

# NOTE

## A STRANGE LAND AND A PECULIAR PROBLEM: USING LOCAL KNOWLEDGE TO RESOLVE AMBIGUOUS PROPERTY DESCRIPTIONS IN APPALACHIA

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## INTRODUCTION

Conveying property in Appalachia can be somewhat like a box of chocolates: “You never know what you’re gonna get.”<sup>1</sup> Carved by ancient rivers and winding streams, the seemingly never-ending “hollers”<sup>2</sup> and hills of Appalachia can disorient even the best navigator. Couple the region’s rugged topography with an already ambiguous demarcation system, and properties once mapped by metes and bounds descriptions become impossible to re-create with any sort of certainty.<sup>3</sup> Thus, though rooted in a desire for clarity,<sup>4</sup> the combination of mountainous terrain and imperfect demarcation results in a property system riddled with ambiguity.

Due to this inherent definitional problem in Appalachian land, the lines on a map do not always align with widespread local knowledge. The result is even further uncertainty, as variances between local understandings of place and federally standardized definitions of property cause confusion over which definition is correct, a problem this Note defines as “vertical ambiguity.” When such variances find their way into property descriptions, one’s answer—local or federal—can determine whether entire parcels of land are transferred. The question then becomes how to properly make that choice. This Note offers a clear answer: when such conflicts arise, there should be a presumption in favor of local knowledge.

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1. Eric Roth, *Forrest Gump*, DAILYSCRIPT.COM, [dailyscript.com/scripts/forrest\\_gump.html](https://perma.cc/TDM3-E4VV) [https://perma.cc/TDM3-E4VV].

2. See Chi Luu, *The Legendary Language of the Appalachian “Holler,”* JSTOR DAILY (Aug. 8, 2018), <https://daily.jstor.org/the-legendary-language-of-the-appalachian-holler/> [https://perma.cc/9TXJ-D6WZ] (discussing the history of the Appalachian dialect and noting the Appalachian use of “holler” for the common-English word “hollow”).

3. See Gary D. Libecap & Dean Lueck, *The Demarcation of Land and the Role of Coordinating Property Institutions*, 119 J. POL. ECON. 426, 428 (2011) (noting the innate inconsistencies in metes and bounds property descriptions and how irregularity only increases in mountainous terrain).

4. See *Leo Sheep Co. v. United States*, 440 U.S. 668, 687 (1979) (recognizing a “special need for certainty and predictability where [property is] concerned”).

In most areas, local and federal definitions of place match.<sup>5</sup> Largely due to the success of the U.S. Board on Geographic Names (BGN), the federal entity tasked with the responsibility of standardizing domestic geographic names, there is general uniformity among place names.<sup>6</sup> Not every local place name is registered, however, leaving significant interpretive gaps in deeds that refer to areas that are locally known but happen to lie beneath the radar of federal registration.<sup>7</sup> This problem is only exacerbated when, either as a result of inconsistent federal naming, or worse, misnamed places, interpreting a property description results in different conveyances depending on whether the local or federal definition is applied.<sup>8</sup>

Because federal place-name definitions are not binding on state courts,<sup>9</sup> triers of fact must resolve these definitional ambiguities by simply weighing the evidence, forcing them to choose between what is locally known and what is formally recognized.<sup>10</sup> This added layer of confusion and uncertainty in defining individuals' property rights seems counterintuitive in a system built upon the need for certainty and predictability.<sup>11</sup> This Note's local solution brings clarity to an

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5. See, for example, Apple Tree Hollow, located in Bath County, Virginia, and Old Still Hollow, located in Lee County, Virginia; both are formally registered in the federal system. *Geographic Names Information System*, U.S. GEOLOGICAL SURV., <https://geonames.usgs.gov/apex/f?p=138:1:551570168680> [<https://perma.cc/PHJ8-M3QR>] (type "hollow" into the "Feature Name" search bar; then select "Virginia" from the "State" options; then select "Send Query").

6. *U.S. Board on Geographic Names: Home*, U.S. GEOLOGICAL SURV., <https://www.usgs.gov/core-science-systems/ngp/board-on-geographic-names> [<https://perma.cc/7W9X-4SUA>] (discussing the federal government's concern over contradictions among place names and spellings, specifically for surveyors, map makers, military personnel, and others who "require[] uniform ... nomenclature").

7. See, e.g., *Plum Creek Timberlands, L.P. v. Yellow Poplar Lumber Co.*, No. 1:13CV00062, 2016 U.S. Dist. LEXIS 160930, at \*15 (W.D. Va. Nov. 21, 2016) (holding a contractual clause "convey[ing] 'all ... tracts, pieces or parcels of land, or interests in land ... on the watersheds of Levisa River and Dismal Creek and their tributaries in ... Buchanan County, Virginia'" to be ambiguous).

8. To counteract this problem, Arizona State University distinguishes between place-name databases based on whether they list federal place names or state place names. See *Geographical Sciences*, ARIZ. STATE UNIV., <https://libguides.asu.edu/c.php?g=263829&p=1762311> [<https://perma.cc/BC3P-C9EE>].

9. See *U.S. Board on Geographic Names: Home*, *supra* note 6 (explaining that the BGN's decisions are only "binding [on] all departments and agencies of the Federal Government").

10. See *Blacksburg Mining & Mfg. Co. v. Bell*, 100 S.E. 806, 810 (Va. 1919) ("[T]he question of the location of the land embraced in [a] deed [is] within the province of the jury.").

11. See *Leo Sheep Co. v. United States*, 440 U.S. 668, 687 (1979) (recognizing "the special need for certainty and predictability where land titles are concerned").

otherwise jumbled problem. For if anyone can navigate the rugged, ambiguous property descriptions in Appalachia, then there is no better source of authority than the experts themselves: local residents.<sup>12</sup>

This Note proceeds in four parts. Part I introduces the Appalachian region and the goals of federal standardization. Part II discusses the idiosyncrasies of the dominant land demarcation system in Appalachia, the metes and bounds system, and how it has affected legal principles of property law and deed interpretation. Using a recent case out of the Western District of Virginia, *Plum Creek Timberlands, L.P. v. Yellow Poplar Lumber Co.*,<sup>13</sup> Part II also highlights the problem of vertical ambiguity.

Part III proposes a solution, seeking to find common ground by balancing both the interests of local communities and the interests of the property system as a whole. Rooting itself in the practical challenges of applying metes and bounds to Appalachian property descriptions as well as in the anthropological concept of “cultural attachment,”<sup>14</sup> Part III justifies the proposal as a fair and equitable solution that provides clarity to a currently ambiguous system. Lastly, Part IV reveals that a presumption in favor of local knowledge would have limited effects on alienability. Moreover, Part IV explains why standardization scholars, such as Professors Thomas Merrill and Henry Smith, have exaggerated their concerns over the potential for heightened transaction costs because the presumption argued for here does not create a new “form” of property but rather works within the current system in a way that cabins the proposal’s scope. Further, rather than undermine the goals of federal standardization, this proposal complements the policy of the BGN.

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12. See GINNY BENGSTON & REBECCA L. AUSTIN, THE PROPOSED MOUNTAIN VALLEY PIPELINE JEFFERSON NATIONAL FOREST SEGMENT CULTURAL ATTACHMENT REPORT 47 (Applied Cultural Ecology, LLC ed., 2016) (noting that local residents [on the Virginia-West Virginia border] often talked “about how they knew every inch of their land and that they held those lands in a special kind of reverence”).

13. No. 1:13CV00062, 2016 U.S. Dist. LEXIS 160930 (W.D. Va. Nov. 21, 2016).

14. JAMES A. KENT, JOHN RYAN, CAROLYN HUNKA & ROBERT SCHULTZ, CULTURAL ATTACHMENT: ASSESSMENT OF IMPACTS TO LIVING CULTURE 1 (1996) (defining “cultural attachment” as “the cumulative effect over time of a collection of traditions, attitudes, practices, and stories that tie a person to the land, to physical place, and to kinship patterns”).

## I. BACKGROUND

This Note centers around Appalachia—both its culture and its people.<sup>15</sup> For generations, people have argued over exactly *where* Appalachia really is,<sup>16</sup> or even if it *exists at all*.<sup>17</sup> For the purposes of this Note, however, the *where* question will be answered using John Alexander Williams’ 1996 definition, “Consensus Appalachia,” as this definition is particularly helpful in “delineating a more inclusive Appalachian Virginia.”<sup>18</sup>

While some define the region using the Appalachian Regional Commission’s (ARC) definition of Appalachia, that definition, in certain ways, is “the most flawed,” as “it is as much the product of political horse-trading as it is of any intellectual rationale.”<sup>19</sup> The “Consensus” definition, on the other hand, takes a more holistic and cultural approach, restoring seven of Virginia’s northwestern tier counties—Augusta, Rockingham, Shenandoah, Page, Frederick, Clarke, and Warren—as well as Roanoke County, to its definition of Appalachia, despite the fact that the ARC excludes them on political and economic grounds.<sup>20</sup> The result is an Appalachian Virginia which includes every county west of the Blue Ridge, roughly following the Interstate 81 corridor.<sup>21</sup> In addition to these Virginian

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15. For guidance on the pronunciation of the word “Appalachia,” see Sharyn McCrumb, *Pronouncing Appalachia.mp4*, YOUTUBE (Apr. 28, 2010), [https://www.youtube.com/watch?time\\_continue=141&v=eGCqWrsAZ\\_o](https://www.youtube.com/watch?time_continue=141&v=eGCqWrsAZ_o) [<https://perma.cc/MNK6-SQR9>] (“Appa-LAY-shuh is the pronunciation of condescension, the pronunciation of the imperialists, the pronunciation of people who do not want to be associated with the place, and Appa-LATCH-uh means that you are on the side that we trust.”).

