

**CONVERSION OF SOUTH CAROLINA'S PUBLIC
LANDS TO PRIVATE PROPERTY**

**Trey McLeod
University of South Carolina School of Law
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I. INTRODUCTION

South Carolina in particular is faced with public and political pressures to convert public lands into private ownership justified by a need for economic development. This has become a major issue in the minds of conservationists with the proposed development of the Clemson Experimental Forest and the proposed damming of the Tyger River. They argue against such proposals believing them to be wrong because the tax-paying public owns these lands and conversion would take place at the expense of natural resources while private individuals profit. The research project will assess the legal situation of the federal lands and try to determine what can and cannot be implemented under existing federal laws.

Part II of this project will give a broad history of the Public Land Establishment of the United States. Part III will discuss the structure of the federal and state owned land in South Carolina. Part IV of this project will discuss in depth the proposal to development the Clemson Experimental Forest. Part V will discuss the plans to dam the Tyger River. Finally this project will conclude by assessing what the current land policy means for South Carolina.

II. HISTORY OF PUBLIC LAND ESTABLISHMENT

a. *The American Land System Under The Confederation*

Even before the end of the Revolutionary War the colonial government had committed itself to attaining at least some control over the western territories. If not by choice then it was most certainly by obligation. In August of 1776, the Continental Congress enacted a law that would give land to any person who deserted the British Army.¹ This course of action was aimed less at attracting the loyal British soldiers and more at the German mercenaries who were being paid to fight for the crown.² This proved to be largely ineffective in wooing a significant amount of deserters. In September of 1776, the Continental Congress decided to offer land as incentive to join the Colonial Army.³ The colonies found it more acceptable to offer land in return for permanent service in the colonial army because there was a general distaste in the colonies for professional soldiers or “soldiers for hire.”⁴ Land seemed a more appropriate reward for those who chose to serve their country.

The nation acquired the first part of the public domain (also known as the “original public domain”) soon after the American Revolution. Those states with claims to the western lands ceded them to the central government.⁵ The last

¹ Vernon Carstensen, *The Public Lands: Studies in the History of the Public Domain* 110, 522 (University of Wisconsin Press 1968) [hereinafter *The Public Lands*].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ MSN Encarta

states to cede its claim was Georgia in 1802.⁶ The process of ceding state land to the government was prompted by Maryland who held no claim to the western lands. Maryland refused to ratify the Articles of Confederation unless the landed states ceded their claims to the central government.⁷ The land given by the states to the federal government is known as the “original public domain” and consisted of 237 million acres. This land eventually became Ohio, Indiana, Illinois, Michigan, Alabama, Mississippi, Tennessee, Wisconsin, and a large portion of Minnesota.⁸ The “original public domain” accounted for 12.2 percent of the total continental area of the United States today.⁹

b. The Federal Lands From 1788 To 1891

In 1803, Thomas Jefferson negotiated with France to sell its North American claim for \$15 million.¹⁰ The sale (also known as the Louisiana Purchase) left the United States with the rest of Minnesota, Nebraska, Arkansas, Missouri, North Dakota, South Dakota, and Iowa.¹¹ The purchase also gave the United States most of Kansas, Oklahoma, Montana and Wyoming.¹² The Louisiana Purchase added 560 million acres to the federal lands.¹³ This purchase was followed in 1819 by the purchase of Florida from Spain.¹⁴ In 1846, the United States acquired Oregon, Washington, Idaho, and

⁶ *Id.*

⁷ *Id.*

⁸ Richard Behan, *Plundered Promise: Capitalism, Politics, and the Fate of the Federal Lands* 65, 310 (Island Press 2001).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 66.

