHA loan, and it would make a payment of \$9.5 million to the county. They felt the Sasser bill was best for the financial situation of the county (Studenc January 18, 1984). Today, the Great Smoky Mountains National Park is still managed as *defacto wilderness*. None of the above bills passed Congress, nor have any since.

Access to Family Cemeteries

One of the main concerns of those who were removed from the 44,000 acres north of the Fontana reservoir was that they would have access to their family cemeteries after the land was given to the TVA and the national park. In researching this issue, many of the people who lived in the communities have said their relatives agreed to sell their land based on the promise that after WWII they would be given access to their family cemeteries, and this would be done primarily by a road built to replace of NC 28. Many of these people have vivid memories of the TVA employees promising this.

However, the 1943 Agreement in no way promises a road to be built for cemetery access, but instead promises to build a road which would be an important link in the "around the park" road as recommended in the Master Plan of the park (1943 Agreement; section 4). While this "important link" would make access to cemeteries easier, the agreement makes no specific mention of providing an access road to cemeteries.

There are 22 cemeteries on the north shore of the reservoir. They are accessible by boat and 4-wheel drive transportation (National Park Service 1988). Currently, per the *General Management Plan*, relatives are provided access by the National Park Service. Also, the NPS maintains the cemeteries. The *General Management Plan* establishes special provisions for the Hazel Creek cemeteries (those located north of Fontana) because of their remote location. In the *Plan* is a statement from the Secretary of the Interior (1980), Cecil Andrus, assuring Swain County Commissioners' Chairman James L. Coggins that the NPS will continue to work with the North Shore Cemetery

Association, provide access to existing cemeteries, and continue the maintenance and upkeep of the cemeteries (National Park Service 1982; 59-60). However, even with this assurance the North Shore Cemetery Association has continued to fight for a road to their family cemeteries.

Conflicting Values - National Park Service/Conservation Values vs. Local Traditional Values

It is the purpose of national parks, according to the National Park Service Organic Act of 1916, "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Conservation is the most basic value of the National Park Service. For the sake of natural resource management, it is important to note there are many units under the broad heading of the National Park Service - national parks, national historic parks, national recreation areas, among others. All units have the primary responsibility of stewardship of the nation's resources (Wright 1996; 355).

In her essay, "The Cultural and Natural Resource Management Needs of Parks and Protected Areas," Stephanie Toothman addresses the issue of having an appropriate balance between the natural and cultural resources under the care of the NPS. She states that there are three criteria for achieving this balance - acknowledgement of both types of resources, accepting the responsibility for both types and a commitment financially, as well as staff, to responsibly manage the resources. She reviews problems in the past that

have affected this balance in the NPS (Wright 1996; 358).

In the 1980s, it was the feeling of many cultural resource specialists that park management did not properly recognize the existence of cultural resources in their natural areas. Not specific to the Great Smoky Mountains National Park, but to the NPS in general, it was felt that efforts to comply with the National Historic Preservation Act of 1980 were "fragmentary and poorly supported." This law required all federal agencies to inventory, evaluate and protect natural resources within their jurisdictions. A review of National Park Service planning documents and management plans showed little attention given to cultural resources. This lack of recognition resulted in a lack of understanding of the historical significance of many resources, as well as a lack of understanding of local and regional "themes" of nearby communities represented by these resources (Wright 1996; 358-359). However, it is acknowledged that there has been an improved support of cultural resource management in the NPS in recent years, and a reaffirmation that resource stewardship, inclusive of natural and cultural resources, is the primary responsibility of the NPS (Wright 1996; 367).

It is clear that the basic premise of the existence of national parks is protection of the nation's natural and cultural resources for the greatest good of the greatest number of people. Over the past fifty or so years the North Shore Road controversy has existed, the country has simultaneously undergone a transformation in their feelings about the environment. As population and urban sprawl increase, many people, especially in urban areas, have put increased value on our natural environment and its preservation.

It is this conservation value which directly conflicts with the values of the local people. While there is no question that the local people hold a certain respect and value for their mountain region and its beauty, their opinion differs on the basis of their traditional values. Both North Carolina and Tennessee residents sold their land for the formation of the Great Smoky Mountains National Park so that people other than just themselves could come and enjoy the region they called home. They understood the beauty they were privileged to, and they also knew the possible economic benefits of having a national park in their backyard. The value the local people have historically put on their environment is based on its ability to sustain them; they have depended on this land for farming, timber, and mining. Now, many of the locals put the same economic value on the area by way of tourism dollars.

Additionally, many locals put a historic value on the land which once belonged to their families. It is a common characteristic of Southern Appalachian people that family is one thing they hold dear. Family ties are typically strong; this can be attributed to the rural character of the region as well as Southern Appalachia in general. They also have a certain reverence for their dead, and paying their respects to the dead is important religiously.

Particular to this region of North Carolina is the shaping of their values by historical events, specifically the formation of the Great Smoky Mountains National Park and the building of Fontana Dam. The displacement residents have experienced from these two events has not changed their strong sense of place; however, it has intensified the conflict

between traditional values and the purpose of the NPS in managing the Smokies. Approximately 1,300 families were removed from their land with the construction of the dam; some were transients, but at least half had been residents of the area before construction of the dam. Of these residents, one fourth had previously been displaced with the formation of the park. This displacement fueled a feeling of bitterness towards the government, which was only exacerbated by the perceived broken promise of the Road to Nowhere. This bitterness is further intensified by the residents' feelings that their needs have been placed second behind the environmental concerns of the NPS (Smith 1995; 143,158-159). The culmination of these two sets of values and feelings has resulted in direct conflict between the agendas of two parties, Swain County residents and the National Park Service.

The combination of these issues – economic, environmental, access to family cemeteries, designated wilderness and conflicting values – has resulted in a situation with no easy resolution. The original issue at hand was the construction of a road in replacement of a flooded road. However, it is now an issue of building a road which could harm the environment; building a road that will lead to family cemeteries; building a road that will provide economic prosperity to an impoverished county; fulfilling a promise made by the federal government over fifty years ago. It seems safe to say that rarely has so much ridden on the completion of a road.

Chapter 5

Review of the Harvard Principled Negotiation Method

Both theory and experience suggest that the method of principled negotiation will produce over the long run substantive outcomes as good as or better than you are likely to obtain using any other negotiation strategy...it should prove more efficient and less costly to human relationships. - The negotiator's bible

The Harvard principled negotiation method has been used for a variety of situations in the past couple of decades, from union strikes to foreign diplomat relations. The book in which the method was described, *Getting to YES, Negotiating Agreement Without Giving In*, was published in 1981 by William Ury and Roger Fisher. It is now commonly referred to as the "negotiator's bible" in the field of dispute resolution (Stewart 1997; 78). The method is so revered because of the way in which it has changed and shaped modern day negotiation.