16. See Stewart Scales, Emily Satterwhite & Abigail August, *Mapping Appalachia’s Boundaries: Historiographic Overview and Digital Collection*, 24 J. APPALACHIAN STUD. 89, 89 (2018) (quoting DAVID WHISNANT, MODERNIZING THE MOUNTAINEER: PEOPLE, POWER, AND PLANNING IN APPALACHIA 134 (N.Y.: Burt Franklin 1980)) (“Appalachian boundaries have been drawn so many times by so many different hands that it is futile to look for a correct definition of the region.”).

17. Nicholas F. Stump & Anne Marie Lofaso, *De-Essentializing Appalachia: Transformative Socio-Legal Change Requires Unmasking Regional Myths*, 120 W. VA. L. REV. 823, 823, 825-27 (2018) (describing the “Appalachian myth” as a willful creation for the benefit of industrial interests in the region’s natural resources).

18. Scales et al., *supra* note 16, at 94, 96.

19. *Id.* at 96.

20. *Id.*

21. *Id.* at 94.

counties, the Consensus definition includes eastern Kentucky, eastern Tennessee, western North Carolina, three counties in far-northwest South Carolina, northern Georgia, northeastern Alabama, and essentially the entire state of West Virginia.<sup>22</sup>

The romanticization of Appalachia as a land forgotten in time can largely be traced to Will Wallace Harney's now-infamous article, "A Strange Land and a Peculiar People,"<sup>23</sup> published in an 1873 issue of *Lippincott's Magazine of Popular Literature and Science*.<sup>24</sup> Today, nearly 150 years later, the "quaint"<sup>25</sup> image of the backward hillbilly largely remains the stereotypical mascot of Appalachia.<sup>26</sup> Portrayed as "poor, lazy, isolated, violent, illiterate, and hard-drinking,"<sup>27</sup> hillbillies have consistently been the unwanted step-child of America.<sup>28</sup> Mocked for so long, this Note seeks to restore the image of the Appalachian hillbilly, not as the uneducated and dangerous bootlegger, but as the property system's most knowledgeable and reliable expert in terms of resolving ambiguous property descriptions in Appalachia. Yet before one can appreciate the expertise of local Appalachian residents, one must first understand the peculiarity of their geographic location.

### A. A Strange Land

Standing in Roanoke, Virginia, one stands closer to two other state capitals than that of Virginia—Charleston, West Virginia, and Raleigh, North Carolina.<sup>29</sup> Continuing further southwest, one gets further and further from Richmond, until eventually, after roughly

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22. *Id.*

23. Will Wallace Harney, *A Strange Land and a Peculiar People*, 12 LIPPINCOTT'S MAG. POPULAR LITERATURE & SCI. 429, 429-31 (1873) (describing the juxtaposition between the natural beauty of Appalachia and its "backward" inhabitants).

24. Stump & Lofaso, *supra* note 17, at 825 & n.7.

25. Harney, *supra* note 23, at 430-31.

26. David C. Hsiung, *Stereotypes*, in HIGH MOUNTAINS RISING: APPALACHIA IN TIME AND PLACE 101, 107 (Richard Straw & H. Tyler Blethen eds., 2004).

27. *Id.* at 101.

28. See Stump & Lofaso, *supra* note 17, at 823 ("Appalachia has been essentialized as an 'other America' that is not just *different* from but also *lesser* than the broader United States.").

29. *Southwest Virginia Is Further Away from Richmond than You Think*, ROANOKE TIMES (Jun. 24, 2018), [https://www.roanoke.com/opinion/editorials/editorial-southwest-virginia-is-further-away-from-richmond-than-you/article\\_63e3adc5-8294-520e-8351-4a44ca99e3c5.html](https://www.roanoke.com/opinion/editorials/editorial-southwest-virginia-is-further-away-from-richmond-than-you/article_63e3adc5-8294-520e-8351-4a44ca99e3c5.html) [<https://perma.cc/YE73-A2DH>].

a two-hour drive southwest from Roanoke, one stands closer to *seven* other state capitals than Richmond.<sup>30</sup> “But, wait, there’s more!”<sup>31</sup> Keep going west and you reach the counties of Lee, Scott, and Wise—parts of each being closer to *eight* other state capitals than Richmond—with the grand finale in Ewing, Virginia, a town closer to *nine* other state capitals than its own.<sup>32</sup> This geographic oddity makes Southwest Virginia unique, as no other place in the country is closer to eight (much less *nine*) other state capitals than its own.<sup>33</sup> This begs the question: “If something happens in Southwest Virginia, does it make a sound in Richmond?”<sup>34</sup>

Although the issues of place-name standardization and cultural attachment presented in this Note spans the entirety of the Appalachian region,<sup>35</sup> with potentially global impacts on deed interpretation,<sup>36</sup> such applications are outside the scope of this Note. This Note will focus almost entirely on Virginia law and, as a result, Southwest Virginia. Thus, it is this geographic separation from political representation that provides further support for the proposition that local knowledge will often far exceed that of distant government agencies or politicians.

However, more than just the geographic location of Appalachia is unique; the physically rugged terrain can make traversing the landscape a trap for the unwary. With long ridges, deep gorges, narrow creek valleys, sharp cliffs, and an overall scarcity of flat land, travelling through the Appalachians can often be hazardous.<sup>37</sup>

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30. *Id.* (noting that Bristol, Virginia, is closer to seven other state capitals than Richmond).

31. *Id.*

32. *Id.* (noting that the capitals of Kentucky, West Virginia, Tennessee, Georgia, South Carolina, Ohio, Indiana, North Carolina, and Alabama are closer to Ewing, Virginia, than Richmond).

33. *Id.*

34. *Id.* (discussing the impact of geographic separation on the political process in Southwest Virginia).

35. See JAMES A. KENT & KEVIN PREISTER, THE SCIENTIFIC VALIDITY OF CULTURAL ATTACHMENT AS A SOCIAL PHENOMENON AND THE BASIS FOR AN “ALL LANDS” APPROACH IN NEPA DECISION-MAKING 18 (2015) (noting that “there is an expectation that a high level of Cultural Attachment” will exist in Appalachian counties).

36. *Id.* at 6-10 (noting the presence of cultural attachment in native Hawaiian populations and indigenous Australian populations).

37. Harney provides a romanticized, anecdotal account of these topographical features. See Harney, *supra* note 23, at 429-31.



Perhaps a result of its unique geographic location, its unique topography, or both, the lands of Appalachia hold special meaning in the hearts of the people that call them home.<sup>38</sup> In what Professor Barbara Allen calls a “generational memory,” local residents often attach a patchwork of cultural importance onto the land around them, creating “an emotionally powerful sense of place that almost defies articulation.”<sup>39</sup>

### *B. Federal Standardization*

Federal standardization of place names in the United States began in the late nineteenth century.<sup>40</sup> After the American Civil War, “[i]nconsistencies and contradictions among ... [place] names, their spellings, and applications became a serious problem for mapmakers and scientists who required uniform, non-conflicting geographic nomenclature” for communication.<sup>41</sup>

In response to these concerns, and with the belief that the answer was broad federal regulation, President Benjamin Harrison signed Executive Order 28 on September 4, 1890, establishing the United States Board on Geographic Names (BGN).<sup>42</sup> “The BGN was given authority to resolve all unsettled questions concerning geographic names,” and its decisions “were accepted as binding by all departments and agencies of the Federal Government.”<sup>43</sup>

In 1947, Congress officially codified the BGN to “provide for uniformity in geographic nomenclature and orthography throughout the Federal Government.”<sup>44</sup> The BGN is therefore responsible for “solving name discrepancies, approving new names, validating and

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38. See KENT ET AL., *supra* note 14, at 10 (noting that the Appalachian attachment to land is similar to descriptions of traditional cultural and spiritual relationships used in describing Native Americans’ attachment to land).

39. See Barbara Allen, *The Genealogical Landscape and the Southern Sense of Place*, in *SENSE OF PLACE: AMERICAN REGIONAL CULTURES* 152, 161 (Barbara Allen & Thomas J. Schlereth eds., 1990).

40. U.S. BD. OF GEOGRAPHIC NAMES DOMESTIC NAMES COMM., PRINCIPLES, POLICIES, AND PROCEDURES: DOMESTIC GEOGRAPHIC NAMES, 1, 2 (2016) [hereinafter DNC], [https://geonames.usgs.gov/docs/pubs/DNC\\_PPP\\_DEC\\_2016\\_V.2.0.pdf](https://geonames.usgs.gov/docs/pubs/DNC_PPP_DEC_2016_V.2.0.pdf) [<https://perma.cc/Q64J-UT37>].

41. *Id.* at 1.