¹⁴ *Id.*

the remainder of Montana and Wyoming from Great Britain.¹⁵ The federal government bought a large portion from Mexico, and in 1850 bought another large tract of land from Texas.¹⁶ By 1898, after a few more purchases from Mexico, England, Russia, and the Annexation of Hawaii, the United States accumulated an overall 1,848 million acres for a price of \$69 million.¹⁷

c. Redistribution of the Federal Lands prior to the 20th Century

By 1784, “independence had thrown into the lap of a none-to-perfect union the vast and unsettled area between the Great Lakes and the Mississippi and Ohio Rivers.”¹⁸ The first issue at hand for the government was to try and honor all of the land bounties granted to veterans of the American Revolution. These bounties proved very difficult to grant because of the slow process of surveying the land. Very few of the veterans actually lived on their land bounties. Many former soldiers sold their bounties to speculators. As a result, the land bounty system failed its objective of establishing deserving and needy veterans on farms of their own.¹⁹ Twenty years of peace went by before the first titles to bounty lands could be conveyed.²⁰ Overall, the military bounty lands made up between one-seventh and one-sixth of all occupied western lands.²¹ The important maxim in administering these lands was that it be done wisely.²² The states who ceded there land claims were very clear that the lands should, for the common benefit to the nation, be settled and formed into

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Carstensen, *The Public Lands* at 17.

¹⁹ *Id.*

²⁰ *Id.* at 15.

²¹ *Id.* at 16.

²² *Id.*

states.²³ Congress complied with this imperative and established that these lands must “be disposed of for the common benefit of the United States.”²⁴ There were two opposing views purporting to accomplish this goal but in drastically diverging ways. The first viewed these lands to be a source of revenue.²⁵ Proponents of this view saw land as the only tangible source of federal wealth and power.²⁶ The second considered the public lands as a vehicle to spread the population.²⁷ This could be accomplished by providing cheap or free lands to those willing to move west. George Washington was a strong advocate for “providing for the wave of settlements which was already bursting across the mountains.”²⁸

A committee was established in 1784 to create a system to decide between these two competing views and to establish a system that would manage these lands.²⁹ At that time, there was no uniform system for the disposal of lands.³⁰ States had established their systems according to each of their unique colonial experiences.³¹ The Ordinance of 1785 was America’s first land law.³² This law provided for the reservation of one section in each township for future use or support of public elementary schools.³³ It was determined that land would be sold at auction with a high minimum and each

²³ Bernard Shanks, *This Land is Your Land: The Struggle to Save America’s Public Lands* 23, 310 (Sierra Club Books 2001).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 28.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 34.

³³ MSN Encarta

land sale would be carefully surveyed for good title prior to this sale.³⁴ This was not an immediate success due to the fact that surveys were difficult to execute and very time consuming.³⁵ Due to this problem, the government solved its short-term financial burdens by selling large tracts of land to private companies.³⁶ Eventually land was sold to individuals in large tracts and settlers were dispersed throughout the West.³⁷ Some critics believe that the land should have been sold in smaller tracts with conditions of improvement and settlement.³⁸ These critics also believe that the federal government sold off too much land and as a result hindered America's prosperity by overextending and dispersing the population.³⁹

As noted, the initial policy of the federal government was to transfer ownership of much of the federal lands to private and state ownership.⁴⁰ Land that was not sold outright was most likely held by squatters. The federal government allowed this to happen but it still imposed a \$1.25 an acre price. When it was clear that this policy was failing to bring in any revenue (mostly because squatters did not pay) the government decided to change that policy. In 1862, the Homestead Act was enacted and brought with it a new policy that encouraged agricultural development rather than the raising of revenue. It became the general intent of the disposal laws to transfer lands to individuals.⁴¹ The Homestead Act allowed the head of a household to claim 160 acres for a

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ FLOR 5

⁴¹ *Id.*

nominal administration fee and the requirements of residency and cultivation.⁴² According to some this created a policy that would be accomplished “by turning the citizenry loose on the existing wealth of a continent.”⁴³ By 1932, 1 million settlers had been enticed into the public lands and more that 270 million acres passed into private ownership.⁴⁴ The Homestead Act was not repealed until 1976 but by then all the agricultural lands had passed from public ownership.⁴⁵

