

THE PROPOSED SALE OF THE HOFMANN FOREST: A CASE STUDY IN NATURAL RESOURCE POLICY

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Abstract—In January 2013, the North Carolina State University (NCSU) Endowment Fund and Natural Resources Foundation proposed selling the 79,000 acre Hofmann Forest, which a Forestry Foundation at NCSU had purchased in 1934 and used for education, research, and demonstration programs. This proposed sale prompted substantial public and faculty opposition, as well as a lawsuit filed based on the North Carolina Environmental Policy Act (named SEPA). Various factors—including the lawsuit, public protests, media exposure, and a new university strategy in 2015—shifted the university’s plan from the outright sale of the Hofmann to retaining ownership of the majority of the property and selling a timber deed to a Timber Investment Management Organization (TIMO) in 2016 in order to ensure conservation over as much as 70,000 acres of the land. This public university policy issue is described here in some detail as a case study.

INTRODUCTION

The first Director of the North Carolina State University School of Forestry, Julius Hofmann, felt that the students in the new program needed a forest to learn on and practice their discipline, and worked tirelessly to acquire a suitable tract of land for the new School that he founded after leaving Pennsylvania. In 1934, he set up a Forestry Foundation as a vehicle to obtain a loan and manage such a property, and bought a massive 80,000 acre Pocosin tract in the North Carolina coastal plain. To quote Hofmann (1933), the property was acquired:

“...as a forestry laboratory, demonstration area and as a source of revenue to help carry on the forestry education work.”

“The Forestry Foundation is to hold this property for the sole interest and benefit of the Forestry Department of State College.”

Management of the mostly wetland property proved to be challenging, but the Forestry Foundation and professors at the school slowly began teaching and experiments on the forest, and subsequently Wally Wicks, an industry manager, began to convert some of the natural pond pine and other species to loblolly pine by slowly ditching parts of the swamp, draining it, and converting it to loblolly pine plantations. Forestry students also went to summer camp on the Hofmann through the 1950s, and then later moved to the closer and less rugged Hill Forest in the Piedmont of Durham County N.C. After about five

decades of ownership, the Hofmann Forest began to make its first net profits in the 1980s.

In 2008, the Forestry Foundation was merged with the Pulp and Paper Foundation to create the NC State University Natural Resource Foundation (2008), which was: “organized to operate exclusively for scientific and educational purposes in support of the scientific, educational, research, and outreach missions of the College of Natural Resources at NC State University. The Corporation has a strong history and lineage of forestry and forest products support, largely due to the management of the Hofmann Forest, which is recognized as a unique resource and a primary focus of the Corporation since its inception.”

Despite the initial mission that focused on the Hofmann Forest, the Natural Resource Foundation soon decided to sell the Hofmann based on the premise that it would gain more revenue for its educational and research support mission from a sale of the Hofmann Forest than it could receive from actually managing the Hofmann. Numerous citizens, faculty, and citizens opposed the sale, and pursued various strategies and tactics to stop the sale and protect the Hofmann for education, research, and conservation in its existing university foundation ownership.

By the late 2000s, the forest began to contribute net revenues of more than \$2 million per year for the NCSU College of Natural Resources budget. Timber harvests increased substantially from less than 50,000 tons in 2005

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to more than 200,000 tons in 2010, and then dropped to less than 100,000 tons in 2013 (table 1), providing evidence that the high harvest levels were not sustainable. A complex interaction of harvests from natural pine stands; large investments in regeneration of those stands to convert them to planted stands; an unbalanced age class structure; falling stumpage prices; and more aggressive timber harvesting resulted in the harvest area and volume peak and then decline. The timber harvest levels probably could have been scheduled in a better sustained yield even flow approach, but there is not adequate public data to pin this down, and indeed the Hofmann Forest Management Committee was disbanded during this critical period as well. Regardless, the run up in harvest revenues, College expenses, and subsequent revenue declines may have encouraged the Natural Resources Foundation and NCSU to consider selling the property. The public and faculty were not privy to these deliberations or details of the forest management decisions.

AGENDA SETTING PROCESS

This paper examines a policy process that this issue evolved through, and the current status and resolution of the debate, with the university selling a timber deed to the Hofmann Forest, but still retaining the ownership of the Forest. . To provide some theory for this paper, we adapt the agenda setting process described by Cobb and Elder (1972), Birkland (1988), and Cabbage and others (2017), which starts with an issue being identified, and then various attempts by interest groups who are seeking a different policy to get their issue on the agenda for change (fig. 1). This process applies well to the Hofmann debate, and provides a somewhat dispassionate way to examine what was a contentious debate about the fate of the forest.

In brief, the agenda setting process states that an issue is triggered by some initiator or focusing event, which brings attention to an old policy, or places some new policy on an agenda for action by decision makers. Official university decision makers, such as the North Carolina State University (NCSU) College of Natural Resources (CNR) Dean, the Natural Resources Foundation (NRF), and the Chancellor in this case, were able to get the proposed sale on the NC State University agenda quickly, and without the need for any consultation

with external stakeholders or interest groups. Persons and uninfluential groups who then eventually opposed the sale of the Hofmann Forest, such as faculty, students, local residents, or conservationists, then had to build broader coalitions and gain wider public attention in order to have their views considered or to halt the proposed sale.

This paper describes how the interest groups that favored retaining the Hofmann Forest sought to oppose the sale for their stated educational, research, and conservation objectives, and by inference, how NC State University and its investment foundations sought to sell the Hofmann Forest to meet their implied educational, financial, and programmatic objectives. Data and references for this discussion are drawn mostly from NC State and public media, newspaper, and internet sources, which were all that was publicly released, since the NC State University Endowment Fund and its Natural Resource Foundation have continuously claimed that they are a private foundation, and they are not subject to any open records, although they are housed in university buildings and have university emails, phones, and purchase cards. In fact, the administration chose not to issue any specific statements about the sale other than formal university press releases or open letters to the College and the public from the Dean of the College of Natural Resources.