42. *Id.*

43. *Id.*

44. Act of July 25, 1947, Pub. L. No. 80-242, 61 Stat. 456 (codified at 43 U.S.C. §§ 364-364f).

recording existing names, and promulgating all official names” for the Federal Government.<sup>45</sup> Since 1947, the Domestic Names Committee (DNC), a subdivision of the BGN, has been “responsible for standardizing the names of places, features, and areas within the [United] States.”<sup>46</sup> The DNC consists of representatives from the Departments of the Interior, Commerce, Agriculture, Defense, and Homeland Security, as well as the United States Postal Service, Government Publishing Office, and Library of Congress.<sup>47</sup>

The DNC rules on hundreds of naming decisions per year, responding to proposals from federal agencies, state and local governments, and the public.<sup>48</sup> The DNC relies on a multitude of factors in its decision-making process, including local use and acceptance,<sup>49</sup> verbal usage, established usage, historical usage, legal usage, legislated usage, and written usage.<sup>50</sup> Advocates of a new name or changed name must then support their claim with evidence typically consisting of government records, maps, letters, and other documentation of local support.<sup>51</sup> Importantly, all BGN decisions are still binding only on the departments and agencies of the federal government.<sup>52</sup> Thus, any lingering disputes over place names and their locations (or existence) remain open to state and local interpretation.

## II. PROPERTY DESCRIPTIONS AND THE PROBLEM OF “VERTICAL AMBIGUITY”

This Part addresses the underlying legal principles of contract and property law that govern the interpretation of ambiguities in

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45. DNC, *supra* note 40, at 2.

46. *Id.*

47. *Id.*

48. Jeremy Berlin, *Who Decides What Names Go on a Map?*, NAT'L GEOGRAPHIC (Sept. 18, 2015), <https://www.nationalgeographic.com/news/2015/09/150918-us-board-geographical-names-125th-anniversary-national-geographic-maps-place-names/#close> [https://perma.cc/98NP-FE7L]. Once the BGN decides the standard term that will be used for a place name, the BGN requires a “compelling reason” before it will change a name. DNC, *supra* note 40, at 11.

49. DNC, *supra* note 40, at 2 (noting that a “primary principle” of the BGN is “formal recognition of present-day local usage”).

50. *Id.* at 3-4.

51. *Id.* at 28.

52. *Id.* at 1.

property descriptions. This Part demonstrates how, in instances of “vertical ambiguity,” discrepancies between local definitions and federal, standardized definitions create a tension that exacerbates the definitional issue already inherent in mountain property.

### A. *Property Descriptions*

The ability to define the property conveyed is perhaps the most important part of a property transaction.<sup>53</sup> In a property system built around the need for reliability and certainty, accurate property descriptions are vital to the system’s proper functioning.<sup>54</sup> This Note focuses on ambiguities that arise in *describing* property, for example, ambiguities with respect to metes and bounds property descriptions<sup>55</sup> and ambiguities inherent in “catch-all” or “Mother Hubbard” clauses.<sup>56</sup> Because the latter are often seen as somewhat of a remedy for the former, it is necessary to understand how the metes and bounds system operates.

#### 1. *Metes and Bounds*

The metes and bounds system has historically been the dominant method for demarcating boundaries in the eastern United States, including Appalachia.<sup>57</sup> Metes and bounds is a system of demarcation that uses local knowledge and impermanent markers to define

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53. See Donald J. Kochan, *Deeds and the Determinacy Norm: Insights from Brandt and Other Cases on an Undesignated, Yet Ever-Present, Interpretive Method*, 43 FLA. STATE U. L. REV. 793, 795 (2016) (arguing that deeds must have a fixed, identifiable meaning at the time of conveyance).

54. *Id.* at 823-24 (discussing the need for a “high level of certainty” in property transactions).

55. Maureen E. Brady, *The Forgotten History of Metes and Bounds*, 128 YALE L.J. 872, 875 (2019) (describing how property descriptions using the metes and bounds system commonly demarcate property using local monuments or “reference to neighbors’ lands and other nearby features”).

56. *Mother Hubbard Clause Law and Legal Definition*, USLEGAL, <https://definitions.uslegal.com/m/mother-hubbard-clause/> [<https://perma.cc/9PZQ-QNYK>] (defining a “Mother Hubbard” clause as a deed provision that describes property in general language in an attempt to sweep parcels not specifically described into its grasp).

57. See Brady, *supra* note 55, at 875; Libecap & Lueck, *supra* note 3, at 427, 432; see also *Surveying in Virginia*, VIRGINIAPLACES.ORG, <http://www.virginiaplaces.org/boundaries/surveying.html> [<https://perma.cc/GV5W-BXUD>] (explaining the mechanics of colonial surveying in Virginia).

the boundaries of a particular parcel of land.<sup>58</sup> Such descriptions “define[] parcels independently and idiosyncratically using non-standard, impermanent natural features (rocks, streams, trees); structures (walls, monuments); and adjacent properties (‘southwest corner of Benjamin Beasley’s survey’).”<sup>59</sup> Due to these highly customized reference points, the metes and bounds system can be used to map parcels as simple as a rectangle and as complex as the mind desires.<sup>60</sup>

At its core, the metes and bounds system is decentralized, serving as a direct contrast to the more precise, standardized rectangular demarcation system.<sup>61</sup> The rectangular system adopts a uniform, inflexible, grid-like structure that uses rectangular quadrants to map out parcels of equal shape and size.<sup>62</sup> The metes and bounds system, however, is more popular in the Appalachians because it is customizable and adaptable in rough terrain, using natural boundaries rather than artificial grids.<sup>63</sup> The result, especially in mountainous areas, is a hodgepodge of parcels that are uniform in neither shape nor size.<sup>64</sup>

Due to their highly irregular shapes, imperfect measurements, and often transient markers, metes and bounds descriptions inherently produce ambiguities in property descriptions.<sup>65</sup> Over time, trees fall, neighbors move, and the plots once mapped by metes and bounds property descriptions become impossible to recreate with any sort of certainty, if at all.<sup>66</sup> As a result, a litany of

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58. See Brady, *supra* note 55, at 872.

59. Libecap & Lueck, *supra* note 3, at 427; see, e.g., *Asberry v. Mitchell*, 93 S.E. 638, 639 (Va. 1917) (interpreting a deed describing property as “[o]ne hundred acres of land, bounded by Sarah M. Ratliff on the north and by E. R. Mitchell on the south, off the west end of the farm of H. C. Asberry”).

60. Brady, *supra* note 55, at 875.

61. Libecap & Lueck, *supra* note 3, at 427-28.

62. See *id.* at 429-32 (explaining how properties were described with a simple grid number).

63. See *id.* at 426-27 (providing a sample metes and bound description reading as follows: “Beginning at a white oak in the fork of four mile run called the long branch & running [North 88 degrees West] three hundred thirty eight poles to the Line of Capt. Pearson, then with the line of Pearson ... One hundred Eighty-eight poles to a Gum.”).

64. *Id.* at 427.

65. See *id.* at 451 (explaining that metes and bounds descriptions often resulted in land disputes and general confusion over the limits of property ownership).

66. Brady, *supra* note 55, at 951.

potential legal claims await the unwary property owner—competing claims for overlapping borders, uncertainty over total acreage, mistakes found in surveys, gaps in ownership—each leaving land titles open to seemingly endless legal challenge.<sup>67</sup>

These inherent ambiguities and variances in metes and bounds descriptions only become more frequent as terrain becomes more rugged.<sup>68</sup> After all, a land demarcation system that used poles and chains to measure distance was bound to become less accurate in the rugged, up-and-down mountainous terrain of the Appalachians than on flat land.<sup>69</sup>

## 2. Legal Requirements and “Mother Hubbard” Clauses

Parties transfer ownership of real property through transactions called “conveyances.”<sup>70</sup> Using a deed, the parties to a transaction must identify the buyer (grantee), the seller (grantor), any consideration given for the property, and a legal description of the property to be transferred.<sup>71</sup> To complete the transaction, the signed and notarized deed must then be recorded at the appropriate land-recording office, commonly the locality’s registrar’s office.<sup>72</sup>

The ability to define the property conveyed is perhaps the most important part of this transaction, as the parties involved must be able to know “who has what and when.”<sup>73</sup> In order to be valid, a property description must “contain[] sufficient terms to designate

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67. Libecap & Lueck, *supra* note 3, at 451.

68. *Id.* at 441.

69. *See id.* at 436, 441 (noting that as the “ruggedness” of a landscape increases, the prevalence of irregular plot shapes and demarcation variances also increases).

70. Bridget Molitor, *Transferring Property*, FINDLAW, <https://realestate.findlaw.com/selling-your-home/transferring-property.html> [<https://perma.cc/WT6F-EWCA>].

71. *Id.*

72. *Id.* This is obviously an over-simplified summary of how property conveyances operate. As this Note will only focus on the issue of defining and describing property in Appalachia, issues concerning the intricacies of state recording statutes are outside the scope of this Note.