The next form of land disposal was land grants to the states upon entry to the Union. Ninety-Four million acres was the total amount given to states for education and 169 million acres were given for the building of canals, wagon trails, roads and other infrastructure.⁴⁶ A large amount of land was granted to railroad companies to improve the transportation system to and from the west. The theory behind the railroad grants was that by encouraging private investment in the railroad it would expedite the economic development of the western lands.⁴⁷

d. Public Land Policy in the 20th Century

In 1900, there were 557,643,120 acres of public domain that remained open to settlement under the public land laws of the United States.⁴⁸ The year 1902 signaled a wave of change in the United States’ policy of public land regulation. On June 17, 1902 Congress passed the Reclamation Act that

⁴² MSN Encarta

⁴³ Behan, *Plundered Promise* at 67

⁴⁴ MSN Encarta

⁴⁵ *Id*

⁴⁶ Behan, *Plundered Promise* at 68

⁴⁷ Carstensen, *The Public Lands* at 45.

⁴⁸ E. Louise Peffer, *The Closing of the Public Domain: Disposal and Reservation Policies 1900-50* 8, 372 (Stanford University Press 1951)

established rules on reservations and well as settlement.⁴⁹ These reservations were for preserving land for future disposal. They were also used as Indian trading posts as well as other public purposes.⁵⁰ Western opinion was strongly against reservation held the idea that the government's role from the very beginning was to bring lands into cultivation and settlement as soon as development of the country permitted.⁵¹ It was not yet a fact in the minds of the people that a majority of the "good" land was already gone although at that time it was the reality.⁵² The Reclamation Act was the "first step in acknowledging that the homestead principle was coming to an end."⁵³ Teddy Roosevelt was one of the first presidents to realize that the homestead land was fleeting and was quoted as saying that the public lands "should be held for the homebuilder...and no one else."⁵⁴ With the number of homebuilders dwindling and the number of corporations rising, the government seemed to become more restrictive in its land laws. On the other hand the West felt that any private ownership was fine.⁵⁵

As one writer stated, "Congress built a foundation of conservation slowly."⁵⁶ In the overall scope this may be true however the first precedents of conservation were established as early as 1799 in the form of "Naval Reserves."⁵⁷ These reserves were used for the commonly accepted public

⁴⁹ Peffer, *The Closing of the Public Domain* at 38.

⁵⁰ FLOR 7

⁵¹ *Id.*

⁵² *Id.*

⁵³ Peffer, *The Closing of the Public Domain* at 40.

⁵⁴ *Id.*

⁵⁵ Peffer, *The Closing of the Public Domain* at 41.

⁵⁶ Shanks, *This Land is Your Land* at 61.

⁵⁷ Behan, *Plundered Promise* at 68.

food of self-defense. These heavily wooded areas would provide lumber for ships to build the U.S Navy. These reserves eventually totaled 264,450 acres in Florida, Alabama, and Mississippi.⁵⁸ The precedent set by these reserves was “maintaining public land in public ownership for the public good” was established in public policy.⁵⁹ It was not until 1891 that any significant legislation was passed that would reinforce this precedent. The Forest Reserve Act of 1891 became the basis for the national forest system. Under section 24 of this Act, the executive was granted enormous power to designate portions of the public domain as National Forests.⁶⁰ It was President Teddy Roosevelt who really used this power to an extreme. Before Congress could repeal the Act, the President had added 148 million acres to the forest reserves and withdrew 80 million coal-enriched acres from private exploitation.⁶¹ One can clearly see how the philosophy of conservation was beginning to surface but it was a philosophy “still too weak to directly confront the land developers; it was intended for public lands regarded as worthless.”⁶² The government changing policy of administering the public lands can be accurately understood by examining the time line of land laws designed to restrict the selling of public lands or to extend the number of acres currently held by the federal government.

In 1911, Congress passed the Weeks Act that enabled the government to extend national forest systems by purchase into states that never had or no

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Shanks, *This Land is Your Land* at 61.