The common form of negotiation has historically been positional bargaining. The involved parties take a position, and essentially bargaining to the point of compromise. This method applies to the most fundamental of negotiations, family quarrels, and to the most extreme, disputes between nations. However, with positional bargaining at least one party always loses something. There are many problems with positional bargaining according to Fisher and Ury.

First, there are two types of positional bargaining - hard and soft. Soft bargaining tends to be more concerned with the emotional aspects of bargaining. Parties involved tend to

sidestep the issue at hand in order to not damage the relationship they have with the other party. This is typically the type of negotiating done among family members and friends. However, hard bargaining is the total opposite. Instead of treating the other party as friends, they are treated as adversaries. The end is seen not as agreement, but victory. It becomes a game of who can fight harder and win bigger. Some negotiations may be strictly hard or soft, but likely they are a combination of both; this commonly results in the soft party losing to the hard party because of the different styles (Fisher & Ury 1991; 6-9).

This type of positional bargaining is usually a win-lose situation, and there are problems associated with it.

- It is inefficient. Agreement may or may not be reached when parties bargain this way. They go back and forth with what they will and will not give up or agree to. This all takes time and money.
- It often leads to unwise agreements. Once parties have taken a position, they argue these positions to try and make the other party understand. In doing so, they become stronger in their positions and try harder to win, thereby becoming less likely to reach a wise agreement with their original interests at hand.
- It becomes even more difficult when there are more than two parties involved. People begin to take sides; their shared interests become "symbolic rather than substantive," and agreement becomes even more difficult to reach.

However, according to the authors of the negotiator's bible, it is possible to have a win-win situation with principled negotiation because these problems are eliminated.

The Four Principles of the Method

The principled method is based on four things: people must be separated from the problem, the focus must be on interests not positions, there must be options for mutual gain, and objective criteria must be used.

Principle #1 Separate the people from the problem. There is a human aspect to negotiation which can work for the benefit of the settlement or against it. It works against the negotiation when involved parties disregard the emotions involved; people can be offended, may become angry or even get hostile when their feelings are ignored. In any negotiation, involved parties are interested in both the substance of the negotiation and also maintaining a relationship. These two things are often confused, and many times in positional bargaining the two are put in conflict with each other (Fisher & Ury 1991; 19-21). While the remaining principles are more clear-cut, there are many facets to this principle.

Understanding the human aspect of negotiation can be done in many ways, still separating the issue from the person or relationship. It is vital to any negotiation that both parties understand the point of view of the other; perhaps, even put themselves in their shoes. When it is better understood where the other party is coming from, the conflict itself is better understood. Understanding does not mean anyone must give up their views, but it may cause someone to revise their views. This is a benefit to the negotiation (Fisher & Ury 1991; 23-24). Emotions are often high in these situations, and

emotions cannot be ignored. They must be recognized, understood, and acknowledged.

The most obvious aspect of this principle is that you must not blame the other party for the problem. While this is all too often the case, it is probably one of the biggest reasons negotiations fail. Putting the other at blame immediately puts them on the defensive side (Fisher & Ury 1991; 25). Just like a small child, the ears are covered and nothing is heard.

Involving the stakeholders in the negotiation is also a key to making it work. If they have a part in the process, they are more likely to accept the outcome. On the other hand, if they are not involved but are taken a product from the negotiation for their approval, then they are less likely to accept something they were not important enough to be a part of in the first place. All parties should be involved in the process from the beginning, instead of one party trying to complete a product they feel the other will accept. This is also a common occurrence in negotiation processes, which usually results in frustration (Fisher & Ury 1991; 27-28).

As the negotiator's bible says, "Without communication there is no negotiation" (Fisher & Ury 1991; 32). Bad communication does not go very far in dispute resolution. Problems resulting from bad communication are misunderstandings between parties, miscommunications, not talking and not listening to each other. Good speaking and listening skills are essential. It is important not only to hear the other person, but also to listen to them. If communication is the key to sustaining any relationship in everyday

life, then it is certainly an important aspect of the relationships in negotiations. As stated earlier, there are two important elements of negotiations - substance and relationships. Good communication helps understanding the substance and helps maintain good relationships.

There is a difference between dealing with the problem at hand, and dealing with the people involved in the problem. The two must be separated. Dealing with the people is a continuous task in order to make dealing with the problem easier.

This principle can be applied to the North Shore Road conflict in the following ways:

- There is very much a human aspect of this issue because of the impact it has had on residents and the county as a whole.
- It is vital that the involved parties understand the point of view of the other parties involved, that they put themselves in the other's shoes. There are many parties involved, as identified in Chapter 3, with a variety of points of view.
- There are many intense emotions in this conflict from all sides of the issue, and these emotions cannot be ignored. These emotions have certainly been exhibited over the past decades, but whether they have been understood is questionable.
- Communication between the parties in many instances has suffered the problems of bad communication.
- And lastly, as stated before, there is a difference between the problem and the people. The difference needs to be defined for this issue. The problem is that the road has not been completed. It is not that the National Park Service has not built a road and it is

not that the federal government has reneged on a promise.

Principle #2 Focus on interests not positions. Behind every person's position in the negotiation, there is an interest and sometimes more than one. This interest defines the position they have taken and the result they want to see in the end. For this reason, it seems most logical that interests be the focus of the negotiation and not the position. Many times, positions may be different but underlying interests may not be. In determining people's interests, the easiest way is to simply ask why they feel the way they do. In understanding why they feel the way they do, it may be possible to resolve the problem by satisfying both interests (Fisher & Ury 1991; 41).

Fisher and Ury explain this with a simple analogy of two men in a library arguing over the window being open or closed, one wants it open and the other wants it closed. The librarian asks the first man why he wants it closed, and his reason is that he doesn't want a draft. She asks the second man why he wants it open, and his reason is that he would like some fresh air. Because she now understands the interests of the two men, and not just that one wants the window open and the other closed, she was able to settle their dispute by opening a window in another room. For the purposes of later discussion in this chapter, it is important to note that basic human needs are typically the most powerful interests (1991; 41-44).

This principle can be applied to the North Shore Road conflict in the following ways:

- Every stakeholder identified in previous chapters has a position in this issue. There are essentially two positions, either build the road or do not build the road; however,

there are many different interests at play, such as environmental concerns, construction costs, access to family cemeteries, and economic development for the county.

- There are basic human needs involved - economic security, and a sense of belonging which was lost when residents were displaced.