73. Kochan, *supra* note 53, at 795. Issues with property descriptions also raise larger questions involving title insurance and marketability of title. Amanda Farrell, *Why the Legal Description Is So Important in Land Surveys*, PROLOGIX, (Aug. 9, 2018), <https://www.proplogix.com/blog/why-the-legal-description-is-so-important-in-land-surveys> [<https://perma.cc/BJ7Y-8QUK>]. Title companies will often have their own property description requirements before they will issue a title insurance policy to a buyer and may even require a new survey. *Id.* Since these are not legal requirements, such issues and requirements are outside the scope of this Note.

the land in question.”<sup>74</sup> Surprisingly, metes and bounds descriptions are not required to convey property; so long as there is a way to reasonably ascertain the intended boundaries, a court will not invalidate a conveyance for vagueness.<sup>75</sup>

To offset what are frequently unreliable metes and bounds boundary descriptions, practitioners commonly include “catch-all” phrases, or “Mother Hubbard” clauses, which act as somewhat of an “insurance policy.”<sup>76</sup> While such clauses are, by definition, vague, their use serves the important purpose of “catching” the property *intended* but perhaps not *actually* captured by a metes and bounds description.<sup>77</sup> Thus, even though such phrases “unequivocally expand[] the conveyance to property beyond that specifically described in the deed,” they do not void a deed for uncertainty.<sup>78</sup> Even clauses including conveyances of “all the land of the grantor in a certain county,”<sup>79</sup> or all the lands within a certain watershed, are enough to effectuate a transfer, so long as one may reasonably ascertain the property the parties intended to convey.<sup>80</sup>

### *B. Defining Ambiguity*

Simply put, a deed is a contract for land. Thus, state contract law governs the interpretation and construction of deeds.<sup>81</sup> In Virginia, where the language of a deed is clear and unambiguous, a court is required to construe the terms according to their “plain meaning.”<sup>82</sup>

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74. *Blacksburg Mining & Mfg. Co. v. Bell*, 100 S.E. 806, 811 (Va. 1919).

75. *See Amos v. Coffey*, 320 S.E.2d 335, 338 (Va. 1984) (giving effect to a deed conveying lands not described in the deed).

76. Mark Burghardt, *The Mother Hubbard Clause*, OIL & GAS REP., (Oct. 20, 2015), <https://www.theoilandgasreport.com/2015/10/20/the-mother-hubbard-clause/> [<https://perma.cc/LG7N-27KV>].

77. *Id.*

78. *Vicars v. First Va. Bank-Mountain Empire*, 458 S.E.2d 293, 295 (Va. 1995).

79. *Carrington v. Goddin*, 54 Va. 587, 609 (1857); *see Amos*, 320 S.E.2d at 336, 338 (finding a deed that conveyed “all of those certain tracts or parcels of land ... in or near the Town of Gretna” was not void for uncertainty).

80. *See Plum Creek Timberlands, L.P. v. Yellow Poplar Lumber Co.*, No. 1:13CV00062, 2016 U.S. Dist. LEXIS 160930, at \*15 (W.D. Va. Nov. 21, 2016) (interpreting a deed conveying all of the property owned by the grantor “on the watersheds of Levisa River and Dismal Creek and their tributaries”).

81. *Contract*, CORNELL L. SCH. LEGAL INFO. INST., <https://www.law.cornell.edu/wex/contract> [<https://perma.cc/EXF5-RWDC>].

82. *Amos*, 320 S.E.2d at 337 (citing *Berry v. Klinger*, 300 S.E.2d 792, 796 (Va. 1983)).

Thus, a Virginia court may not look outside the four corners of a deed to determine whether language is clear and unambiguous.<sup>83</sup> The “guiding light” for courts in this process “is the intention of the parties as expressed by them in the words they have used,”<sup>84</sup> and no rule of construction may be used to defeat that intention.<sup>85</sup>

Another well-established principle of deed interpretation in Virginia is the parol evidence rule.<sup>86</sup> The parol evidence rule generally states that prior or contemporaneous written or oral agreements can never be introduced as evidence “to vary, contradict, add to, or explain” an unambiguous and final written agreement.<sup>87</sup> By governing the extent to which parties can introduce evidence of a prior or contemporaneous agreement (called parol or extrinsic evidence), this rule acts a gatekeeper for the jury, controlling what jurors are allowed to consider in making their interpretive determinations.<sup>88</sup>

The question of whether a deed is ambiguous is a question of law to be determined by a court.<sup>89</sup> Mere disagreement is not enough to create an ambiguity.<sup>90</sup> Rather, in order to be ambiguous, the language of a deed must be “obscure and doubtful,” either referring to two or more things at the same time or being capable of more than one reasonable understanding.<sup>91</sup>

It is only *after* a court deems a deed ambiguous on its face that it may then admit extrinsic evidence to ascertain the intent of the parties.<sup>92</sup> Once the question becomes one of subject matter—that is,

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83. *CNX Gas Co. v. Rasnake*, 752 S.E.2d 865, 867 (Va. 2014).

84. *Amos*, 320 S.E.2d at 337 (quoting *Magann Corp. v. Elec. Works*, 123 S.E.2d 377, 381 (Va. 1962)).

85. *CNX Gas Co.*, 752 S.E.2d at 867.

86. *Amos*, 320 S.E.2d at 337.

87. *Id.* (quoting *Godwin v. Kerns*, 17 S.E.2d 410, 412 (1941)).

88. *See Parol Evidence Rule*, CORNELL L. SCH. LEGAL INFO. INST., [https://www.law.cornell.edu/wex/parol\\_evidence\\_rule](https://www.law.cornell.edu/wex/parol_evidence_rule) [<https://perma.cc/YXR6-2T37>].

89. *Langman v. Alumni Ass’n of the Univ. of Va.*, 442 S.E.2d 669, 674 (Va. 1994).

90. *Wilson v. Holyfield*, 313 S.E.2d 396, 398 (Va. 1984) (“Contracts are not rendered ambiguous merely because the parties disagree as to the meaning of the language employed by them in expressing their agreement.”).

91. *CNX Gas Co. v. Rasnake*, 752 S.E.2d 865, 867 (Va. 2014) (first citing *Harris v. Scott*, 18 S.E.2d 305, 307 (Va. 1942); and then citing *Schultz v. Carter*, 151 S.E. 130, 131 (Va. 1930)).

92. *Robinson-Huntley v. George Washington Carver Mut. Homes Ass’n*, 756 S.E.2d 415, 418 (Va. 2014) (citing *Eure v. Norfolk Shipbuilding & Drydock Corp.*, 561 S.E.2d 663, 667-68 (Va. 2002)).

a dispute over *location* rather than *construction*—the question falls within the province of the jury and is taken out of the court's hands.<sup>93</sup>

### C. *The Problem of "Vertical Ambiguity"*

Under current law, there is no distinction between types of ambiguity—once a description is determined to be ambiguous, all descriptions are given to the jury to resolve.<sup>94</sup> However, not all ambiguities are created equal. Some ambiguities, what this Note refers to as “vertical ambiguities,” raise fundamental issues of federalism and cultural attachment—directly challenging who gets to define property.<sup>95</sup>

The focus here is on the *source* of the ambiguity. If the ambiguity is a result of a variance between a local and standardized definition, then that ambiguity is vertical because the disagreement is over *who* gets to define property—local residents or federal agencies. In contrast, if an ambiguity is the result of a variance in the parties' understanding of rights contained in property, then that ambiguity would be horizontal because the disagreement is over the *type of property* transferred.

The case of *Plum Creek Timberlands, L.P. v. Yellow Poplar Lumber Co.* is illustrative.<sup>96</sup> In *Plum Creek*, the plaintiff, Plum Creek Timberlands, sued Yellow Poplar Lumber Company seeking a declaration that it was the lawful owner of certain natural gas interests located in Buchanan County because a 1930 deed purporting to convey such property was null and void.<sup>97</sup> The property in question was once owned by the defendant Yellow Poplar, an entity that was in the midst of bankruptcy proceedings in South Carolina at the time the 1930 deed was executed.<sup>98</sup>

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93. See *Blacksburg Mining & Mfg. Co. v. Bell*, 100 S.E. 806, 810 (Va. 1919) (“[T]he question of the location of the land embraced in [a] deed [is] within the province of the jury.”).

94. See *id.*

95. See Nestor M. Davidson, *Standardization and Pluralism in Property Law*, 61 VAND. L. REV. 1597, 1617 (2008) (acknowledging the federalism issue present in modern American property law discrepancies).

96. No. 1:13CV00062, 2016 U.S. Dist. LEXIS 160930 (W.D. Va. Nov. 21, 2016).

97. *Plum Creek Timberlands, L.P. v. Yellow Poplar Lumber Co.*, No. 1:13CV00062, 2014 U.S. Dist. LEXIS 43421, at \*1-2 (W.D. Va. Mar. 31, 2014).

98. *Id.* at \*2.