The primary official NCSU public press releases and web postings touted the investment benefits of the sale (Watzin 2013); the limited academic use of the Hofmann Forest (NC State University 2015); and the advantages of a new conservation agreement (Hartman 2015). Opponents of the sale contested these official positions, and indeed unsuccessfully argued that the Forest was public property and subject to North Carolina open records laws. Opponents did make many open records requests and did receive copies of the eventual Hofmann Forest sale contracts and some emails deemed to be public, but all requests for information about the Natural Resources Foundation Board meetings or documents were denied. Their attorneys strongly felt that the North Carolina open records law would apply the Natural Resources Foundation / NC State University leaders, but the estimated cost of \$10,000 or more to open a new lawsuit for their records about the Hofmann was too expensive for the opponents to afford.

Table 1—Hofmann forest timber harvest trends, 2004–2013

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Area (acres)	290	430	900	1730	1940	2160	2279	1210	1570	1150
Volume (thousand tons)	23	38	88	134	177	194	201	106	127	97
Tons/acre	79	88	98	77	91	90	88	88	81	84

The 2013 Hofmann Forest Sale Announcement Triggers the Issue

The plans to sell the Hofmann Forest apparently started in 2008, when the original Forestry Foundation was merged with a newly created Natural Resources Foundation (NRF), even though the NRF charter recognized the historical significance and importance of the Forest. Over the next several years the foresters, locals, and conservation group members of the NRF Board were replaced by executives in the wood products and pulp and paper industries. The Board members had official authority to make decisions about financial assets. Under the rules of NCSU Foundation ownership, other public and citizen stakeholders do not have a direct say in such decisions, and thus lacked agenda status during decision making. The Natural Resources Foundation voted at its January 19, 2013 board meeting to invite proposals to purchase the Hofmann Forest. In an announcement released on January 23, 2013, the university focused on

potential revenues expected from selling the Hofmann, stating in part that (Watzin 2013):

I write to let you know that the Natural Resources Foundation Board of Directors has unanimously recommended the sale of the Hofmann Forest in its entirety, assuming price and other considerations can be met, for the specific support of the mission of the College of Natural Resources.

I also want to reassure you that any sale of the Hofmann will be consistent with the values of the College [of Natural Resources], which include retaining the name in recognition of the legacy of the Forest to the College. The goal is to sell the property as a working forest. The College hopes to retain access to the property by faculty and students for teaching and

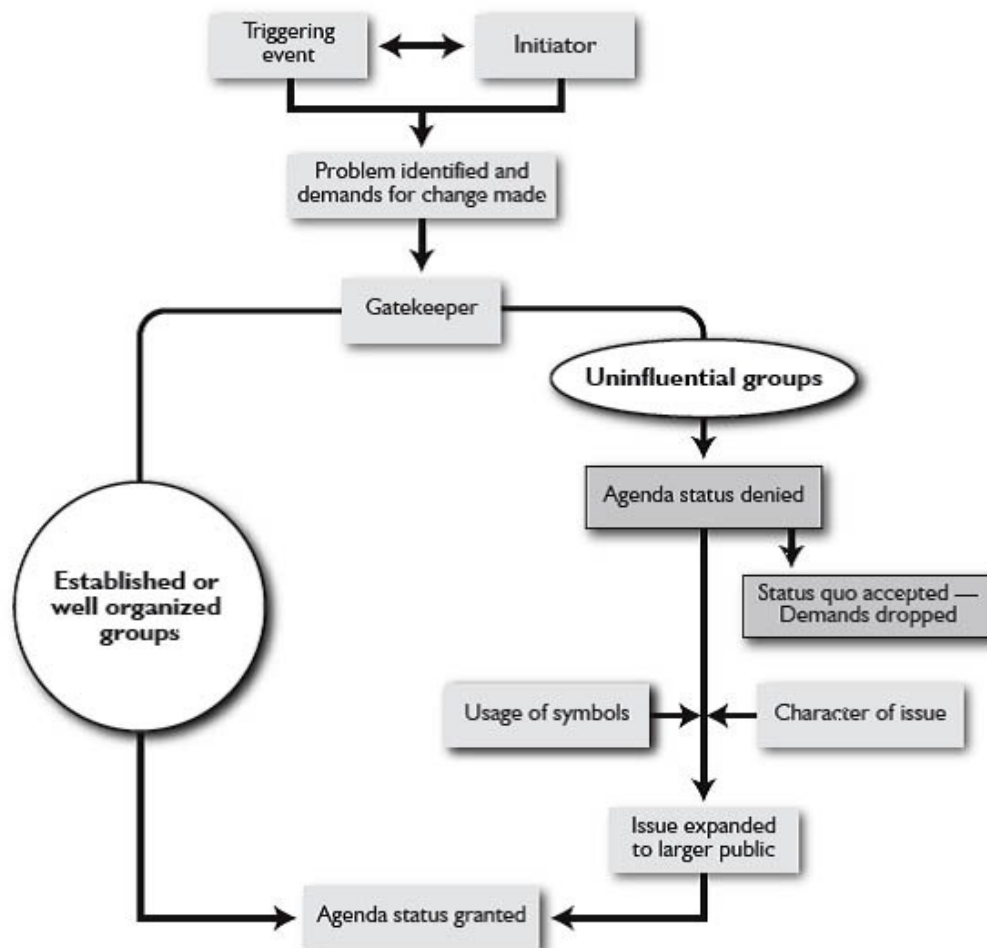


Figure 1—The agenda setting process (Cubbage and others 2017).

research. My commitment to forestry education, research and outreach as core elements of the programming of the CNR is strong...

The College is currently experiencing significant growth and has strong ambitions. Keeping current programs strong and leveraging new opportunities for the College will only be possible with additional cash flow. A more diversified portfolio of investment could provide a higher and more consistent level of support to the College...

Currently, the primary role of the Hofmann Forest is as an investment, with earnings supporting scholarships and the academic and research programs of the College. It is managed by the Natural Resources Foundation as a commercial forest. Although the Foundation staff has done an outstanding job of managing the Hofmann Forest over the last decade, we are at a competitive disadvantage compared to large commercial operations, which have greater resources to manage in the face of a changing business climate...