Principle #3 Invent options for mutual gain. This principle is exactly what it says, not searching for one answer, but knowing there may be more than one. When more than one option is found, more people's interests can be met. Of course, as easy as it sounds, it is not easy at all. It requires creativity, but also critical thinking and not just wild ideas. It requires the negotiator not acting in his self-interest, and not assuming there is one single answer nor any fixed answer (Fisher & Ury 1991; 56-59).

The best method for inventing multiple options is brainstorming among a few participants, using a facilitator and having it in a relaxed setting. It is important that the brainstorming session is not judgmental, and free from criticism so participants are not apprehensive about sharing ideas - inventing ideas is not the same as deciding on a solution. Once multiple options are generated, the mutual gain can be identified by identifying shared interests (Fisher & Ury 1991; 61-69).

This principle can be applied to the North Shore Road conflict by either revisiting options created in the past previously discussed, or creating new options with the input of major stakeholders. Other options should be open to more than alternate routes for a road, but

additionally other means of satisfying the obligation of the 1943 Agreement.

Principle #4 Insist on using objective criteria. The main idea of this principle is to negotiate on the basis of something independent of either side, but also applies to both sides. Using objective criteria works better and more efficiently because neither party feels as though the other has the upper hand; the criteria are objective. It is more efficient because people spend less time arguing over positions and instead rationalize based on criteria they both accept. By doing so, the negotiation does not become a contest of wills or power (Fisher & Ury 1991; 81-92).

This principle can be applied to the North Shore Road conflict in the following ways:

- Instead of arguing over whether the road should be built or not, instead it would be wiser to develop objective criteria based on the interests involved in the settlement of the 1943 Agreement.
- Looking at each interest individually could help to develop objective criteria.

The Benefits and Constraints of Applying This Method

The principled method of negotiation is by no means the perfect answer to every conflict; however, it is much more successful than positional bargaining in most situations. The method could be considered the people-friendly version of negotiation. Tore Sager states in his book, *Communicative Planning Theory*, that early critics of this method of negotiation felt it was "best suited for an unaggressive bargainer who is in a relatively weak position. It offers no comprehensive analysis of how to exploit or deal with the

various kinds of force and manipulation in negotiation" (1994; 166). This may be a harsh criticism of this method. The intent of the method is not to teach negotiators how to get a backbone, but how to deal with difficult situations and work towards a winning settlement - a winning settlement defined as one which all parties are satisfied with the end product. For different situations, the method has certain benefits and certain constraints.

Currently, the human aspect of the North Shore issue is working against the settlement of the conflict. In this issue, the human aspect is the fact that there are many people directly impacted by the settlement of this issue, or the nonsettlement. This works against the settlement when other interested parties discount their emotions. Interest groups of the county and residents feel as though their feelings have been discounted by environmental organizations and often by legislators who support designated wilderness. Therefore, a benefit of applying the principled negotiation method would be the awareness it would bring to all parties.

More specifically, the principle of separating the people from the problem would definitely benefit this settlement. From an outsider's perspective, it is one of the major concerns in the settlement of the issue that parties associate the problem with the people. In fact, they place direct blame on other parties. Environmental organizations are referred to as "those radical environmentalists," and are blamed for the halting of the road construction. There are "those cemetery people" and "those wilderness people" who cause a stir as well, not to mention "those park rangers". The federal government is

blamed the most for not fulfilling the agreement. This negotiation method attempts to move away from placing blame, which would be a great benefit to the settlement of this issue.

Fundamental to the resolution of this issue will be changing the focus from parties' positions to their interests. As stated earlier, the focus remains on the position, who wants the road and who does not, instead of why they do or do not want it. Involved parties must begin to understand specifically why people do not want the road, and specifically why people want the road. Clear and adequate communication certainly is the key; hearsay is not a reliable means of communication. This would benefit the settlement as well. The greatest aid this method can offer the North Shore Road issue can be summarized by the above benefits, but additionally, that it would specifically suit the variety of parties and interests present in this conflict.

Two main constraints immediately hinder the application of the principled negotiation method. First is the age of this conflict. For 53 years, positions and feelings have festered and snowballed; they have become complicated and confused. In some instances, many people appear to be confused about what road is actually still disputed - the North Shore Road or the Transmountain Road. Residents have become divided on accepting a cash settlement, or fighting for a road. As time passes, they become a little more upset by their federal government that has broken a promise to them. Politicians continue to propose legislation for a settlement that does not pass the Congress. Environmentalists continue to lobby for the designation of a 467,000 acre wilderness

tract in the Smokies, and against the North Shore Road. Over such a long period of time, what has happened is positional bargaining, and with such a large number of stakeholders this has complicated matters. Groups have taken sides and formed coalitions between other groups with the same position. This constraint is likely to hinder any other negotiation method, but the principled method may be able to overcome this constraint.

The second constraint is the establishment of objective criteria. While possible, it is complicated by the fact that one of the main interests is considered a moral issue. It is difficult to establish objective criteria of moral standards and stay independent of the wills of the participants. In this situation, the moral issue of the broken promise can be examined as to the content of the promise (reparation of land) and thereby remove the moral issue by identifying alternate means of satisfying the interests of the stakeholders. It is easier to develop criteria for economic interests, environmental concerns and the road construction. This is something that would have to be done as the second step in the negotiation process among the participants.

The use of the principled method of negotiation to resolve the North Shore Road conflict would likely be an improvement compared to using positional bargaining. There is a greater chance of a win-win situation because of its greater benefits in comparison to positional bargaining.

Chapter 6

Conclusion

This controversy...now resolves itself into not who is right, but what is right. On the one hand idealism and intangible interests of the few, on the other a solemn contractual obligation of our nation, our State and one of its political subdivisions. Treaties and contracts made in good faith should be kept and fulfilled. "Even a man's word should be as good as his bond." - Swain County Board of Commissioners, brief prepared for Luther Hodges (Governor of North Carolina), 19__

This issue has manifested into a conflict which yields no easy resolution. The original intent of this research was to examine the way in which resolution has been attempted and the issues which have prevented resolution. Additionally, it sought to identify the stakeholders in the issue and the values which underlie their positions. Lastly, it sought to examine the method of principled negotiation and how this method may apply to the conflict at hand.

Attempts at resolution of this conflict have been virtually continuous over the past 53 years, and unsuccessful. It has been piecemeal at best, and just when it seems progress may be made, it is not. It is a classic case of positional bargaining in which all participants have formed their position, in most cases formed coalitions, and have not budged from their positions. One side refuses to build any road, and the other side refuses to accept a settlement without a road.