⁶¹ *Id.*

⁶² *Id.*

longer had public lands.⁶³ This Act signified the expansion of publicly owned lands but these new “acquired” lands were never considered part of the public domain. This Act accounts for 48 percent or 25 million acres of the acquired land now held by the United States.⁶⁴ The Weeks Act, along with some New Deal legislation, is responsible for making the federal government the largest landowner in the country.⁶⁵

Included in that New Deal legislation was the Taylor Grazing Act of 1934. The main goal of this legislation was to remedy the deterioration of the then existing public lands caused by overgrazing, drought and the conditions created by the Great Depression. This Act was an “implicit shift in federal law toward ending disposals and retaining lands in federal ownership.”⁶⁶ The shift toward an explicit policy of retention of the public lands was reinforced in 1964 with the creation of the Public Land Law Review Commission. The Commission’s job was to review the existing land laws and the policies and practices of the federal agencies in charge of the federal lands. In 1976, the Federal Land Policy and Management Act not only repealed the Homestead Act but also officially ended the policy of disposal and expressly declared that the national policy was the retention of remaining land in federal ownership.⁶⁷

e. Administering the Public Lands

Article IV, Section 3, of the U.S Constitution allows Congress to dispose of and make all rules and regulations necessary for the administration of territory

⁶³ Peffer, *The Closing of the Public Domain* at 298.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ FLOR 7

⁶⁷ *Id.*

and other properties owned by the United States. The Department of the Treasury was created in 1789 and was put in charge of these lands. In 1812 these lands were placed in the control of the General Land Office (GLM), which was part of the Treasury Department.⁶⁸ Later the GLM was relocated to the Department of the Interior when it was created in 1849.⁶⁹ The federal government can have three types of jurisdiction over lands that it owns. The first is “exclusive legislative jurisdiction.”⁷⁰ When the United States has this type of jurisdiction over lands then it has full legislative authority and no local or state laws apply unless Congress permits.⁷¹ The second type of jurisdiction is known as “partial” jurisdiction where the state has retained some control over the land as a condition of cession. The third type of jurisdiction involving the government is concurrent jurisdiction where both the state and federal government share legislative jurisdiction.⁷² If the federal government owns land but has none of the three jurisdictions listed then it still has proprietary jurisdiction over the land that it owns. This does not give it explicit legislative jurisdiction however the Supremacy Clause does give it the power to pre-empt any state or local laws that conflict with any federal statute affecting that land.⁷³

Article IV, §3 addresses the authority of the United States to and manage property. This clause states “Congress shall have the power to dispose of and

⁶⁸ MSN Encarta

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”⁷⁴

III. FEDERAL OWNERSHIP VS. STATE OWNERSHIP

a. *Aspects of Federal and State Lands (in South Carolina)*

South Carolina has a total area of 19,374,080 acres.⁷⁵ Currently the federal government owns 5.7% of that area. There are four primary agencies that control the federal lands in South Carolina. They are the Department of Agriculture (USDA), the Department of Defense (DoD), the Department of Energy (DOE), and the Department of the Interior (DOI).⁷⁶ The USDA controls 55% of the total federal lands.⁷⁷ These federal lands can be found in the Sumter and Francis Marion National Forests. These Forests are managed primary for uses including timber and wood production, watershed protection, habitat for wildlife and fish, and outdoor recreation.⁷⁸ The DOE controls 15% of the total federal lands in South Carolina in the form of the Savannah River Site. The DOI also controls 15% of the total federal lands in the form of Fort Sumter and Fort Moultrie.⁷⁹

The State of South Carolina owns 5.5% of the total area of South Carolina (almost 1 million acres).⁸⁰ The state lands are managed by four agencies. These four agencies are the Department of Parks, Recreation, and

⁷⁴ *Id.*

⁷⁵ LCISC

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

Tourism (PRT), the Department of Natural Resources (DNR), The Forestry Commission (SCFC) and Clemson University. DNR lands consist of the ACE Basin Project, the Santee Coastal Reserve, and Jocassee Gorges.⁸¹ It has also acquired 41,000 acres under the Heritage Preserves across the state. The SCFC manages the state forests and there are three such forests in South Carolina. The first is Harbison, near Columbia which is the smallest consisting of 2,176 acres.⁸² The second largest is Manchester State Forest which is located in Sumter County and consists of 25,000 acres. The largest forest in the state is Sand Hills located in the north central part of the state near the border of North Carolina and it consists of 46,000 acres.⁸³ Clemson University owns and manages 17,500 acres of forestland known as the Clemson Experimental Forest (CUEF). The CUEF provides a prime wildlife habitat for many animals and a number of recreational opportunities.⁸⁴