On September 13, 1929, the United States District Court for the Western District of South Carolina, presiding over the bankruptcy proceedings, directed the trustee of Yellow Poplar to convey to W.M. Ritter Lumber Company certain tracts of land located in Buchanan County (the Ritter Deed).<sup>99</sup> “The court’s decree described the four tracts of land to be conveyed, but also included a catch-all provision,” which stated:

It being the intention to embrace herein and convey hereby all of the tracts, pieces or parcels of land, or interests in land owned by Yellow Poplar Lumber Company on the watersheds of Levisa River and Dismal Creek and their tributaries in said Buchanan County, Virginia, whether hereinabove described, or referred to, or not.<sup>100</sup>

At the time of the Ritter Deed, Yellow Poplar also owned two tracts of land, described as Tracts 10 and 11.<sup>101</sup> On October 16, 1930, a second decree by the Western District of South Carolina deeded Tract 10 to C.G. Jackson.<sup>102</sup> Plum Creek argued that this second deed, the Jackson deed, was invalid on the grounds that Tract 10 was located “on the watershed of the Levisa River,” and thus had already been conveyed by the catch-all language of the Ritter Deed.<sup>103</sup>

The catch-all language of the Ritter Deed was critical, purporting to convey *all* of the tracts of land owned by Yellow Poplar “on the watersheds of Levisa River and Dismal Creek and their tributaries in said Buchanan County, Virginia.”<sup>104</sup> “This language could reasonably be interpreted” in one of two ways: (1) the language could have conveyed “all of Yellow Poplar’s land located in Buchanan County, which land was *also* located on a watershed or tributary of Levisa River or Dismal Creek”—as the plaintiffs argued; or (2) the language could have conveyed “all of Yellow Poplar’s land that was located on a watershed or tributary of Levisa

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99. *Id.* at \*3.

100. *Id.* at \*3-4.

101. *Id.* at \*4.

102. *Id.*

103. *Id.*

104. Plum Creek Timberlands, L.P. v. Yellow Poplar Lumber Co., No. 1:13CV00062, 2016 U.S. Dist. LEXIS 160930, at \*15 (W.D. Va. Nov. 21, 2016).

River or Dismal Creek, which *watershed or tributary* was located in Buchanan County”—as the defendants argued.<sup>105</sup> Since this language could have reasonably been interpreted in more than one way, the court found the catch-all provision in the Ritter Deed to be ambiguous and permitted the parties to submit extrinsic evidence to show which parcels the parties to the Ritter Deed originally intended to convey.<sup>106</sup>

Plum Creek hired several experts to testify that the Russell Fork was a tributary of the Levisa Fork and that Tracts 10 and 11 were thus located within the watershed of the Levisa Fork and subject to the 1929 conveyance.<sup>107</sup> For example, Plum Creek hired a hydrologist, a geologist, and a surveyor.<sup>108</sup> Each witness based their opinion almost entirely on federal, standardized definitions of the Big Sandy and Levisa Fork River watersheds.<sup>109</sup> Relying heavily on reports from the United States Engineer’s office and maps from the United States Geological Survey, Plum Creek argued that Tract 10 fell within the watershed of the Levisa Fork, and thus were conveyed in the Ritter Deed.<sup>110</sup>

In contrast, Yellow Poplar hired its own experts, including a geologist/hydrologist and a surveyor,<sup>111</sup> as well as a natural historian to testify that the Russell Fork had *never* been *locally understood* as being in the Levisa Fork watershed.<sup>112</sup> Critically, a natural historian, a person with “knowledge of the naming conventions historically prevalent in the area,”<sup>113</sup> sought to testify that, in his opinion, “it [was] unlikely” that a citizen in Southwest Virginia at that time would have “considered the Russell Fork watershed and the Levisa River/Dismal Creek watershed to be the same watershed.”<sup>114</sup>

This is a direct contradiction. On the one hand, Plum Creek argued that the federal definition should control, saying that

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105. *Id.* at \*15-16.

106. *Id.*

107. *Id.* at \*23-26.

108. *Id.*

109. *See id.*

110. *Id.*

111. *Id.* at \*6.

112. *Id.* at \*17-20.

113. *Id.* at \*20.

114. *Id.* at \*17.

because Tract 10 was on the Russell Fork and the Russell Fork was federally defined as being within the Levisa Fork watershed, Tract 10 was conveyed by the catch-all provision.<sup>115</sup> Yet on the other hand, Yellow Poplar argued that the local understanding should control, saying that, regardless of how the federal government defined the Levisa Fork watershed, the local residents of Buchanan County get to decide which land constitutes the Levisa Fork watershed.<sup>116</sup> Therefore, since Buchanan County residents would have never considered the Russell Fork watershed and the Levisa Fork watershed to be the same watershed, Tract 10 was not included in the 1929 Ritter Deed.<sup>117</sup>

This problem, evinced by *Plum Creek*, is one of local knowledge versus standardization. The issue can be boiled down to essentially one question: Who gets to decide what the Levisa Fork watershed encompasses? This question strikes at the heart of property law, as it affects the core of real estate transfers—defining the property to be conveyed—and presents a central debate over the legitimacy of local place-naming systems that define property in relation to cultural importance.

### III. HILLBILLY EXPERTS: WHY LOCAL RESIDENTS DESERVE DEFERENCE

Appalachian hillbillies, by virtue of living in the area, have objectively superior knowledge of the land around them. It is their attachment to *place*, however, that distinguishes them as the property system's most reliable experts for resolving ambiguous property descriptions in Appalachia. The Appalachian attachment to land is a distinct "hallmark of their regional identity."<sup>118</sup> Significantly, this cultural phenomenon is something that commonly expresses itself in *property descriptions*.<sup>119</sup> Like a collection of private maps, deeds often give third parties a sense of how people

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115. *See id.* at \*23-26.

116. *See id.* at \*17-20.

117. *Id.* at \*17-18.

118. Allen, *supra* note 39, at 152.

119. *See, e.g.,* Asberry v. Mitchell, 93 S.E. 638, 639 (Va. 1917) (involving a deed of land "on the north side of Clinch Mountain, in Little Valley," which conveyed property based on the locations of the neighbors' lands, which "were well known to the parties").

understand the land around them.<sup>120</sup> More than just a legal document, a deed tells a generational story.<sup>121</sup> Thus, in instances of vertical ambiguity, they system's greatest and most dependable reference points are the stories themselves, bound by the annals of local history and preserved by the people who call the land home.

### A. *Cultural Attachment*

Cultural attachment is “the cumulative effect over time of a collection of traditions, attitudes, practices, and stories that tie a person to the land.”<sup>122</sup> This social phenomenon has three essential elements: (1) land, (2) physical place, and (3) kinship patterns—with each element being intricately linked to the other in a dynamic social-ecosystem.<sup>123</sup> While this phenomenon is not specific to Appalachians,<sup>124</sup> the level of cultural attachment commonly found in Appalachia is particularly unique.<sup>125</sup>

Critically, cultural attachment is nontransferable.<sup>126</sup> By definition, cultural attachment is linked to a *specific* piece of land, a *distinct* physical place, and a *certain* kinship pattern.<sup>127</sup> Thus, by definition, “its loss cannot be mitigated through monetization, or by the receipt of comparable land”—as there can be only one *place*.<sup>128</sup>

#### 1. *Land as Family*

The importance of land in Appalachia signifies that local residents are uniquely qualified to resolve property description ambiguities because they are both intensely knowledgeable and

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120. STEVEN STOLL, *RAMP HOLLOW: THE ORDEAL OF APPALACHIA* 161 (2017).

121. *See id.* (“A deed might seem like an impersonal legal instrument, but local deeds [tell] stories and trace[] the transfer of land between and within families.”).

122. KENT ET AL., *supra* note 14, at 1.

123. *Id.* at 4-5.

124. KENT & PREISTER, *supra* note 35, at 6-10, 37 (noting the existence of cultural attachment in native Hawaiian, indigenous Australian, and Native American populations).

125. BENGSTON & AUSTIN, *supra* note 12, at 47 (“[T]he people who reside in the Peters Mountain area have a cultural attachment to the [Jefferson National Forest] that is different from other areas here in the United States.”).

126. KENT ET AL., *supra* note 14, at 1.

127. *Id.*

128. KENT & PREISTER, *supra* note 35, at 4.

especially invested in ensuring that conveyances protect family lands. An Appalachian's land is fundamental to her individual identity.<sup>129</sup> Throughout Appalachian communities, land has a "sacred quality"—not uncommon to that of the Native American attachment to land—that sees land not as a commodity but as part of one's own family.<sup>130</sup> Rather than viewing land as an economic investment, Appalachians often talk about land in noneconomic "terms of self-sufficiency ... and stewardship."<sup>131</sup> In this context, production on land is both prospective (preserving the land for the next generation) and retrospective (maintaining and reassembling the original land holdings of ancestors).<sup>132</sup> Here, the land becomes a mixture of both time and space, tying the past and present together in a culturally significant and singular place.

By commingling geographic place with genealogical ancestry, the intrinsic value of land outweighs its objective economic value.<sup>133</sup> For example, between 1875 and 1895, members of a prominent West Virginia family, the Belchers, made at least one hundred land transfers, approximately seventy-five involving individuals named Belcher.<sup>134</sup> And while nearly every transfer was written down or recorded, very few made any mention of money.<sup>135</sup> Stories like the Belchers' exist throughout the hills of Appalachia, highlighting the long custom of a noneconomic property system in Appalachia that recognizes the innate cultural importance of land.<sup>136</sup>

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129. See Davidson, *supra* note 95, at 1620-21 (noting that property is fundamental to individual identity and self-actualization).

130. KENT ET AL., *supra* note 14, at 4, 10 (noting that the Appalachian attachment to land is similar to descriptions of traditional cultural and spiritual relationships used in describing Native Americans' attachment to land).

131. *Id.* at 4. (noting comments from Appalachians such as the following: "[t]his land isn't mine, I am just taking care of it for the next generation").

132. *Id.* at 4-5.