The one instance referred to earlier in this research when this issue ever came closest to

being settled was positional bargaining. Participants were primarily the state, the Department of the Interior and Swain County. Each party developed agenda items they were willing to accept or approve in order to settle the 1943 Agreement. One of the primary reasons this negotiation would have been successful, in the sense of being accepted by the three parties, is that all parties accepted one key fact upon negotiation. They conceded to the fact that the road would never be built, and instead negotiated for the best settlement that would allow the obligations of the agreement to be met. The result of the negotiation took two years to agree upon. Unfortunately, the settlement was a victim to timing. Although it will never really be known if the settlement of 1980 would have made it through Congress had its champions not left office, it appeared more promising than any other settlement offer yet. It can be presumed that the settlement would have passed because of how far it had come in the two-year period.

The history of offers made to settle this issue highlighted one of the main problems associated with negotiations, which was addressed in the previous chapter. Involving all parties is more efficient and results in a better end than developing possible solutions without the input of all parties and then presenting them solutions. The process is then one-sided. This has been the habit of offers made in the past to fulfill the obligation of the Department of the Interior, and has proved unsuccessful.

The stakeholders were identified in Chapter 3 as the residents of Swain County, the North Shore Cemetery Association, the Citizens Against Wilderness, environmental organizations, the county government, the National Park Service, and legislators.

Additionally, their positions were identified and the reasons for their positions were explained. For the purposes of negotiation, this large number of stakeholders makes a resolution difficult. For it to be a successful settlement, there should be seven "yes's" in this case, and one "no" would make it unsuccessful. Not simply for the chances of success, but also for practicality, the term stakeholders should be further defined which would narrow the number of participants.

In Chapter 3, stakeholders were identified as those who have had an active role in this issue for the majority of the 53 years. However, it was commented that only two of the original stakeholders remained in the issue, the National Park Service (as a unit of the Department of the Interior) and Swain County. Stakeholders can also be defined as the parties who directly have something to lose or gain in the settlement of this issue. This would add one other stakeholder, the residents of the county. The residents will be directly impacted by a settlement, mainly economically. Environmental organizations are not directly impacted by the settlement. Their interests in the environment are impacted, but they stand to lose or gain nothing which they have a vested right to on an individual basis. Legislators stand to lose their constituent support, but they do not have a direct loss or gain from the settlement. In fact, they should not be identified as stakeholders but instead as advocates for their residents, as well as liaisons between the federal government and residents.

For the sake of negotiation, there should be only two parties involved in the negotiation. This is assuming the county government can adequately represent the interests of the

residents. The two participants should be the National Park Service, specifically represented by the Great Smoky Mountains National Park, and the Swain County government, specifically the Board of Commissioners and the county manager. However, if residents do not feel these parties can adequately represent them, then a representative of the residents should participate in the negotiation.

The third intent of this research was to address how the method of principled negotiation might be applied to the North Shore Road issue. Chapter 5 identified how the four principles of this method applied to this issue, and what the benefits and constraints may be in the application of the method. It can be concluded that there is no outstanding reason why this method would not be successful if used to settle the 1943 Agreement. The method addresses the difficulties that have arisen from this issue, and perhaps the only factor which could hinder the negotiation - the long time period in which it has existed - can also be managed. It can be managed because of the creative approach used to identify options for mutual gain, and also the concept of separating the people from the problem. The application of this method would still remain a challenge; it would by no means be easy. However, it is possible.

It has been stated throughout this research that the North Shore Road issue is a complicated one. It is especially difficult for the author, having attempted to play devil's advocate throughout this process. The author believes the people of Swain County deserve a conclusion to this long chapter of their county's history. The county was promised a road in 1943 to replace a road which was flooded for the benefit of the entire

nation during wartime. It was promised at a time that the automobile was becoming even more popular, and driving was becoming a leisure sport. It was promised before the federal government ever knew what an environmental impact statement was, or the change the actions of "radical environmentalists" would have on society. It was promised because it would be a critical element in a proposed "circle around the Smokies" of the master plan for the Great Smoky Mountain National Park. Time passed and the funds came slowly.

In the passing time, environmentalists began to come out of the woodwork. Situations began to change, and the completion of the road looked evermore impossible. The damage that building a 30-mile paved road through the mountain topography would cause is real. Just as real are the feelings of the former residents of the Hazel Creek area of the North Shore land; they wish to be able to visit their family cemeteries and their homeland. The economic development that would come from such a road is questionable; roads do not always bring prosperity. With this road, there would have to be so much more in order to bring prosperity to the impoverished Swain County. Where is the importance placed - on the moral obligation of the federal government or the preservation of 44,000 acres of wilderness? The author believes that there can be a balance between the two, in which the obligation can be met and the environmental impact mitigated. It is hopeful, that through conducting a process such as principled negotiation the balance can be found, and perhaps an end to the Road to Nowhere can be found.

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APPENDIX

MEMORANDUM OF AGREEMENT OF OCTOBER 8, 1943
BETWEEN THE DEPARTMENT OF THE INTERIOR AND
THE TENNESSEE VALLEY AUTHORITY RELATING TO
THE ACQUISITION AND TRANSFER OF CERTAIN
LANDS IN FONTANA DAM AREA FOR USE AS PART OF
GREAT SMOKY MOUNTAINS NATIONAL PARK

THIS AGREEMENT, made and entered into as of the 30th day of July 1943, by and between TENNESSEE VALLEY AUTHORITY (hereinafter called the "Authority"), a corporation created by an Act of Congress known as the Tennessee Valley Authority Act of 1933; the STATE OF NORTH CAROLINA (hereinafter called the "State"), acting by and through its Governor, its Council of State, and its State Highway and Public Works Commission; SWAIN COUNTY (hereinafter called the "County"), a political subdivision of the State of North Carolina, acting by and through the Board of Commissioners for the County of Swain; and UNITED STATES DEPARTMENT OF THE INTERIOR (hereinafter called the "Department"), acting herefor for the use and benefit of the National Park Service of said Department,

WITNESSETH:

WHEREAS, the Authority pursuant to the powers vested in it by the Tennessee Valley Authority Act of 1933, is engaged in the construction of a hydroelectric development, known as the Fontana Project, consisting of a dam and reservoir on the Little Tennessee River in North Carolina, said dam being located approximately ten (10) miles upstream from the Tennessee-North Carolina State line; and

WHEREAS, the Forney Creek Road District has heretofore issued bonds for and constructed on road or

highway extending from Deals Gap on the west to Bryson City on the east, said road following a course north of the Little Tennessee and Tuckasegee rivers and south of the present southern boundary of the Great Smoky Mountains National Park (hereinafter referred to as the "Park"); and

WHEREAS, the County has heretofore assumed full liability for all principal of and interest on the bonds issued for the construction of said road as aforesaid, and in 1940 issued its own refunding bonds (and interest funding bonds) in the place of all such bonds then outstanding and unpaid; and