IV. CLEMSON EXPERIMENTAL FOREST

a. Origins of the Clemson Experimental Forest

Due to the outbreak of World War I farmers saw a significant increase in demand so naturally there was an enormous increase in production. The war had brought with it the necessity of feeding troops as well as continuing to feed the expending population of the United States.⁸⁵ Farmers had a strong incentive to produce more and that is just what they did. The war was followed by 10 years of prosperity in the 1920's due mainly to the need for America to

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Robert Sorrells, *Clemson Experimental Forest: Its First Fifty Years* 3, 56 (Clemson University 1984).

restock its inventories since they had been depleted during WWI.⁸⁶ The Great Depression hit on October 29, 1929, “Black Tuesday.” It was at that time that it also became clear that America had over farmed its lands to the point where nothing could be grown and much of the topsoil was eroding away. Due to overexploitation and drought on the Plains, wind “swirled the soil away” causing farms to go under.⁸⁷ When these farms went, they took thousands of jobs with them. The devastation did not stop at with the farmlands of the Plains. At one point forests covered 800,000,000 acres of land but by 1933, forests covered a mere fraction of that number standing at 100,000,000 acres.⁸⁸ This increased to occurrence of erosion and helped to wash away enormous amounts of topsoil. The effects of wind alone caused 300,000,000 acres of land to lose topsoil and by 1934 more that 300 million acres or one-sixth of the United States was gone.⁸⁹ Due to the loss of topsoil, farmers were unable to be productive and many farms were simply abandoned. Other farmers chose to make cut down trees to use the land because the fields they had been using were unproductive.⁹⁰ Yet others were using fertilizers to grow there crops and this was terrible for the soil. In order to “sweat a living from their farms,” farmers were forced to “do the very things which made the farms less and less capable of supporting them. It was a classic dilemma.”⁹¹

⁸⁶ *Id.*

⁸⁷ *Id.* at 4.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 5.

South Carolina was one of the hardest hit areas of the Great Depression. The soil here was never all that fertile originally and the Depression simply pushed the state deeper into despair. South Carolina was still feeling the effects of the Civil War as well. By 1888, the state “was as used to destitution as the human soul can get.”⁹² A number of factors contributed to the poor soil quality and standard of living for southern farmers. After the Civil War, many farms were left without owners because they had died in battle and it was difficult to find labor for those farms still in production.⁹³ By 1930, there was a significant decrease in landowners from the previous decades. Only about one-third of the farmers actually owned their own land and another one-third made their living, as sharecroppers while the other third were tenants.⁹⁴ Land conservation was a hard sell under these conditions mainly because 25 percent of tenants only stayed in one place for a year⁹⁵ It was hard to get someone who did not own the farm and who was probably never coming back to practice good farming techniques. The truth was that “when a man is poor, there is no point in talking to him about conservation and land management-not for some *else’s* land.”⁹⁶ Sharecropping and tenancy grew to the point where farmers who once owned their own farms found themselves working for others.⁹⁷ In 1933, it was these conditions that contributed to two-thirds of all eroded land being located in the southeast.⁹⁸

⁹² *Id.* at 6.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 7.