The current rate of return from the Hofmann is less than what might be achieved from a diversified investment portfolio.

With the vote to make the sale and its public announcement in on January 23, 2013, the established interests and sale advocates of the NRF Board, the Dean of the College of Natural Resources, and the NCSU Chancellor extended the sale from their private agenda to the broader and more perilous public agenda. The sale decision was made in closed meetings of the NRF Board and the NCSU Endowment Fund Board. These Boards have successfully claimed that as a private 501(c)(3) foundation, their records were exempt from public records requests, as were any of the records of the Dean or Chancellor related to Foundation business. Consequently, opponents had neither access to the process nor records of it, and were forced to try to halt the sale through broader issue expansion strategies.

Subsequent information that was released, however, did indicate that the Natural Resource Foundation actually began seeking buyers for the Hofmann Forest much before there was a public announcement in January 2013. In fact, on October 19, 2012, the Natural Resources Foundation voted to explore and seek if any buyers had a "real and specific interest" in purchasing the forest. Those

expressing interest were asked to sign a confidentiality agreement. They were then provided with detailed information about the forest and asked to submit an initial proposal by January 7, 2013. More than 27 expressions of interest were received. So the proposed Hofmann Forest sale began considerably before it was publicly announced, placing opponents at a disadvantage.

The initial and enduring reactions to the public sale announcement by most public, alumni, and faculty were almost completely negative. In the same web site announcing the sale, all the alumni, public, and faculty bloggers expressed opposition to the sale, such as comments excerpted below:

"The College of Natural Resources is proposing the sale of Hofmann Forest. Does anyone else find this as paradoxical as I do? ... I strongly suggest that 80,000 acres of unfragmented woodlands is an irreplaceable NATURAL RESOURCE that should be held for future generations and not sold to the highest bidder. The idea itself is very troubling and in direct conflict with regard to the name of the department proposing the sale. The action being considered is shortsighted, irresponsible and reckless. Once the ink dries and the deal is done, the transaction can never be undone. Despite all assurances, promises and handshakes the land will inevitably be one day dotted with trailer parks, Burger Kings and Dollar Generals. Perhaps the College of Natural Resources should look into offering a course on how to best name a subdivision." (Morton 2013).

"Talk about not seeing the forest for the profit from the trees. I am so disappointed in this decision. Guess they wont be needing any donations anymore." (Cook 2013).

"The message you are sending is that you would rather have the short-term income and distance yourself from the realities of managing one of the largest privately-owned resources in the state than stay committed to teaching that sustainable natural resource management is a viable means for income." (Rudd 2013).

"I can't believe this..... how could the board of trustees sell a donated forest to cover their own agenda in making some new department. Don't sell it!!! Like Mark stated, this really is one of the last

true Natural Resources and this should be treasured, not sold. NCSU, I'm sad to see you spiraling down in both influence and prestige with these sorts of decisions. JUST SO EVERYONE KNOWS< THE ENTIRE FACULTY AND STUDENT BODY IN THE DEPARTMENT OF CNR SAID DON'T SELL IT!" (Anonymous 2013).

"It is clear the College has strong monetary ambitions; tragic that it has no long term academic or stewardship ambitions... Our stature is integrally linked to the Hofmann. The Hofmann Forest has provided 79 years of teaching, research, and service to students in forestry and natural resources. It is the envy of the rest of the world, as largest living working forest laboratory in existence... Per the Land Ethic of Aldo Leopold (1948), 'A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.' The sale of the Hofmann would be tragically, monumentally, permanently wrong, violating all the principles and ethics that we espouse as a profession, college, and university." (Cubbage 2013a).

"I am truly disgusted with the idea and possible impending sale of the Hofmann Forest. By ridding the College of this property you are depriving future students an IRREPLACEABLE opportunity to learn and experience true forestry on such a grand scale. The only beneficiary here is someone's bank account. Dean Watzin, do your students one better, show them how properly managed forests can be steadfast in times of economic uncertainty, rather than dreaming of the shear number of zero's on the winning bidder's check." (Hull 2013).

Internal and External Efforts Expand the Issue

The sale announcement initially left opposing faculty, students, locals, and conservationists in disarray for some time. They tried to appeal to the Dean, to Natural Resource Foundation, and to the Chancellor. The Dean met with faculty and students upon request, but proved resolute in prosecuting the sale, and requests for further meetings eventually petered out. A few faculty in the Department of Forestry and Environmental Resources jointly wrote "reply all" email letters to the Dean in response to periodic College communications about the sale; and specific memos to the Chancellor and the Board of Trustees about the error of making such a sale, with

"reply all" copies to the College list serve and NRF Board members as well. In response to the sale opponents, the Department Head of the Forest Biomaterials Department wrote "reply all" comments advocating for the sale.

Further reflecting splits in the College, the Department of Forestry and Environmental Resources faculty voted to oppose the Hofmann Sale, and the Forest Biomaterial Department voted in favor of selling the Forest—perhaps since they never used the Forest, and could receive some proceeds from its sale to build a long-desired new building. Fred Cubbage proposed a resolution via his Senator to the North Carolina State University Faculty Senate to oppose the sale. Cubbage presented the case to the Senate Resources Committee, and attended two Senate meetings to support the resolution. The Provost, the Dean, and the former Senate president spoke against the sale at the meetings. The current Senate president did not let Cubbage speak at the meetings; the Chancellor attended the meeting with the final vote and then left. Discussion by senators was limited, and it did not pass. Cubbage and Joe Roise also wrote and hand delivered letters opposing the sale for all the members of the Board of Trustees and the Natural Resource Foundation Board before two periodic meetings, but they did not receive any responses.