WHEREAS, the State has heretofore assumed jurisdiction and control of said Deals Gap-Bryson City road, which is now known North Carolina State Highway No. 288, and of all other public roads connecting therewith; and

WHEREAS, the reservoir to be constructed and operated by the Authority as a part of said Fontana Project will submerge, flood, or otherwise adversely affect a substantial portion of said Highway 288 east of the site of the Fontana Dam, together with other public roads connecting with said Highway 288; and

WHEREAS, the War Production Board has indicated that it would not approve or permit the reconstruction or relocation of said Highway 288 so long as the present war emergency and the shortage of labor, materials, and equipment resulting therefrom continue to exist; and

WHEREAS, said Highway 288 as now constructed does not furnish or afford a high standard of service, and it is recognized by the parties hereto that the reconstruction or relocation of said road on an equivalent basis after the war emergency or at any other future time would not constitute a wise or efficient expenditure of public funds; and

and inefficient expenditures of public funds and of capturing certain benefits for the region affected and the public generally;

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and promises hereinafter contained, it is hereby mutually agreed by and between the parties hereto as follows:

1. Promptly upon the execution of this agreement, the Authority shall, to the extent it has not already done so, in the name of the United States of America, commence and thereafter prosecute in a systematic, orderly, and diligent manner the acquisition by purchase, the exercise of eminent domain, or otherwise, of the land identified on the map attached to and hereby made a part of this agreement as Exhibit A¹ as "Land Proposed for Transfer to U. S. Department of the Interior," the land to be so acquired being more particularly described as follows:

All that land, except that part hereinafter excluded, lying in Swain County, North Carolina, on the north side of the Little Tennessee and Tuckasegee rivers, and south of the Great Smoky Mountains National Park, extending from Twenty Mile Ridge on the West to the divide between Lands Creek and Peachtree Creek on the East, the east boundary of the area being approximately 2 miles west of Bryson City, North Carolina, the said area being bounded as follows:

1. On the west and north by the present boundary line of the Great Smoky Mountains National Park;
2. On the east by the divide between Lands Creek and Peachtree Creek (the nearest property line being the true boundary) but including the two tracts along the Tuckasegee River formerly owned by A. E. Lowe and A. L. and W. C. Nichols and acquired by the Authority from Nantahala Power and Light Company under tract designations FR-262 and FR-264;

¹ On file in the Washington Office.

WHEREAS, there are now held in private ownership certain lands hereinafter described in section 1 of this agreement aggregating approximately forty-four thousand four hundred (44,000) acres in area, located within the limits of the County south of the present southern boundary of the Park and north of the Little Tennessee and Tuckasegee rivers, all of which acreage (along with certain other acreage now in private ownership) was originally proposed for inclusion within the boundaries of the Park; and

WHEREAS, the acquisition of said land described in section 1 hereof by the United States of America and in the inclusion thereof within the boundaries of the Park would serve to extend said boundaries substantially as originally contemplated, and would also establish a basis for the construction by the Department of a park standard road over and across said land; and

WHEREAS, the Department regards a park standard road connection between Deals Gap and Bryson City as an important link in a planned "around the Park" road, has included the same as a part of a Master Plan for the development of the park (extended as aforesaid), and, subject to inclusion of the aforesaid additional acreage within the Park area, is agreeable to initiating construction of the Park portion of such a road as soon after the present war as funds are made available therefor by Congress; and

WHEREAS, the parties hereto desire to provide for and agree upon the extension of the Park boundaries as aforesaid, the closing and ultimate replacement of Highway 288, and the immediate and final settlement and disposition of all claims which the State and the County may at any time have against the Authority or the United States of America by reason of the flooding, taking, or closing of said Highway 288 and the other roads hereinafter described or referred to, all in the manner and upon the terms and conditions hereinafter specified, and all to the end and purpose of avoiding unwise

3. On the south by proposed Fontana Lake (1710 contour) from the east boundary to a point on the edge of the lake approximately 3600 feet as measured along the shore (1710 contour) in a northerly direction from the axis of Fontana Dam; thence first with the north boundaries thence the west boundary of two tracts of land acquired by the Authority from Nantahala Power and Light Company and Carolina Aluminum Company, respectively, under tract designations FR-438 and FR-16 to a point 150 feet north of the center line of the principal access road to Fontana Dam and approximately 100 feet west of Lewellyn Branch; thence along a line parallel to and 150 feet north of said center line in a general westerly direction to an intersection with the boundary line of the Great Smoky Mountains National Park on the south end of Twenty Mile Ridge and east of Twenty Mile Creek.

Excepting and excluding from the area above defined (1) all those lands owned by the North Carolina Exploration Company, consisting of some three or four tracts of land situated in the Eagle Creek and Myers Branch watersheds and containing approximately 1,920 acres, more or less, and (2) all land upstream from Fontana Dam having the elevation of its present ground surface below the plane of the 1710-foot (m.s.l.) contour.

The above described land contains a net total of approximately 44,400 acres, more or less.

Provided, however, that the Authority may at its election postpone the acquisition of the taking of any steps in connection with the acquisition of all or any part of or interest in the following property:

The tract of land owned by the North Carolina Mining Corporation situated on the north side of the Sugar Fork tributary of Hazel Creek approximately 2 miles north of Proctor and being the tract of land conveyed by Walter S. Adams and Wife, Melinda, to the North Carolina Mining Corporation by deed dated March 29, 1901, and recorded in the Office of the Registrar of Deeds of Swain County, North Carolina, in Deed Book 29, page 238, the said tract containing 196 acres, more or less.

until a date six months after the cessation of the hostilities in which the United States is now engaged, it being recognized by the parties hereto that the mining of said tract of land and the removal of such minerals as may be contained therein may be of importance to the prosecution of the war.

It is recognized and agreed that any or all of the lands acquired by the Authority under this section may be subject to outstanding rights of way, easements, and/or mineral rights; that any of said lands acquired from the Aluminum Company of America or any of its subsidiaries may be subject to rights of way one hundred fifty (150) feet in width for any transmission line or lines of any of said companies which may be constructed to interconnect any of the plants of said companies with the power system of the Authority, the location of such rights of way to be as agreed upon from time to time by said companies or any of them and the Authority; and that any of said lands acquired from Carolina Aluminum Company may be subject to any or all of the following perpetual rights, easements, and privileges in favor of Carolina Aluminum Company, its successors and assigns, as the owner or owners of the dam site of the Cheoah Development and as appurtenant thereto:

a. The right at all times without limitation or restriction to flood by the waters of the reservoir impounded by the Cheoah Dam or any other dam erected on or near the site thereof, the said properties to an elevation of 1276.63 feet above mean sea level and to flood said properties to such additional elevations as may result from wave action, floods, and other high water conditions.

b. The right is the discretion of Carolina Aluminum Company, its successors or assigns, to remove from the shore of Cheoah Reservoir and the land under said reservoir and to destroy or otherwise dispose of silt, drift, timber, vegetation, and other matter, and to use said shore and land for such purposes and any other purpose reasonably connected with the maintenance and operation of the Cheoah Development together with the right of ingress, egress, and regress for such purposes with tools, vehicles, and equipment across said properties.