⁹⁸ *Id.*

Franklin Roosevelt was the person who made it his mission to improve the conditions in the southern states. One South Carolinian remarked, “He’s the first president who has ever tried to help us down here. He’s the first president who has made us feel that we are part of the United States.”⁹⁹ It was Roosevelt who initiated acts which were designed to relieve farmers by purchasing land to be regenerated.¹⁰⁰ In South Carolina alone there were 8,000,000 “so badly depleted as to be virtually destroyed.”¹⁰¹ In order to achieve the goals that Roosevelt envisioned¹⁰² the Secretary of Agriculture formed the National Resource Board charged with the job of gathering data to identify those lands that most needed reclamation. It was the Board’s recommendation that the best method to achieve Roosevelt’s goal would be to “by carefully selected pieces of submarginal land and set up demonstration acreage to show landowners and farmers how to husband their land properly.”¹⁰³ Under the Bankhead-Jones Tenant Act and the recommendation of the Board, the United States purchased 75 million acres of submarginal farmland.¹⁰⁴ This was an important decision to Roosevelt because half of the population depended on agriculture for its livelihood and “a poor farm population meant a poor urban population.”¹⁰⁵ It was a man named George H. Aull that heard Roosevelt’s plan to restore abandoned and depleted farmlands.

⁹⁹ *Id.* at 7-8.

¹⁰⁰ *Id.* at 8.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

Aull was a former graduate of Clemson and was studying for his Ph.D. in land economics.¹⁰⁶ It was his vision that began the Clemson Experimental Forest.

At the time South Carolina contained one million acres of unused cropland.¹⁰⁷ In one county there were 90,000 acres destroyed beyond recognition of the original soil due to erosion.¹⁰⁸ This was all happening while the population of the state was on a steady increase especially in farm communities and as such there was less land for each person to farm.¹⁰⁹ Aull's plan was to get the federal government to purchase large acreages of land in order to help these farmers learn a better way to farm through example. He first proposed an area called Fant's Grove that consisted of 8,500 acres of land south of the College campus. In this proposal the government would provide money to buy the land, plant trees, develop pastures, build public recreation facilities and nature trails and restore some of the historic houses in the area.¹¹⁰ Aull wanted to make it "a repeatable demonstration of what can be done in the way of shifting disadvantaged people within narrow limits from submarginal to profitable land and of adjusting the social and economic institutions in the area to the changed conditions."¹¹¹ His first proposal of 8,500 acres was rejected for being too small and requiring too little money.¹¹² The government was obviously looking for a large-scale project that would incorporate a number of different land uses. With that in mind Aull proposed a similar plan but this time it

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 10.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 11.

¹¹¹ *Id.*

¹¹² *Id.*

consisted of 35,000 acres and he included a number of programs such as game sanctuaries, fish hatcheries, etc, and he called this new plan the Clemson College Community Project.¹¹³ In order for the government to commit to purchasing the land there had to be a guarantee of future ownership and management and the president of the college assured that this would be fulfilled “in every respect.”¹¹⁴ Once the proposal was accepted, Aull was quickly offered the job of project manager and state coordinator.¹¹⁵

The first thing Aull did as project manager was to hire 20 people to begin work on the project as secretaries, clerks, draftsmen, and surveyors. Laborers were picked from the relief rolls of the three counties involved.¹¹⁶ Work was badly needed in the area and the project supplied plenty of it. In all there were 1,500 laborers hired to clear stands of timber, build fire lanes, and clear streambeds.¹¹⁷ Trees are an important part of any forest so a majority of the labor went to planting seedlings.¹¹⁸

The government was very slow in sending the checks for land payments. Work on the project began over one year before the first land payment was received and by March of 1936, over a year and a half after work began only nine checks had been sent.¹¹⁹ Much of the problem lied in the difficulty of getting the land properly identified.¹²⁰ In the 1930’s many of these deeds did not define their boundaries in ways that a person could understand. Many of

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 12.

¹²⁰ *Id.*

them referred to trees or rocks that no longer existed.¹²¹ Once all of this confusion was sorted out, the total number of parcels sold was 300 with a cumulative total of 29,665 acres purchased as a price of \$13.00 per acre.¹²² This project eventually became known as The Clemson Land Use Area.