After all the internal appeals to stop the sale failed, the opponents eventually moved to promote external issue expansion both through advocacy campaigns (e.g., symbolic communication) and litigation. The advocacy efforts portrayed the sale as a mistake and highlighted the sale as a shift from investing in education on the forest to investing in Wall Street. Advocacy efforts featured the value of education and research as the mission of the Hofmann Forest and rebutted claims that undergraduate students would benefit most—since they received less than 10% of the net proceeds in scholarships from the Hofmann. They also stressed that the Hofmann was an educational asset, not a financial one (Cubbage 2013a, b), and its immense, irreplaceable conservation value as such a large unbroken natural tract as the Hofmann (Sutherland 2014). External critics of the sale wrote opposing comments on newspaper blogs and letters to the editor opposing the sale. Eventually, a group of core university student leaders, outside conservationists, and a few faculty coalesced to find coordinated ways to oppose the sale, and get the decision to sell the Hofmann Forest reconsidered. In response to the emerging opposition, Chancellor Randy Woodson and Dean Mary Watzin wrote an extensive Raleigh News and Observer (N&O) letter to the editor supporting the sale, stating that their "... obligation to students came first." (Woodson and Watson 2013). Cubbage (2013b) rebutted their arguments in a reply, and stated that NCSU's obligation to students was to teach what we believe and practice what we teach.

Ron Sutherland at the Wildlands Network spearheaded a public relations campaign that included getting support and letters from more than dozen environmental groups to oppose the sale, including the Sierra Club, Izaak Walton League, North Carolina Coastal Federation, Center for Biological Diversity, and Dogwood Alliance, as well as thousands of their members. Initially it was difficult to get the environmental groups engaged in the campaign, because a majority of the Hofmann Forest was already under intensive pine plantation management, and not seen as very pristine. But eventually more and more organizations and individuals realized the conservation value of maintaining this huge tract of uninhabited land for wildlife, and for maintaining the excellent water quality in the three rivers that flowed from Hofmann's expansive acreage.

Seven public protests and rallies were held at NCSU and on the Coast, including one simultaneous event at NCSU and Deppe Park (part of Hofmann Forest) that drew about 100 participants at each location. Also, hundreds of iconic dark green SaveHofmannForest.org (2016) yard signs were placed throughout the state and on most main streets entering the NCSU campus, earning the campaign much-needed public awareness. The Web site itself served as a low-tech location to put position statements and as a reference place for much of the media that was published about the sale. Sutherland developed a high-tech interactive map of the Hofmann Forest that served as a handy public interface for the benefits of the forest (Wildlands Network 2016), as did a Facebook (2016) site. Each of several sale announcements, public protests, and eventual court case hearings generated newspaper and local TV coverage in Raleigh and in Jacksonville near the Forest, which was posted periodically.

In March 2013, Walker Farms, an agribusiness firm based in Illinois, offered \$150 million to purchase the forest. Public opposition to the sale was heightened when the firm's secret business plan to convert at least 45,000 acres the forest's 55,000 acres of planted trees and some natural swampland to row crops, commercial development, and subdivisions was leaked to the public (Price 2014). This proposed purchaser and massive development contravened the initial CNR pledge to keep the Hofmann Forest as a working forest, and provoked even broader public opposition to the sale. In fact, the sale contract required only that the remnants of the Forest would bear the name Hofmann Forest and that a plaque honoring an original Hofmann forest manager, Wally Wicks, would be left somewhere on the Forest. Development was not proscribed, and indeed eventually promoted by the new buyer, with assistance from previous plans prepared by the Natural Resource Foundation (Price 2014). Figure 2 shows a snippet of the development plans contained in the business plan—indicating both that most of the Hofmann

Forest would be converted to other uses, and that this conversion could earn up to \$400 million for the buyers over the next decade, in comparison to their \$150 million purchase price (Hofmann LLC 2013).

Public Relations and Advocacy Efforts

The implicit strategy of the sale proponents was to make the sale quietly after meetings and decisions in the closed Natural Resource Foundation meetings, with the subsequent approval of the Endowment Fund of the of the Board of Trustees of North Carolina State University, which included the Chancellor and the Vice Chancellor for Finance of NC State University. One could characterize this approach as a decide-announce-defend (DAD) policy process (Hendry 2004), where an agency makes a decision without public input, and then defends it from opposition so it can be executed. The NRF contended that it is a private organization that does not need comply with laws governing State organizations or open records, and the university supported that stance through its legal office and pursuit of the sale. The NRF on the other hand, and its predecessor the Forestry Foundation, also have successfully claimed that they were State land when it came to paying property taxes, so they would be tax exempt in Jones and Onslow counties (Edmisten 1980).

As one response to the lack of success on getting on the NC State University agenda, about two dozen key environmental, local community, student, faculty, and alumni leaders stayed active for about two years promoting issue expansion to try to reverse the decision. The North Carolina Society of American Foresters voted to oppose the sale, and the Association of Consulting Foresters contributed funds to the environmental lawsuit opposing the sale, as did more than 100 individuals. Issue expansion ultimately created a context so broad that that foresters and environmental activist groups such as Dogwood Alliance and Center for Biological Diversity also cooperated and helped by sending out action alerts to their members in order to protect a planted forest area, for perhaps the first time ever. These alerts led to more than 4000 email and letter requests to Roy Cooper, the Attorney General of North Carolina, and to Dean Mary Watzin, asking them to stop the sale of the Hofmann Forest.

Social media efforts included more than 10,000 signatures on online petitions opposing the sale (I-Petition 2016: 2,214 individuals at <http://www.ipetitions.com/petition/cnr-alumni-against-the-sale-of-the-hofmann-forest/>); Facebook 2016: 4,980 at <https://www.facebook.com/SaveHofmannForest>; and 11,877 signatures at MoveOn (2016); (<http://petitions.moveon.org/sign/save-hofmann-forest-from>). These petitions were ultimately delivered to the NCSU's Chancellor during the largest protest that

COMMERCIAL DEVELOPMENT

There are approximately 10,000 acres that are readily available for commercial development. Jacksonville, NC is one of the fastest growing cities in the United States. The military base is expanding and the need for housing and other essentials will drive demand. The approximately 10,000 acres of land could be converted from timberland and have a potential value of \$10,000.00 per acre.