133. See *id.* at 5 (quoting a local resident saying "people offer us money for our land but we don't sell it").

134. STOLL, *supra* note 120, at 161.

135. *Id.* at 162.

136. See KENT ET AL., *supra* note 14, at 7 ("A person who is culturally attached has a relationship to land, which is primarily based in non-economic values.").

## 2. Attachment to Place

The Appalachian sense of place, the “intimate knowledge of [one’s] landscape [and] what happens in [one’s] landscape,” is one of the most prominent elements of cultural attachment and further evidence of local residents’ objectively superior knowledge of property in Appalachia.<sup>137</sup> Grounded in both individual and generational memories, the intrinsic relationship between local residents and the land they live on is perhaps most apparent in towns and communities throughout Appalachia.<sup>138</sup> To many Appalachians, “place” is not just a plot of ground defined by legal title but also one that is shaped by human occupancy.<sup>139</sup> Place names carry with them stories and values that attach the people to their home.<sup>140</sup> As James Kent and Kevin Preister noted in a 2015 study of Peters Mountain: “[I]t is impossible to separate the communities who live between and among the [Jefferson] National Forest lands from the landscape that surrounds them.”<sup>141</sup>

For example, culturally attached Appalachians will commonly identify local properties through the use of family names, such as “so-and-so’s house” or “so-and-so’s place,” evincing their intimate association of people with the land around them.<sup>142</sup> “[T]his knowledge is irreplaceable,”<sup>143</sup> as the land itself takes on a “living interactive quality” that cannot be replicated anywhere else.<sup>144</sup> The result

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137. See *id.* at 4-5.

138. See KENT & PREISTER, *supra* note 35, at 18 (noting a high expectation that cultural attachment will exist in Appalachia).

139. See Allen, *supra* note 39, at 158 (explaining that “place” is a loaded term in a community’s vocabulary that carries a special meaning beyond its usual sense of locality and implies a relationship between the specific piece of land and its owner).

140. KENT ET AL., *supra* note 14, at 5 (noting Appalachian commentary such as the following: “[o]ur people are attached to the valleys and mountains all around us”); see Charles Hillinger, *Time and Custom Stand Still in the Hills and Hollers of West Virginia*, L.A. TIMES (Feb. 10, 1985, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1985-02-10-vw-3776-story.html> [<https://perma.cc/8TP6-DXB5>] (recalling two sisters in Odd, West Virginia, who lived on “Johnny Sneed Mountain,” a mountain named for “their great-great-great-grandfather, who settled in Odd in the late 1700s”).

141. KENT & PREISTER, *supra* note 35, at 1.

142. Allen, *supra* note 39, at 158, 160 (“[L]ike individuals, [homeplaces] are [a] part of the social fabric of the community.”).

143. KENT & PREISTER, *supra* note 35, at 18.

144. KENT ET AL., *supra* note 14, at 5 (noting that cultural attachment is commonly the result of generations living in the same area over many years).

is a patchwork of cultural importance that sprawls the hollers and hills of Appalachia in a way that “almost defies articulation.”<sup>145</sup>

### 3. *Kinship Patterns and the “Genealogical Landscape”*

By associating people and families with distinct geographic places, Appalachians have knowledge of the distinct “genealogical landscapes” around them, “placing people within [certain] social and geographical frame[works].”<sup>146</sup> Using the household as a basic unit, residents are able to use kinship patterns to foster a system of social capital that furthers mutual cooperation, trust, and community.<sup>147</sup>

This complex relationship between the people, their ancestors, and their land is a result of generations of family members living in one area, a concept that has “characterized mountain living for the last two hundred years.”<sup>148</sup> More often than not, names and places are interchangeable in mountain towns—allowing local residents to “read” a landscape in both a physical and genealogical sense.<sup>149</sup> In fact, in many cases, *where* one lives can be “just as [important] in establishing [one’s] identity as *who* [one’s] relatives are.”<sup>150</sup> Thus, an Appalachian is able to draw more than just an address or a property description from land—she can draw from it a complex network of relationships to better interpret place names and intentions of the parties to a land transaction.

### B. *Using Local Knowledge to Resolve Place-Name Ambiguity*

Property is inherently cultural, embedded with “layers of meaning and purpose.”<sup>151</sup> As evinced by the concept of cultural attachment, an Appalachian’s land is more than just lines on a map; land

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145. Allen, *supra* note 39, at 161.

146. *Id.* at 152.

147. KENT ET AL., *supra* note 14, at 5; see Chris Holtkamp & Russell Weaver, *Place Identity and Social Capital in an Appalachian Town*, 25 J. APPALACHIAN STUD. 49, 50 (2019) (defining social capital as “a place-based asset predicated on relationships between community members and expressed through norms of behavior including trust, reciprocity, and willingness to contribute to the public good”).

148. See KENT ET AL., *supra* note 14, at 8.

149. Allen, *supra* note 39, at 160.

150. *Id.* at 158 (emphasis added).

151. Davidson, *supra* note 95, at 1638.

represents an entire web of social relationships.<sup>152</sup> It is this deeply-rooted sense of cultural attachment that is perhaps the strongest justification for the presumption for which this Note argues, for if anyone knows the rugged terrain of the Appalachian Mountains, it is the Appalachian hillbilly.<sup>153</sup>

### *1. Revisiting the Current State of Systemic Ambiguity*

The current property system, although rooted in a desire for certainty,<sup>154</sup> is riddled with ambiguity.<sup>155</sup> First, metes and bounds property descriptions, with their use of impermanent reference points and highly irregular shapes, inherently introduce uncertainty.<sup>156</sup> Thus, plots once mapped by metes and bounds property descriptions become nearly impossible to re-create with any sort of certainty as time passes.<sup>157</sup> Moreover, as terrain becomes more rugged—as it so often tends to do in the Appalachians—these inherent ambiguities and variances only become more frequent.<sup>158</sup> Drop even the most experienced surveyors into the seemingly never-ending, up-and-down, ridge-and-valley, undulating waves of Appalachia, and disorientation becomes unavoidable.

Second, in addition to the physical difficulty of defining and demarcating the land itself, the legal standard for property descriptions merely requires “sufficient terms.”<sup>159</sup> In fact, metes and

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152. See KENT ET AL., *supra* note 14, at 4; see also Melinda Bollar Wagner, *Space and Place, Land and Legacy*, in CULTURE, ENVIRONMENT, AND CONSERVATION IN THE APPALACHIAN SOUTH 121, 123-24 (Benita J. Howell ed., 2002) (citing Lin Usack, Cultural Attachment to Land Study 5, 8 (1994) (paper for Anthropology 411: Appalachian Cultures, Radford University) (on file with author)) (“When land has been owned by a family for so many generations, it ceases to be simply property: it moves from commodity to family member.”).

153. See BENGSTON & AUSTIN, *supra* note 12, at 47 (noting that local residents of Peters Mountain often talked “about how they knew every inch of their land and that they held those lands in a special kind of reverence”).

154. See *Leo Sheep Co. v. United States*, 440 U.S. 668, 687 (1979) (recognizing a “special need for certainty and predictability where land titles are concerned”).

155. See *supra* Part II.A.

156. See Libecap & Lueck, *supra* note 3, at 451.

157. Brady, *supra* note 55, at 951.

158. See Libecap & Lueck, *supra* note 3, at 436, 441 (noting that as the “ruggedness” of a landscape increases, the prevalence of irregular plot shapes and demarcation variances also increases).

159. *Blacksburg Mining & Mfg. Co. v. Bell*, 100 S.E. 806, 811 (Va. 1919) (“A description ‘which contains sufficient terms to designate the land in question with such certainty that the



bounds descriptions are not required to convey property; so long as there is a way to reasonably ascertain the intended boundaries, a court will not invalidate a conveyance for vagueness.<sup>160</sup> Factor in “Mother Hubbard” clauses, which “unequivocally expand[] the conveyance to property beyond that specifically described in the deed,”<sup>161</sup> and the result leaves much clarity to be desired. With such inherent ambiguity, property rights are often left open to interpretation, constantly putting landowners at risk of having their property rights challenged.<sup>162</sup>

For Appalachians, the consequences of metes and bounds and the accompanying loose legal requirements for property descriptions exacerbate an already self-defeating cycle: more rugged land leads to more variation in property descriptions, which leads to more catch-all provisions, which lead to more uncertainty, which leads to more litigation.<sup>163</sup> For a system seemingly dependent upon landowners being able to know and define their rights, these inherent ambiguities and uncertainties create significant problems. Thus, how one defines their land with respect to their surrounding landscape is vital in understanding one’s legal property rights. However, as noted above, how a person defines herself in relation to her surrounding landscape is inherently linguistic, highly localized, and deeply cultural.<sup>164</sup>

## 2. *Hillbilly Experts and the Need for Clarity*

In response to the systemic ambiguities present in many Appalachian property descriptions, local knowledge and culture can provide clarity where a deed may be unable to do so. After all, as noted during a recent 2015 study of an Appalachian community on the Virginia-West Virginia border,

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boundaries thereof can be ascertained by the application of general rules, governing the location of land conveyed by any deed’ is absolutely essential.”)

160. See *Amos v. Coffey*, 320 S.E.2d 335, 338 (Va. 1984) (giving effect to a deed conveying lands not described in the deed).