It is further understood and agreed that in the purchase or other acquisition of the aforesaid land as herein provided, the Authority shall be privileged to follow and abide by its standard policies and procedures, as the same may be varied or amended from time to time, pertaining to the acquisition of lands or interests therein. The Authority shall not be responsible and shall incur no liability under this section for any delay or delays in the acquisition of title to any of said land caused or attributable to title searches or other studies, condemnation proceedings or other litigation, or caused by or attributable to any act or circumstance which is incident to or reasonably related to such acquisition or which is beyond the Authority's control, it being the intention of the parties that Authority shall incur no liability for any delays in the acquisition of any land under this section resulting from any cause whatsoever other than the willful failure or

refusal of the Authority to take any step necessary to effect such acquisition.

2. Immediately following its acquisition in accordance with Section 1 hereof of all of the land described in said section, the Authority shall assign and transfer to the Department, for the use and benefit of the National Park Service and for inclusion as a part of the Park, the right of possession and all other right, title, and interest which the Authority may have in and to said land, and shall also grant to the Department, its agents, servants and invitees the right of access to any use of all lands of the United States in the Authority's custody lying upstream from Fontana Dam between the land to be transferred to the Department hereunder and low watermark on Fontana Lake, together with the right of access to and the use of the waters of said lake, for the purpose of constructing and maintaining thereon boating and recreational facilities, piers, docks, and related equipment, and of performing all other acts which may be reasonable necessary to the administration and use, as a part of the Park, of the lands to be transferred to the Department under this section 2; provided, however, that said assignment, transfer, and grant shall be effected by an agreement of transfer between the Authority and the Department substantially in the form attached to and made a part hereof as Exhibit B1¹ and shall be subject to all of the terms, conditions, provisions, exceptions, exclusions, and reservations contained in said Exhibit B, and shall also be subject to all those rights, easements, and interests (whether or not now listed or specified in said Exhibit B) which have been or may be reserved or left outstanding at the time of Authority's acquisition of the lands described in Section 1, as permitted or contemplated by said Section 1; provided further that, prior to the execution of said transfer agreement, a metes and bounds description of the lands to be transferred to the Department thereunder shall be

1/ On file in the Washington Office.

Incorporated therein in substitution for the description of said lands not contained in Exhibit B; and provided further that if the Authority shall at any time have acquired all of the land described in Section 1, with the exception of all or any part of or interest in the North Carolina Mining Corporation tract separately described in said Section 1, the Authority and the Department shall then enter into an agreement of transfer, as aforesaid, with respect to so much of the land described in Section 1 as the Authority shall then have acquired, and in such case said North Carolina Mining Corporation Tract, or the part thereof or interest therein not initially transferred by the Authority to the Department, shall be the subject of a separate and subsequent agreement of transfer between the Authority and the Department, such subsequent agreement of transfer to be consistent with the provisions of this agreement and substantially in the form attached hereto as Exhibit B, and to be executed immediately following the Authority's acquisition of the part of or interest in said tract not covered by the initial agreement of transfer.

The parties recognize and agree that, as an incident to the construction, maintenance, and operation of the Fontana Project, the Authority will acquire certain lands and rights and interests in land in addition to those specified to be acquired under Section 1 hereof and to be transferred under this Section 2. The acquisition of such additional lands and rights and interests in land shall not give rise to any obligation on the part of the Authority to transfer the same, or any part thereof or interest therein, to the Department, and the Authority's sole obligation under Sections 1 and 2 of this agreement shall be to effect the acquisition of the lands specified in Section 1 and to transfer the possession and control of said lands to the Department along with the additional rights of access and use specified in the preceding paragraph, all as herein specifically provided.

3. The Department agrees to enter into an agreement or agreements of transfer with the Authority as provided by Section 2 hereof, and pursuant to and subject to the provisions of such agreement or agreements, to accept an assignment and transfer of the lands described in Section 1 hereof, together with the additional rights of access and use specified in Section 2. The Department further agrees that, forthwith upon the execution and delivery of such an agreement of transfer, it will extend the present boundaries of the Park to embrace and include the land transferred thereby.

4. The Department represents and states that it has evolved a Master Plan for the development of the Park as extended by the addition of the lands described in Section 1 hereof, and that said Master Plan includes an "around the Park" road, of which the Park section of a project road between Deals Gap and Bryson City constitutes an important link. Subject to the transfer by the Authority to the Department of the land described in Section 1 as herein provided, the Department agrees that, as soon as funds are made available for that purpose by Congress after the cessation of the hostilities in which the United States is now engaged, the Department will construct or cause to be constructed the following described sections of road, all of said sections being hereinafter collectively referred to as the "Park Road":

- a. A section of road beginning at a point on the Fontana Dam access road near the crossing of Fax Branch, and extending to a point on the western boundary of the land identified on Exhibit A as the property of North Carolina Exploration Company.
- b. A section of road beginning at the eastern boundary of said North Carolina Exploration Company land and extending to the eastern boundary of the Park as extended hereunder.

c. A section of road across said North Carolina Exploration Company land connecting the ends of the sections of road described in paragraphs a. and b. above.

d. A section of road beginning at a point in the road described in paragraph a. above, and extending in a generally southerly direction to the west abutment of Fontana Dam.

Provided, however, that in lieu of the sections of road described in paragraphs a., b., and c. above, the Department may at its election construct or cause to be constructed, as a part of the Park Road, a continuous section of road beginning at a point on the Fontana Dam Access Road near the crossing of Fax Branch and extending around the aforesaid property of the North Carolina Exploration Company (through existing Park lands) to the eastern boundary of the Park as extended hereunder. In the event of such election on the part of the Department, the Department shall nevertheless construct or cause to be constructed, as a part of the Park Road, the section of road described in paragraph d. above, which section shall in such case commence on said alternative section of Park Road at a point west of the lands identified on Exhibit A as the property of North Carolina Exploration Company. Upon commencement of construction of the Park Road, the Authority shall transfer and assign to the Department its right of possession, and all its other right, title, and interest in and to the land required for the right of way of that portion of the road described in paragraph d. above which lies within the boundaries of Fontana Dam Reservation. The Department shall secure and provide for itself all such easements and rights of way as may be necessary for the construction and maintenance of any portion of the Park Road which may be located upon or across any of said North Carolina Exploration Company property.

if and when funds are made available by the Congress for said Park Road as aforesaid, the location and type of said road, the method and manner of constructing the same, and all standards and specifications therefor shall be determined by the Department in its sole discretion; provided, however, that said Park Road when constructed shall as a minimum standard be finished throughout its length with a dustless surface not less than twenty (20) feet in width; and provided, further, that said Park Road shall connect at the eastern boundary of the Park, as extended hereunder, at a point to be selected by the Department, with the road which is to be constructed by the State in accordance with and subject to the provisions of Section 6 hereof.