80,000 Acres - Hofmann Forest

PROJECTED IRRIGATED FARM INCOME

Projected Irrigated Figures	Year 1	Year 3	Year 5	Year 7	Year 10
Total Tillable Acres	1,450	20,000	35,000	40,000	45,000
Corn Base Acres	60%	870.0	12,000.0	21,000.0	27,000.0
Bean Base Acres	25%	362.50	5,000.00	8,750.00	11,250.00
Wheat Base Acres	15%	217.50	3,000.00	5,250.00	6,750.00
Corn Average Price Per Bushel	\$4.50	\$ 4.50	\$ 4.50	\$ 4.50	\$ 4.50
Beans Average Price Per Bushel	\$13.60	\$ 13.60	\$ 13.60	\$ 13.60	\$ 13.60
Wheat Average Price Per Bushel	\$6.25	\$ 6.25	\$ 6.25	\$ 6.25	\$ 6.25
Irrigated Acres					
Average Bushel Per Acre Corn	220	220	220	220	220
Average Bushels Per Acre Beans	70	70	70	70	70
Average Bushels Per Acre Wheat	75	75	75	75	75
Gross Farm Income	\$ 1,308,353.13	\$ 18,046,250.00	\$ 31,580,937.50	\$ 36,092,500.00	\$ 40,604,062.50
Less Operating Expenses	\$ 628,009.50	\$ 9,023,125.00	\$ 16,737,896.88	\$ 19,850,875.00	\$ 23,550,356.25
Net Farm Income Before Taxes	\$ 680,343.63	\$ 9,023,125.00	\$ 14,843,040.63	\$ 16,241,625.00	\$ 17,053,706.25
Farmland Asset Value	\$ 6,500 \$ 9,425,000.00	\$ 130,000,000.00	\$ 227,500,000.00	\$ 260,000,000.00	\$ 292,500,000.00

Note:

Does not take into consideration commodity price fluctuations.

Does not take into consideration cost of land conversion

Farm Operating Expense Ratio 48% increases to 58%

Figure 2—Excerpt of development plans for the Hofmann Forest made by the Hofmann Forest LLC (2013) proposal.

included students, activists, and professors who marched in to the Chancellor's outer office chanting "No sale, no way, the Hofmann Forest has got to stay."

Dozens of newspaper articles were published about the sale; at least a dozen were editorials opposing it. Google hits on the words "Hofmann Forest" increased from about 13 in 2012 to 574,000 in 2015, and very few contained perspectives supporting the sale. In fact, of all the comments on the web petitions and on the newspaper articles and blogs, only one individual—a former CNR dean—consistently supported the sale of Hofmann Forest, and no more than a dozen or less commenters out of thousands on the petitions or on line supported the sale at all. Ron Sutherland and Fred Cabbage wrote and published many editorials and dozens of newspaper blog comments opposing the sale as well in many on line articles.

In addition, there were many persons among the leaders of North Carolina and at NC State University retired faculty that opposed the sale in principle and stated to the Dean and Chancellor that the sale was harming NC State's reputation. The sale opponents were contacted by some of these policy elites, both first hand, or second hand, and many carried the message of "there has to be a

better way" to the Chancellor and the Dean. These elites also were buttressed by many donors withdrawing or refusing to make gifts to the College of Natural Resources and even the College of Agriculture and Life Sciences, or by only making gifts that were very narrowly restricted in order to prevent them from being liquidated or repurposed to other uses. Sale critics were reminded to write to the Alumni Foundation to advocate halting the sale, and indeed many did so on their own volition.

NORTH CAROLINA ENVIRONMENTAL POLICY ACT (SEPA) COURT CHALLENGE

While public relations and media efforts to stop the sale generated widespread public support and opposition to the sale, the proponents of the sale largely stonewalled any faculty opposition, newspaper editorials, or written and internet petitions. It was clear that public opinion alone was not apt to reverse the decision to sell the Hofmann. Thus in another strategy to get on somebody's agenda in order to stop the sale, some opponents filed an environmental lawsuit. This included Fred Cabbage as the lead plaintiff, along Ron Sutherland and three other colleagues—another former professor, the former President of the Forestry Foundation Board, and a local Jones County property owner. The suit charged that the

sale violated the North Carolina State Environmental Policy Act (SEPA). This lawsuit claimed that the Hofmann Forest was State land, since it had never paid income or property taxes and was part of an NCSU Foundation. The lawsuit contended that according to SEPA, NCSU must perform an environmental assessment before making a sale (Wake County Superior Court 2013). The litigation helped issue expansion by keeping the sale in the newspapers after each of three judicial hearings, and by lending legal credibility to the opposition's case.

In order to pursue a legal course of action, the opponents needed to find a lawyer who supported the principles of opposing the sale of the Hofmann Forest, and believed that there was a strong legal basis that could be won with a court case. Several attorneys that were consulted agreed that the sale of the Hofmann was unwise in principle, and either said they could not take the case because it was outside of their area, or referred the opponents to other lawyers. Two environmental law attorneys were specifically consulted regarding the merits of legal action. While attorneys are reputed to seek cases indiscriminately, they are mandated by the bar association not to take cases that they feel lack merit, and few would want to waste time on indigent or pro bono cases. Both attorneys felt there was sound legal basis for action, and one was available and very positive about the merits of the case as a violation of SEPA. In a conscious, but costly, decision to demonstrate that he did practice what he taught and wrote about conservation and the value of teaching on the Hofmann, the lead author here signed a contract to retain a lawyer and guarantee payment of all the plaintiff's legal costs. Much of the costs were eventually supported through appeals to colleagues, locals, foresters, and environmental groups. The plaintiffs hired one environmental lawyer, who had one part-time assistant. Without subsequent issue expansion attracting additional funds, the plaintiffs would have faced impossibly high costs—about \$55,000 in total—and been forced to stop litigation.