161. *Vicars v. First Va. Bank-Mountain Empire*, 458 S.E.2d 293, 295 (Va. 1995).

162. See *supra* Parts II.B, II.C.

163. See *Libecap & Lueck*, *supra* note 3, at 451 (noting that metes and bounds property descriptions often lead to more litigation over property disputes).

164. See *supra* Part III.A.

[T]he people who reside [there] have a cultural attachment to the [land] that is different from other areas here in the United States.... [R]esearchers were told by many local residents about how they knew every inch of their land and that they held those lands in a special kind of reverence.<sup>165</sup>

Therefore, if there is an ambiguity in describing Appalachian property, it should be left to the experts. Courts should rely on those with generations of local knowledge and community-level cultural attachment by creating a presumption in favor of localized place names. In doing so, courts could simultaneously recognize the inherent virtues of cultural attachment and provide clarity to property transfers.<sup>166</sup>

A rule recognizing the cultural patchwork of importance overlaying property in Appalachia would more accurately reflect the intentions of parties engaging in contracts over Appalachian land—a principle that is supposed to be a “guiding light” for courts and juries during the interpretive process.<sup>167</sup> Because property descriptions are inherently less reliable where terrain is more rugged, this recognition would be especially valuable in the culturally attached areas of Appalachia.<sup>168</sup>

A presumption in favor of local knowledge would reinforce the social bonds within communities and sew certainty into property conveyances.<sup>169</sup> By encouraging, and often requiring, hands-on interaction with the land and its people, supplementing metes and bounds descriptions with the objectively superior local knowledge

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165. BENGSTON & AUSTIN, *supra* note 12, at 47.

166. *See* Brady, *supra* note 55, at 880-81 (noting that “rich, customized information about land” carries intangible benefits for communities living in the area).

167. *Amos v. Coffey*, 320 S.E.2d 335, 337 (Va. 1984) (quoting *Magann Corp. v. Elec. Works*, 123 S.E.2d 377, 381 (Va. 1962)).

168. *Libecap & Lueck*, *supra* note 3, at 429 (finding that rectangular survey plots in rugged areas were “less productive than they would have been under [the metes and bounds system]”).

169. *See* Brady, *supra* note 55, at 943-44 (explaining that maintaining a functional system of customizable property descriptions relies on and reinforces the social connections that convey local knowledge); *see also* Benito Arruñada, *Evolving Practice in Land Demarcation*, 77 LAND USE POL’Y 661, 664 (2018) (“[S]ocial consensus allows legal demarcation to produce stronger, in rem, effects.”).

and cultural attachment systems would foster far greater trust in the system than relying upon the whims of federal registers.<sup>170</sup>

### 3. *An Issue of Significance*

The ability to define one's location with respect to others and with respect to one's own surrounding landscape is both socially and politically powerful.<sup>171</sup> After all, a name is legitimacy.<sup>172</sup> Rarely do local residents (much less Appalachian hillbillies), however, have a voice in shaping their cartographic boundaries, as "maps [are] tools of power most commonly wielded by those with institutional power."<sup>173</sup> Yet, "whether produced by a research institute, the federal government, or an ordinary resident[,] ... [maps] are always arbitrary, selective, and incomplete."<sup>174</sup> Moreover, the black and white lines on a map leave no room for the complex human relationships and kinship networks that tie residents to their land and help formulate their individual identities.<sup>175</sup> When property boundaries are interpreted from the perspectives of local residents, from those who know and understand the land around them, courts are better equipped to accurately effectuate transfers with ambiguous property descriptions.<sup>176</sup>

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170. See Brady, *supra* note 55, at 950 ("[W]hen incorporated into legal institutions, [customization] can build trust in and demonstrate the value of legal processes and requirements.").

171. See Scales et al., *supra* note 16, at 91.

172. See U.S. BD. ON GEOGRAPHIC NAMES, USEFUL TIPS FOR APPLYING OFFICIAL GEOGRAPHIC NAMES IN FEDERAL PUBLICATIONS 1 (2016), [https://geonames.usgs.gov/docs/pubs/Official\\_Geog\\_Names\\_Fed\\_Pubs\\_factsheet.pdf](https://geonames.usgs.gov/docs/pubs/Official_Geog_Names_Fed_Pubs_factsheet.pdf) [<https://perma.cc/6VJD-X5BM>] ("Geographic names also carry great cultural significance. Using one name in preference to another can even have political implications.").

173. Scales et al., *supra* note 16, at 91.

174. Eugene J. McCann, *Mapping Appalachia: Toward a Critical Understanding*, 4 J. APPALACHIAN STUD. 87, 87 (1998).

175. *Id.* at 95; see Berlin, *supra* note 48 (noting that National Geography Society's Geographer believes "[p]lace names serve as a vehicle for identity"); see also Guy W. Buford, *Buford: Pipeline Could Endanger Appalachian Waters*, ROANOKE TIMES (Sept. 17, 2015), [https://www.roanoke.com/opinion/commentary/buford-pipeline-could-endanger-appalachian-waters/article\\_6e207ad1-43d3-57b7-85c9-e308459ab6c5.html](https://www.roanoke.com/opinion/commentary/buford-pipeline-could-endanger-appalachian-waters/article_6e207ad1-43d3-57b7-85c9-e308459ab6c5.html) [<https://perma.cc/EL2E-KJGS>] ("These Appalachian Mountains are populated by people, many of whom have been on this land for generations and who have a cultural attachment to their land. This information does not appear on Google Earth.").

176. See Scales et al., *supra* note 16, at 91 ("[W]hen constructed from the perspectives of local residents, [maps] can promote political projects.").

Some will ask why Appalachians cannot simply petition the BGN to change inconsistent federal definitions to align with local names. And while it is true that anyone can petition the BGN to change a name,<sup>177</sup> “changing a name merely to correct or re-establish historical usage is not in and of itself a reason to change a name.”<sup>178</sup> Notably, there have been a total of *zero* name-change petitions from Southwest Virginia, West Virginia, or Eastern Kentucky in the last twelve months.<sup>179</sup> If one extends the search to include Eastern Tennessee, only one natural feature has been renamed.<sup>180</sup> This silence is deafening. While it may be possible that residents in these areas simply have not had a reason to change place names, it seems more likely, given that the BGN receives hundreds of petitions per year,<sup>181</sup> that this virtual absence from the administrative process is indicative of a larger problem of access that is once again leaving Appalachians out of the mapmaking process.

An interpretation principle based on cultural attachment and local knowledge would simultaneously recognize the importance of place and culture in Appalachia while providing clarity and predictability to an otherwise ambiguous system.<sup>182</sup> Hence, by integrating local knowledge with the larger property system as a whole, local communities would be able to facilitate a more accurate property system that not only mirrors the unique intrinsic value of Appalachian land but also places the difficult issues of land demarcation and deed interpretation back into the hands of the experts: local residents.

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177. DNC, *supra* note 40, at 27-31 (not restricting submission of proposals for place name changes to any segment of the general public).

178. *U.S. Board on Geographic Names: How Do I?*, U.S. GEOLOGICAL SURV., <https://www.usgs.gov/core-science-systems/ngp/board-on-geographic-names/how-do-i> [<https://perma.cc/7Q2N-M766>]. In addition, the BGN typically does not approve “variant names,” which are “current or historical name[s] or spelling[s] for a geographic feature other than its official name.” DNC, *supra* note 40, at 17.

179. *U.S. Board on Geographic Names: Action List*, U.S. GEOLOGICAL SURV., [https://geonames.usgs.gov/apex/f?p=geonames\\_web:review\\_lists](https://geonames.usgs.gov/apex/f?p=geonames_web:review_lists) [<https://perma.cc/5WUA-N86Y>] (click “Action List”).

180. *Id.* (changing a stream name due to its offensive nature).

181. *See, e.g.*, U.S. BD. GEOGRAPHIC NAMES FISCAL YEAR 2018 ANN. REP. TO SEC’Y INTERIOR 3 (2018), [https://geonames.usgs.gov/docs/pubs/BGN\\_AnnRpt\\_FY2018.pdf](https://geonames.usgs.gov/docs/pubs/BGN_AnnRpt_FY2018.pdf) [<https://perma.cc/5YAD-PLLE>].

182. *See* McCann, *supra* note 174, at 109.

## IV. ADDRESSING COUNTERARGUMENTS

Proponents of standardization in property law argue that “the structur[al benefits] of standardization promote[] efficien[cy]” by increasing “alienation, reducing [uncertainty], and managing third-party information costs.”<sup>183</sup> These prostandardization scholars argue that any introduction of inconsistency and specialization into property creates high information costs that lower efficiency and decrease property values.<sup>184</sup> While valid in other contexts, such concerns should not prevent application of this Note’s proposal, as a presumption in favor of local knowledge would increase legitimacy, promote clarity, and further BGN interests.

*A. Information Costs and the Impacts on Alienation*

Perhaps the oldest justification for standardization in property law is the idea that standardization promotes alienability by lowering transaction costs.<sup>185</sup> Well-known proponents of standardization, Professors Thomas Merrill and Henry Smith argued,

[T]hird parties must expend time and resources to determine the attributes of [property] rights, both to avoid violating them and to acquire them from present holders. The existence of unusual property rights increases the cost of processing information about all property rights. Those creating or transferring idiosyncratic property rights cannot always be expected to take these increases in measurement costs fully into account, making them a true externality.<sup>186</sup>

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183. Davidson, *supra* note 95, at 1624.