The obligation of the Department to construct or provide for the construction of a Park Road as defined in this Section 4 shall be subject to and contingent in all respects under the appropriation by Congress of all funds necessary for such construction, and failure on the part of Congress for any reason to make such appropriations shall not constitute a breach or violation of this agreement by the Department or any other party hereto.

5. Following completion of the Park Road to be constructed by the Department subject to the provisions of Section 4, the Department may in its discretion bar said road to commercial use, and restrict the same solely to pleasure and tourist traffic.

6. At such time as the Department shall commence the construction of the Park Road pursuant to Section 4 hereof, the State shall forthwith proceed to acquire good and sufficient easements and rights of way for, and shall construct, a road commencing at a point on U.S. Highway 19 in Bryson City, North Carolina, and extending to a point on the eastern boundary of the Park (as extended hereunder) to be selected and designated by the Department, the point so

designated by the Department to be such as to provide for the connection of the State road provided for in this section with the Park Road described in Section 4. The easements and rights of way to be acquired by the State for said Bryson City-Park Boundary Road shall be not less than two hundred (200) feet in width outside the corporate limits of Bryson City. In all other respects, except for the termini thereof as above provided, the location and type of said road, the method and manner of constructing the same, and all standards and specifications therefor shall be determined by the State in its sole discretion; provided, however, that said road when constructed by the State shall as a minimum standard be finished throughout its length with a dustless surface not less than twenty (20) feet in width.

7. Following completion of the construction of the Fontana Project by the Authority, the Authority, on its own behalf and as agent of the United States of America, shall quitclaim to the State all of the right, title, and interest which it or the United States of America may have in and to the so-called Fontana Access Road heretofore constructed by the Authority from U. S. Highway 129 near Deals Gap to the left (east) abutment of the Fontana Dam, including all bridges, culverts, and other facilities constituting a part of the transfer of said access road to the State as aforesaid, the Authority shall also:

- a. Transfer and quitclaim or cause to be transferred and quitclaimed to the State all easements and rights of way acquired by the Authority as agent of the United States appurtenant to those portions or sections of said access road which may be located outside the limits of land of the United States in the custody of the Authority, together with such land as the Authority, as agent of the United States, may hold or acquire in fee west of a point on the north right of way line of said access road approximately one

hundred (100) feet west of Lovelllyn Branch, and between said north right of way line and the Cheoah Reservoir of Carolina Aluminum Company. For the purposes hereof, the north right of way line of said access road west of said point approximately one hundred (100) feet west of Lovelllyn Branch shall be deemed to a line parallel to and one hundred fifty (150) feet north of the center line of said access road.

- b. Grant and quitclaim or cause to be granted and quitclaimed to the State suitable easements and rights of way for the maintenance of all of the portions of said access road which are located on land of the United States in the custody of the Authority, where such land is not included in the land to be transferred and quitclaimed to the State under paragraph a. immediately preceding.

- c. Transfer and assign or cause to be transferred and assigned to the State an agreement between the Authority and Carolina Aluminum Company dated May 5, 1943, relating to an easement for the construction and maintenance of the bridge located on said Fontana Access Road across the Little Tennessee River, together with all rights, privileges, and interests of the Authority and the United States in, to, and under said agreement.

The State agrees that it will, by formal agreement with the Authority and Carolina Aluminum Company, accept an assignment of the aforesaid agreement of May 5, 1943, and assume all of the duties and obligations of the Authority and the United States of America thereunder, so as to effect the substitution of the State for the Authority and the United States of America for all of the purposes of said agreement as contemplated by Section 3 thereof. The State further agrees that, forthwith upon the transfer of said access road as

aforesaid, it will open and thereafter maintain said access road for public travel, take over at the expense of the State the maintenance, repair, and upkeep thereof, and thereafter hold the Authority and the United States of America harmless on account of any loss, damage, or injury sustained by any person or persons using the same; provided, however, that in transferring said access road to the State as aforesaid, the Authority may reserve the right, but shall have no obligation to maintain, flatten, plant grass or shrubbery upon, or otherwise modify the slopes of cuts and embankments adjacent to any portion or portions of said access road between the south end of the Little Tennessee River Bridge and the left (east) abutment of Fontana Dam.

8. Forthwith upon the execution of this agreement, the State, as a means of cooperating with and assisting the Authority in the purchase of the land described in Section 1 hereof, and in the settlement of the problems incident or related thereto, shall pay to the Authority the sum of One Hundred Thousand Dollars (\$100,000), such payment to be made for the purposes of and pursuant to the authority contained in S. B. 198 enacted at the 1943 Session of the North Carolina Legislature and approved March 5, 1943.

9. Promptly upon the execution of this agreement, the Authority shall pay to the State Treasurer of North Carolina, Treasurer ex officio of the North Carolina Local Government Commission, in trust for the County, the sum of Four Hundred Thousand Dollars (\$400,000), said State Treasurer of North Carolina being hereby designated by the County to receive and receipt for said sum on the County's behalf.

Prior to or simultaneously with the payment of said sum to said State Treasurer of North Carolina, the County shall enter into a trust agreement governing the management and disbursement of said trust fund. Said trust agreement shall be subject to the approval of the North Carolina Local

Government Commission, and shall provide that said sum shall be applied by the trustee exclusively to the payment of the principal of road bonds of the County which are now outstanding and unpaid. The County agrees that said trust agreement, once entered into with the approval of the North Carolina Local Government Commission, shall not be amended, revoked, or supplemented except with the written consent and approval of said Local Government Commission.

Delivery to said State Treasurer, as Treasurer ex officio of the North Carolina Local Government Commission, of the Authority's check in the amount of Four Hundred Thousand Dollars (\$400,000), payable to his order as trustee for the County, shall operate as a complete fulfillment and discharge of all obligations of the Authority under this Section 9.