The NCSU Endowment Fund as defendants were represented by several lead attorneys from the State Attorney General staff, who argued that the Hofmann Forest was not State land; two from a private law firm representing the NCSU Natural Resources Foundation, and three lawyers from the NCSU legal counsel's office attended the three court hearings. In Fiscal Year 2014, the NC State Natural Resources Foundation (2015) tax return reported about \$252,000 on program service legal expenses, versus \$2500 in Fiscal Year 2010 (NC State Natural Resource Foundation 2011) before the sale and court case began. As is typically the case when a government entity is the defendant (e.g., lawsuits related to the Endangered Species Act) the State and NCSU legal costs were supported by taxpayers, those of the State of

North Carolina in this case. In fact, the university and NRF respondents in the case seemed much more willing to spend time and money on legal costs, perhaps on the presumption that they could bankrupt or at least vastly outspend the contributions from opponents. The private NRF lawyer even charged the attorney for the plaintiffs with a "Rule 11" ethics violation, which while it was handily dismissed—after considerable time and effort by the plaintiff's attorney—probably cost more than \$10,000 in added legal fees for the plaintiffs.

The SEPA lawsuit sought equity relief through temporary and permanent injunctions to stop the sale, but they were denied at each of two initial hearings (Wake County Superior Court 2013). The NCSU cadre of attorneys contended that the university's foundations were private organizations and therefore not subject to SEPA, and that the plaintiffs lacked standing to bring the lawsuit. If they lost the case and still wanted to move ahead with a sale, the defendants—the NRF Board and University Endowment Fund—would be required to perform a state environmental assessment (EA) and an EIS if required by the EA.

Temporary Restraining Order and Temporary Injunction Trials

The first petition for a Temporary Restraining Order (TRO) to stop the sale was held in Wake County Superior Court on September, 25, 2013, and heard by Judge Paul Gessner. The plaintiffs argued that SEPA required the respondents to perform an environmental assessment and requested a TRO stop an imminent sale. The respondents claimed that the plaintiffs had no standing to sue; that the Endowment Fund of the Board of Trustees of North Carolina State University was a not a State entity; that SEPA did not apply even if they were a State organization; and that there was no imminent sale. Judge Gessner denied the plaintiffs request for a TRO. He stated that he was sympathetic with the complaint, and that the litigants should go read the Lorax, but did not believe that there was evidence that there was an "imminent" sale, such as bulldozers at the gate, which must be the basis for a TRO.

Within four weeks of the defendants disavowing an imminent sale at the TRO court hearing, NC State University announced that it had signed a contract with a buyer—the agribusiness firm of Walker Farms from Illinois. Subsequent information revealed that Walker Farms owned more than 70,000 acres of farms scattered across the Midwest and South, and was one of the largest recipients of U.S. farm subsidy payments in the country. Based on this new development, the plaintiffs filed a second request in Wake County Superior Court, only for a Temporary Injunction against the sale, which was heard by Judge Shannon Joseph. Judge Joseph was

busy, with 21 cases on the docket for the day of the trial in November, and she considered the complex Hofmann case as her third case, which lasted about 2½ hours, much to her chagrin.

The plaintiffs again argued that SEPA should apply for the sale and that an environmental assessment was required to assess potential damage that could be caused by the sale, especially to agribusiness firm that probably would focus on farming and possible conversion to crops. The respondents stated that there was no evidence that major environmental impacts would occur due to the sale. They again said the plaintiffs had no standing to bring the suit; that the Hofmann Forest was not State land; and that even if so, SEPA did not apply in this situation, since the NRF and Endowment Fund were just selling the land and had no responsibility for what happened after the sale. Furthermore, the NRF attorney requested that if the Temporary Injunction were granted, the plaintiffs must post a \$150 million bond because they were interfering with a business deal of that amount—a tactic similar to a Strategic Lawsuit against Public Participation (SLAPP), which is sometimes used to kill an environmental lawsuit by bankrupting and intimidating the plaintiffs (Cubbage and others 2017).

State Lands, SEPA, and Standing to Sue

Judge Joseph acknowledged that she was not familiar with SEPA. During the trial, the judge seemed sympathetic to the claim that the plaintiffs would have standing to bring suit, and entertained the premise that the Hofmann was State land. This was at least in part based on a letter from Rufus Edmisten, Attorney General of the State of North Carolina on July 17, 1980 to the attorney for the Jones County Tax Assessor, which said:

“We are in receipt of a ‘auditor’s verification request’ concerning the above [\$51,002.78 Tax Statement to the Board of Trustees of the Endowment Fund, NCSU]. Please be advised that is our position that none of the Amount shown in the statement is due from the Board of Trustees, North Carolina State University or the State to Jones County, since it property owned by the State of North Carolina. Article V, §2 of the Constitution exempts all State property from taxation.”

As the Supreme Court observed in the case of “In the Matter of the Appeal of the University of North Carolina” on July 15, 1980, “State owned property is exempt from ad valorem taxation solely by reason of State ownership, regardless of the property’s use.”

The plaintiffs also provided case law of many federal NEPA lawsuits that did find that public land sales require an EIS, ranging from National Forest land in West to a post office in Pennsylvania. There were no State cases found allowing or denying EIS for the sale of land. The needs for an EIS rest on what is an environmental impact. It is a question of size and scale. Building a house is not large enough to require an EA; nor are small land deals. However, building a subdivision or bridge with federal funds does, and may lead to an EIS or finding of no significant impact (FONSI). Land conversion almost as big as Raleigh surely would require an EA at least, and probably an EIS.

The plaintiffs argued that the UNC system universities all had policies in place for responding to the requirements for SEPA compliance. These policies mostly consisted of a list of activities that would be deemed exempt from EIS preparation—sale of university-owned land was certainly not one of the listed exemptions under NCSU’s policy. Thus NCSU would not be exempt from SEPA; the Hofmann sale was monumental in its potential for environmental impact, so SEPA must apply. The State Attorney General lawyers (ironically) argued the Hofmann was not State land; that the university buys, sells, and trades assets, including land, all the time without constraints, and was exempt in its Endowment Fund; and that SEPA did not apply. Furthermore, their sale of the Hofmann would only create prospective actions by future owners, which were not their responsibility, so they were not subject to SEPA.