184. See Libecap & Lueck, *supra* note 3, at 428 (arguing that standardization in property law leads to “lower transaction costs,” “better property rights enforcement,” and higher property values).

185. Davidson, *supra* note 95, at 1598, 1624-25 (discussing justifications for the *numerus clausus* principle, meaning the “number is closed,” which parallels arguments for standardization in property law).

186. Thomas W. Merrill & Henry E. Smith, *Optimal Standardization in the Law of Property: The Numerus Clausus Principle*, 110 YALE L.J. 1, 8 (2000).

The thought is that standardization protects the interests of future holders “by limiting the menu of possib[ilities]” for current landowners.<sup>187</sup> The result, so the argument goes, is that property will be both easier to sell and higher in value because the inevitable transaction costs, such as costs of coordination, verification, and enforcement between the parties, will be lower.<sup>188</sup> This concern is particularly potent in property law because of the desire for property to easily flow to “the highest and best use.”<sup>189</sup>

As a preliminary matter, this reactionary justification for standardization seemingly gives short shrift to the benefits of notice.<sup>190</sup> The presumption for which this Note argues does not seek to introduce uncertainty into property conveyances, nor does it create a new “form” of property.<sup>191</sup> Rather, this Note offers a rule of interpretation that would provide courts and juries with a reliable reference point (local knowledge) for interpreting property descriptions with place-name ambiguity after the already-existent safeguards against ambiguity have failed.<sup>192</sup> Thus, concerns of fragmentation and nonstandard transfers of property are *de minimis* in the context of property descriptions.

Arguably, following federal definitions would promote efficiency and alienability by providing an objective baseline for third parties.<sup>193</sup> Such reasoning fails for two reasons. First, in the context of property descriptions, true adherence to the principles of standardization would mean *always* using federal definitions of property in cases of ambiguity. Given that the current property system *already* allows parties to introduce extrinsic evidence to support their interpretations, this “pure standardization” ship has sailed, as juries may already choose to resolve ambiguous property descriptions using local definitions instead of federal names if the evidence supports such an interpretation.<sup>194</sup>

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187. Davidson, *supra* note 95, at 1624-25.

188. *Id.*; see Merrill & Smith, *supra* note 186, at 24 (arguing that the “large transaction-cost barriers” of specialization would “creat[e] an undue restraint on alienation”).

189. Davidson, *supra* note 95, at 1619.

190. See Davidson, *supra* note 95, at 1628-29 (admitting that notice can solve many of the information-cost concerns raised by proponents of standardization).

191. See *supra* Part III.

192. See *supra* Part III.B.

193. See DNC, *supra* note 40, at 2.

194. See *supra* Parts II.A, II.B.

Second, scholars readily admit that if two parties want to structure a conveyance in a particular way, standardization does not stop them; it only makes doing so harder and more expensive.<sup>195</sup> Idiosyncrasies in property descriptions is a problem that the market can work out more efficiently on its own, as any increase or decrease in the variation between descriptions should be reflected in the property's price.<sup>196</sup> But perhaps most importantly, as a matter of policy, the local residents—people who have lived and died for generations on the same farms or in the same counties—should get the final say in determining where their land is.<sup>197</sup>

### *B. Combatting Local Abuse*

Importantly, this Note's proposed presumption would be *rebuttable*, not dispositive. Thus, regardless of whether a particular landowner has a subjective understanding of their property, a challenger would be able to overcome any local presumption by showing that the intent of the parties was founded upon standardized boundaries. This system incentivizes *both* parties to have a better drafting process *before* land transfers occur, as it is in neither party's best interests to purposefully create ambiguity in land transfers.

However, some may still fear the potential for abuse if property rights are contingent upon local residents defining local property. While any system reliant upon local knowledge and cultural understanding assumes a rather homogeneous community,<sup>198</sup> a local jury is more apt to determine such factual disputes on a case-by-case basis than a state or federal legislator who has likely never been to the county, much less the property, in question.<sup>199</sup> Since local understandings are, by definition, commonly known, the

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195. See Davidson, *supra* note 95, at 1625-26; Merrill & Smith, *supra* note 186, at 24-25 (noting that if the goal of standardization is to limit idiosyncrasies in order to promote efficiency, then it "is not in fact a very effective device" for doing so).

196. See Davidson, *supra* note 95, at 1626; see also Merrill & Smith, *supra* note 186, at 47 (explaining how market participants will often opt for a standard-like system even in the absence of a legally imposed system due to the benefits of operating in a "network").

197. See *supra* Parts III.B.2, III.B.3.

198. See McCann, *supra* note 174, at 110.

199. See *supra* Part I.A.

likelihood of one person subverting this system is low. Therefore, the fact that jurors are pulled from the surrounding area actually helps prevent local abuse, as it would be difficult to convince a juror to use an alleged common cultural understanding of which they have never heard.<sup>200</sup>

### *C. Protecting the Integrity of the Standardized System*

Skeptics may argue that deferring to local understandings would undermine the purpose and goals of the BGN. However, while it is true that this Note's presumption would inevitably produce outcomes that contradict federal definitions, such outcomes would advance rather than detract from the BGN's policies and procedures.<sup>201</sup>

First, if the purpose of place-name standardization is to provide the clarity of a "common map," then any contradictions merely work to perfect the overall system. Theoretically, over time, as litigants discover "local use" contradictions, these flaws in the common map would be fixed through adoption by the BGN.<sup>202</sup> Therefore, as standardized boundaries began to be redrawn to conform with local use, local knowledge, and place-based attachment systems, the standardized system would become *more accurate* and such discrepancies *less common*.

Moreover, it is important to note that the presumption for which this Note argues would be limited in scope, as it would apply *only* after a court has deemed a deed ambiguous on its face *and* the place-naming procedures of the BGN have failed.<sup>203</sup> Where the language of a deed is clear and unambiguous, a court would still be required to construe the terms according to their "plain meaning,"<sup>204</sup> for it would be improper for a court to ignore the expressly stated

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200. See KENT ET AL., *supra* note 14, at 4 (noting that cultural attachment requires active participation by communities "to preserve their natural and social environment").

201. See DNC, *supra* note 40, at 2-4, 7, 11 (noting that the "recognition of present-day local usage" is a driving policy behind BGN decisions).

202. 43 U.S.C. § 364 (establishing the BGN to "provide for uniformity in geographic nomenclature and orthography throughout the Federal Government").

203. See DNC, *supra* note 40, at 2 ("A primary principle [of the BGN] is formal recognition of present-day local usage.").

204. *Amos v. Coffey*, 320 S.E.2d 335, 337 (Va. 1984) (citing *Berry v. Klinger*, 300 S.E.2d 792, 796 (Va. 1983)).



intention of the parties by applying a contrary rule of construction.<sup>205</sup>

Therefore, for the majority of conveyances, a local presumption would not disrupt the standardized system. In the event, however, that the system fails and a court faces the decision of whether to use a federal or local definition to resolve an ambiguity within a property description, then this Note's presumption in favor of local knowledge could easily be employed in any dispute in order to resolve the ambiguous description.

### CONCLUSION

This Note draws attention to certain deficiencies that arise when applying federal, standardized place names to Appalachian property and corrects them by placing matters of unique importance back into the hands of the experts: local residents.

The ability to define one's property is essential to the proper functioning of our property system.<sup>206</sup> For many Appalachians, however, this task is far easier said than done, as high mountain peaks and low river valleys make demarcating physical boundaries nearly impossible.<sup>207</sup> The law has attempted to resolve these systemic ambiguities by allowing for expansive "catch-all" clauses.<sup>208</sup> Yet, taken to their logical end, these expansive phrases merely replace ambiguous property descriptions with even more ambiguous clauses. Courts and juries are then forced to make an impossible decision between two competing and plausible interpretations, often having to decide between that which is locally understood and that which is federally defined. The result, at least in part, is largely an arbitrary decision.

This Note proposes a clearer solution. When all other safeguards have failed, the proper interpretation should rely upon local knowledge rather than standardized maps, as local cultural understandings will more accurately reflect the original intent of the parties. First, by working and living in the same area over

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205. *See* CNX Gas Co. v. Rasnake, 752 S.E.2d 865, 867 (Va. 2014).

206. *See supra* Part II.

207. *See supra* Part II.A.

208. *See supra* Part II.A.2.

generations, local residents possess an objectively superior knowledge of the land around them. Second, Appalachians often possess a high level of cultural attachment that is commonly expressed through references to people and places in property descriptions. Thus, more than just legal documents, deeds tell generational stories that weave together complex webs of social and cultural understandings.<sup>209</sup>

The proper solution thus lies in recognizing the importance of place-based culture in Appalachia and appreciating the knowledge that comes from that regional identity. No longer the wayfaring hillbilly, such a rule empowers local residents, through their objectively superior local knowledge and cultural awareness, to reliably and accurately resolve a problem the law so far has not—ambiguous property descriptions in Appalachia.

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209. See STOLL, *supra* note 120, at 161 (“A deed might seem like an impersonal legal instrument, but local deeds [tell] stories and trace[] the transfer of land between and within families.”).

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