10. The State and the County hereby agree that they will, forthwith upon receipt of a request from the Authority so to do, by instrument or instruments in form suitable for recording, transfer, assign, convey, and quitclaim unto the Authority and the United States of America all right, title, and interest which they and the public may have in and to that portion or section of existing North Carolina State Highway 288 between Fox Branch and Watkins Branch, in and to all other roads or portions for sections of road (irrespective of elevation) located upon or across any of the land described in Section 1 hereof and/or any of the land identified on Exhibit A hereto as the property of North Carolina Exploration Company, and in and to all other roads or portions or sections of road in the County lying north of the Little Tennessee and Tuckasegee rivers east of Fontana Dam below elevation 1716 (m.s.l.), including all bridges, culverts, and other facilities constituting a part of any of said roads or portions or sections of road, together with all easements and rights of way appurtenant thereto. The State and the County further agree that they will, forthwith upon receipt of a request from the Authority to do so, take or

procure the taking of any and all action which may be necessary and appropriate to vacate and abandon all of the roads and portions or sections of road to be conveyed and quitclaimed as provided in this paragraph, and to close the same to the use of the public. Until such time as the Authority shall request the conveyance and the vacation, abandonment, and closing of the roads or portions or sections of road referred to in this paragraph, all such roads or portions or sections of road shall retain their present status and continue to be used and maintained as public roads or highways.

In consideration of the premises and of the covenants and promises of the Authority and the Department in and under this agreement, the State and the County, for themselves, their respective successors, representatives, and assigns, shall and do hereby, jointly and severally, release, acquit, and discharge the Authority, its successors and assigns, and its agents and employees, and the United States of America, of and from all obligations, liability, claims and demands of every nature, character, or description, whether now or hereafter existing, arising out of or in any way connected with the inundation, closing, or taking, under or as the result of this agreement or as the result of the construction, maintenance, or operation of Fontana Dam or Fontana Reservoir, of North Carolina State Highway 288, or any portion or section thereof, wheresoever located, or of any other road or roads or section or sections of road (irrespective of elevation) located wholly or partially upon or across any of the land described in Section 1 hereof or any of the land identified on Exhibit A hereto as the property of North Carolina Exploration Company, or of any road or roads or section or sections of road lying north of the Little Tennessee and Tuckasegee Rivers below elevation 1715 (m.s.l.), together with all obligations, liability, claims, and demands arising out of or in any way connected with any impairment of the efficiency, value, usability, or convenience

of any portion (irrespective of elevation or location) of said Highway 288 or of any of said other roads or sections of road, not so inundated, closed, or taken; and the State and the County expressly agree that they will not, jointly or severally, maintain or attempt to maintain any suit or cause of action against the Authority, its agents or employees, or the United States of America based upon or arising out of any such inundation, closing, taking, or impairment, it being in the intention hereof that the covenants and promises of the Authority and the Department herein contained shall constitute and effect and be accepted as an immediate, complete, and final payment and discharge of all such obligations, liability, claims and demands; provided, however, that nothing herein contained shall apply to or preclude any action by the State or the County to enforce compliance or to recover damages for noncompliance by the Authority or the Department with their respective covenants and promises herein made.

11. Anything in Section 10 to the contrary notwithstanding the State does not release or waive or agree not to enforce any claim, demand, or "action over" which it may now or hereafter have against the Authority or the United States, and which is based upon an obligation or liability which the State may have or incur in any landowner by reason of his being deprived of access to land owned by him in Swain County, North Carolina, where such obligation or liability on the part of the State arises out of the inundation, flooding, closing, or other impairment, under or as the result of this agreement or as the result of the construction, maintenance, or operation of Fontana Dam or Fontana Reservoir, of existing North Carolina State Highway 288 between Fax Branch and Watkins Branch; and the Authority hereby expressly agrees to indemnify the State against and save it harmless from any such obligation or liability; provided, however, that whenever such obligation or liability exists or is alleged or claimed to exist on the part of

the State in favor of any landowner, the State shall not, except pursuant to a judicial judgment or decree, pay, compromise, settle, or otherwise dispose of such obligation or liability or any claim, demand, suit, or action based thereon without the written consent of the Authority; provided further that the Authority shall at all times have and exercise full control over the defense, settlement, and disposition of all claims, demands, suits, and actions filed with or against the State in respect of any such obligation or liability, and may compromise, settle, or dispose of the same in any manner or by any method or procedure which it may see fit to adopt in its sole discretion.

Whenever any claim, demand, suit, or action is made or filed with or against the State in respect of an actual or alleged obligation or liability on the part of the State of the kind referred to in the preceding paragraph of this section, the State shall promptly, and in any event within ten (10) days after receipt of formal written notice thereof by the State or summons issued by any court and served on the State, give the Authority written notice of the making or filing of such claim, demand, action, or suit, so as to permit the Authority to defend, compromise, settle, or otherwise dispose of the same as herein contemplated. In the event of failure by the State to give the Authority written notice of any such claim, demand, action, or suit as herein provided, or if the State shall, otherwise than pursuant to judicial judgment or decree, pay, compromise, settle, or otherwise dispose of any such claim, demand, action, or suit without the written consent of the Authority, then and in either or any of such events, the Authority shall be relieved and discharged of any obligation to indemnify the State against or save it harmless from any obligation or liability in respect of such claim, demand, suit, action, or any renewal thereof.

12. This agreement may be simultaneously executed and delivered in any number of counterparts, and each such counterpart shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper representatives thereunto duly authorized as of the day and year first above written.

SWAIN COUNTY, NORTH CAROLINA TENNESSEE
VALLEY AUTHORITY

By the Board of Commissioners for the County of Swain

(SGD) R. D. ESTES
Chairman

Date: October 8, 1943

UNITED STATES DEPARTMENT OF
THE INTERIOR

(SGD) HAROLD L. ICKES
Secretary

(SGD) ARTHUR S. JANDREY
Acting General Manager

STATE OF NORTH CAROLINA
(SGD) J. MELVILLE BROUGHTON
Governor

And by Council of State

(SGD) J. MELVILLE BROUGHTON
Chairman

And by State Highway & Public Works
Commission

(SGD) D. B. McCRARY
Acting Chairman

VITA

Lisa Valdez was born in Boynton Beach, Florida on December 31, 1973. She lived many places growing up, Florida, Texas, Virginia, and Georgia. In 1992, she graduated from Joseph Wheeler High School in Marietta, Georgia. From here, she attended the University of North Carolina at Asheville. Lisa majored in natural resource management and minored in economics; she received her Bachelor of Science degree in May 1996. She entered the School of Planning at the University of Tennessee in the fall of 1996 to pursue her interests in environmental and rural planning. While there, she worked as a graduate assistant, served as Treasurer/Secretary of the Collegiate Institute of Planners, and was a member of the American Planning Association. She is a land use planner for the Western Piedmont Council of Governments in Hickory, North Carolina.