It is worth noting, however, that in trying to sell the Hofmann, the university/NRF also was reported by the North Carolina Coastal Federation (2013) and then investigated by the Corps of Engineers and EPA for violating Section 404 wetlands dredge and fill permit requirements in its existing management. In 2014, the Corps officially concluded that the Hofmann wetlands management did not meet federal criteria for a Section 404 exemption, and forwarded that information to the U.S. Environmental Protection Agency Region 4 office in Atlanta (Rich 2014). This problem would probably not have come to light without the added scrutiny that the proposed sale generated. After hundreds of thousands of dollars more in consulting fees to determine wetlands status on the Hofmann, the NRF/university did reach a settlement agreement with the Corps of Engineers and EPA, and did have to pay a fine and restore about 100 acres of planted forest back to their original wetlands condition.

These wetlands permit violation issues also probably impeded a rapid sale of the Hofmann to anyone for perhaps a year also, and discouraged the farm business

bidder from pursuing a purchase fraught with regulatory trouble, as well with the potential to affect their farm payments on other lands that they owned through the cross-compliance strictures of the Farm Bill. These Farm Bill strictures state that any violations of converting wetlands to dry lands (swampbusting) without an approved farm plan would lead to the loss of all USDA farm payments for all conservation and crop lands on all lands owned by the farmer or farm business. The Walker Farms were among the leading farm payment recipients in the country.

In classic case law regarding standing to sue, the U.S. Supreme Court stated that “the irreducible constitutional minimum of standing contains three elements: (1) an injury-in-fact that is (a) concrete and particularized and (b) actual and imminent, (2) causation, and (3) redressability” (*Lujan v. Defenders of Wildlife*; 504 U.S. 555, 560 [1992]). So to have federal or State standing, plaintiffs must show tangible, individual harm; show that harm is imminent; and show that legal action can improve the problem. The plaintiffs argued for standing as professors, alumni, conservationists, local residents, and a former Forestry/NRF Board president. The State Attorney General lawyer cited a Smithfield (hog) Farm case, which the court ruled for a narrow construction to prevent environmentalists from having standing. The plaintiffs responded that Smithfield did not apply, because the previous plaintiffs brought suit on general and recreation values. The plaintiffs argued that for the Hofmann, they had specific, tangible, educational, business, and downstream property. Their attorney argued that if they did not have standing, no one in North Carolina would, and the SEPA law would be useless. Judge Joseph seemed somewhat convinced by this, and asked the State Attorney General to rebut the claim, which they could not.

Nonetheless, Judge Joseph also ruled against the plaintiffs and dismissed the lawsuit entirely. The written basis for dismissal was not entirely clear, but in her comments, the judge indicated that the plaintiffs apparently had not proven that the sale of Hofmann Forest would cause irrevocable damage—a criterion often used in some legal decisions. The plaintiffs unsuccessfully argued that the purpose of SEPA was to assess if there would be any damage from a potential action, not prove a priori that there would be irrevocable damage. Since the State attorneys largely dismissed any potential damage from a sale, the adverse impacts argument was not compelling. However, on the very next day, the plaintiffs received a leaked copy of the massive Walker Farm / Hofmann LLC proposals to convert virtually all the planted forest land and more into commercial developments and crops, which clearly would cause massive adverse environmental impacts on the Pocosin wetland and three rivers that ran off the Hofmann, which was the fount of their watersheds.

State Supreme Court

The potential huge impacts of the conversion of the Hofmann to crops, subdivisions, and commercial development on an area about half the size of Raleigh provided a further basis for an appeal to the North Carolina Appellate Court, and the plaintiffs filed such a suit quickly. In a huge surprise, the North Carolina Supreme Court unilaterally reached down and took the case out of the Appellate Court hands, and heard it in a hearing in December 2013. That case limited the attorneys for both sides to 30 minutes of oral arguments, in addition to the more than 500 pages of material presented in District Courts and the transcripts of those trials. The arguments were similar, but the attorney for the plaintiffs added the argument that the State would be better served by performing a 30 page Environmental Assessment than spending large sums in court, with hundreds of pages of testimony, unless they realized that the EA would reveal problems with the sale. The respondents (the State Attorney General lawyers) spent most of the time arguing—with limited success when faced with sharp questions from the bench—that the Hofmann Forest had special non-State status since the deed had a reversionary clause from the Endowment Fund of the Board of Trustees of North Carolina State University to the NRF, which prevented it from being sold without NRF permission (who were the ones who actually initiated the sale).

Soon after the Supreme Court hearing, the proposed sale to Walker Farms and a new purchase partner, a Timber Investment Management Organization (TIMO), fell through. Based on the sale cancellation, the Supreme Court essentially ruled the case moot, and made no decision. This lack of a decision in the end, after hundreds of thousands of dollars in legal expenses, did not support the position of the opponents or the proponents of the sale. Thus if another sale were proposed, opponents could return to court. And the case regarding standing to sue, the Hofmann as State Property, and even SEPA was at least strengthened by having enough merit to be heard by the Supreme Court, which only accepts the most serious and substantive cases in the State.

In addition, the EA would have actually been far shorter, taken less time, been less expensive than their huge legal costs, and indeed be a document that students in the College of Natural Resources are taught to prepare in their natural resource professions. This presumes, however, that the EA would justify such a sale, which opponents indeed did not believe would be the case. Of course, before issue expansion occurred, the perceived options for NCSU were either a quick sale or a lengthier EA/EIS process that could highlight potential environmental problems linked to the sale. The ultimate choice between the EA/EIS process or lengthy and expensive litigation only emerged

after issue expansion and agenda status being afforded to the stakeholders opposing the sale.

AGENDA SETTING PROCESS APPLICATION

This issue tracked the Cobb and Elder issue expansion process well. Opponents of the sale were initially ignored, but the issue gained widespread state and even national media attention, largely through the SEPA lawsuit and editorials opposing its wisdom in the Raleigh, Charlotte, and Jacksonville newspapers. A public television special on “North Carolina Now” focused on rare and valuable coastal swamp pocosins (which means “swamp on a hill”), and highlighted the Hofmann Forest as a key piece of this ecosystem. Behind the scenes letters and informal personal contacts with the NCSU Chancellor were made by important North Carolina business executives, NCSU alumni, farm sector representatives, and emeritus professor elites, who reasoned with the Chancellor and CNR Dean that the sale was hurting NCSU’s image and fund raising efforts.

The combination of a legal, media, and behind the scenes elite discussions was crucial in keeping this issue on the NCSU and NR Foundation agendas. Opponents were never asked to meet with the decision makers after the issue went to court, but its high visibility apparently affected the sale outcome. Other contributing factors that helped cancel the outright sale to Walker Farms probably included the rapid drop in corn prices, which damaged optimistic crop return scenarios presented in the prospectus. In addition, the sheer ambition of Walker’s \$150 million proposal would then require controversial and massive Section 404 dredge and fill permits for up to 50,000 acres of planted forests. Getting these wetlands clearing permits from the Corps of Engineers and EPA was highly unlikely, and may have further contributed to Walker being unable to secure the financing needed to execute the signed sale agreement.

After the public and media pressure in 2013 and 2014, in March 2015, the Natural Resource Foundation and Endowment Fund and NC State University withdrew the sale. The withdrawal became public in a newspaper announcement, and stakeholders were not consulted. The NR Foundation and College of Natural Resource decision makers committed to managing the forest for research and education purposes and monetizing some parts of the forest, with the help of the Conservation Fund, a group that NCSU contracted with to help the university achieve this compromise solution. In addition, the Dean and Associate Research Dean held several open College of Natural Resources (2016) meetings about the Hofmann, and facilitated a research data collection and mapping effort for the Forest (see go.ncsu.edu/hofmannwebgis). Several NCSU classes continue to use

the Hofmann for field visits, and it is a case study focus in the senior natural resource management capstone class. However, for about a year from Fall of 2015 to Fall of 2016, new research projects, large class visits, or local tours on the Hofmann were not allowed by the NRF while it tried to settle on new ownership and monetization strategies, as well develop a new watershed management and regeneration approach to meet the EPA wetland protection mandates.

After a year of efforts, the Conservation Fund did not obtain any permanent solutions, so the College of Natural Resource and the NRF hired their own “Forest Asset Manager” to help monetize the Hofmann. Then in July, 2016, the Dean announced that the NRF had sold a 50-year timber deed to Resource Management Service (RMS), the timber investment management organization (TIMO) that had eventually partnered with Walker Farms, for \$78 million. The press release stated that this would provide strong protections for the Hofmann Forest planted forests (Hartman 2016), as well allow for monetization of the agriculture lands and wetland banks on the Hofmann, and offer some prospect of development of land for solar energy.

The final disposition of all the Hofmann Forest lands is not certain, but it appears that the timber deed will help lock in most traditional and forest land uses for its duration of 50 years. There is an escape clause that will allow the NRF/NCSU to buy back up to 8,550 acres of the timber deed at a 25% premium, in case they want to convert it themselves to some more profitable use. On the other hand, the actual owner and their intentions are still a secret—TIMOs just purchase and manage land in a LLC, but don’t own it. The university also lost large amounts of good will and up to \$800,000 of legal and wetland consultant expenses to try to make the sale, as well as large amounts of foregone alumni and donor good will and contributions. And the Hofmann is less of a shining example of university forest management and education, and instead mostly the financial asset the administration wanted. There have been some attempts by faculty to have projects on the Hofmann, and classes are visiting the Forest again each year. RMS has pledged to allow research and educational visits, but have only one staff person on the Forest instead of five that the NRF had, so will have limited ability for frequent visits. In addition, NCSU teaching and research access is not apt to include full access to management costs and returns from the Hofmann, which has been valuable until 2016. We hope to be able to visit the Hofmann often, but it will be more like visiting a museum than taking pride in the fruits of our own stewardship.

This case not only highlights the process of issue expansion and agenda setting, it also demonstrates the

tactics of media use, need for sustained involvement by many diverse interest groups, costs of litigation, agency determination despite opposition, and how university foundations and nonprofit organizations can avoid public scrutiny and perhaps public laws even at State universities for their board appointments, finances, and minutes. NC State University tried to sell the Hofmann Forest quietly in behind the scenes agreements, and limit issue expansion; while opponents tried to expand the issue and attract more opposition. Issue expansion and litigation was possible in this case because ownership was a contested hybrid of private and public ownership and left the door open for oversight under the State Environmental Policy Act (SEPA). SEPA has since been rendered almost toothless by amendments of the North Carolina legislature in 2015, so would not provide as strong a case in the future to oppose a sale. The opponents of the sale needed to employ several strategies to be heard at all—internal and external advocacy, media, direct action protests, the courts, and appeals to elites to intervene on their behalf. NCSU, the NRF, and their administrators made decisions in closed executive sessions, claiming exemption from all public governance laws, never engaged in sincere dialogue with the opponents, and prosecuted their court defense aggressively with considerable no-cost State efforts and at a large NRF expense for their private lawyers. At NCSU, we teach that such adversarial actions could be handled better through collaborative procedures. The CNR actions in 2016 to protect much of the Hofmann Forest with a timber deed and engage faculty and students more on the Hofmann are a step in that direction, and more involvement with conservation groups and local citizens could improve this start.

CONCLUSION

Overall, this contentious process created plentiful ill will on all sides, and generated perhaps only half the maximum amount of money once hoped for by NC State University by making a quick and unilateral sale by the Natural Resources Foundation, which would lead to massive conversion of the Hofmann Forest and development to non-forest uses. In fact, the debate remains sharp enough that it makes us fearful of writing this summary, but it still bears some level of public knowledge as a case of government development objectives versus environmental nongovernment organization (ENGO) and citizen conservation objectives. We have tried to be even handed here, but surely carry some bias as sale opponents in our recounting here. So we do invite readers to seek other information for corroboration if it can be found. The proposed Hofmann Forest sale is a compelling policy case of public or private forest land management issues. We hope that more public information about the issue can inform discussion and that readers can benefit from hearing about the process

and draw their own conclusions about the merits of the approaches used by Hofmann Forest sale proponents and opponents, and strategies and tactics used by both sides. The issue also will bear further monitoring regarding issues such as the expenditures of the interest and principal from the sale proceeds; the access and use of faculty, students, and locals to the forest; and the benefits that accrue to local citizens as well as university administrators from the sale. We all will watch these developments with keen interest.

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