The Clemson Land Use Area was always meant to be a community project. It “recognized that people live together and the actions of one affect the actions of others, too.”¹²³ It was meant to “apply to the community of what was obvious in dealing with the land.”¹²⁴ The area could do this not just for the local community but also for the rest of the state. The acreage within the Clemson Land Use Area had all of the problems that were prevalent throughout the state such as gullies formed by rainfall runoff, depleted soil, abused timberland, and high rates of tax delinquency.¹²⁵ The area also contained a number of historic houses and part of the project was to restore these homes so that “we could regain a piece of our history which-like our-land was slipping into degradation and oblivion.”¹²⁶

There was a great deal of progress in the first few years of the project. Overall, 10,000 acres of trees had been planted, a fish hatchery with six ponds had been built, and a lake had been dammed.¹²⁷ There were a number of construction projects including fire towers, shelters, picnic tables, a dock, a

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at 13

bathhouse, roads and bridges.¹²⁸ One project that was initially proposed but that never materialized was the relocation of the families living on the lands bought by the government. The college itself was never interest in the proposal so it was abandoned.¹²⁹ After Aull stepped down as project manager problems began to surface.

In 1937, there was a big debate over what entity would be recommended to get title to the land.¹³⁰ The major antagonist for the Land Use Area was William Hartman, Regional Director of the Resettlement Administration. He was of the opinion “that no existing State or Federal agency functioning in [the region] was qualified legally, by experience or with necessary trained personnel, to manage those projects and produce the greatest possible social and economic value.”¹³¹ His proposal was to have a Federal Business Corporation established to manage the area.¹³² The request was especially perplexing to Aull and the Clemson staff considering that Clemson was the land grant school of the state and had the facilities and the trained staff to handle the project. The proposal was even more incomprehensible when one realizes the proximity of the land to Clemson, and that “someone on the spot” had been successful in making the project work.¹³³ Eventually the proposal was rejected and the USDA requested that a plane be established that “involved cooperating with State Agencies.”¹³⁴ Even the South Carolina Senate passed a resolution

¹²⁸ *Id.*

¹²⁹ *Id.* at 14.

¹³⁰ *Id.* at 15.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 16.

naming Clemson as the most rational agency to manage the area. Once the recommendation was rewritten to name Clemson as the managing agency all seemed well until Clemson raised questions as to whether it was willing to take on the job of continuing the project.¹³⁵ Clemson's sudden change of position created confusion in Washington as to who was going to continue the Clemson Project. Clemson created the confusion by being evasive towards the question of whether they were going to take over the project. The initial agreement between the college and the government stated that the College was going to manage the lands and in time eventually own these lands.¹³⁶ The problem on Clemson's end was financial. It was more than willing to take these lands if it was assured that it would have the funds that the president stated "may be provided either by appropriation or by receipts from the project itself."¹³⁷

Another major problem facing the project was the fact that the government as of March 1936, had only paid for nine parcels of land.¹³⁸ This did very little for in terms of confidence in the government for the community. The government had taken options out on these lands and some of landowners had been waiting so long that these options ran out as much as three times.¹³⁹ So one can see why the situation needed to be resolved quickly. The whole project was beginning to unravel and something or someone had to make a decision. Clemson agreed to take possession of the lands if the South Carolina

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* at 17.

legislature passed a bill that would give them \$5,000 a year to run the forest.¹⁴⁰ After a lot of political maneuvering the bill was passed and Clemson was granted an annual sum to take responsibility for the forest. The Board of Trustees for South Carolina was convinced accept the government's lease and did so on July 7, 1939.¹⁴¹ The lease was for a period of 50 years and had three 15-year renewal possibilities.¹⁴² Under the terms of the lease the college could operate the land as a conservation area and was responsible for "maintaining, protecting and developing" the natural resources present in the forest.¹⁴³ The College was allowed to gain income from the forest, which was to be used for repairs and replacements, for conservation and development, or for purchasing additional land to be included in the project area.¹⁴⁴ The government also included a clause allowing the government to terminate the lease at anytime it felt the land was not being used properly and the government was explicit by stating in the lease that these lands "must continue to be used for public purposes."¹⁴⁵

From 1939 to 1946 the forest was poorly managed including failure to repair roads, and manicure hiking trails.¹⁴⁶ Bridges were left to be washed out and were subsequently left in disrepair and campsites were allowed to be vandalized.¹⁴⁷ Many of the roads and bridges were left in poor shape for the purpose of discouraging public use of the woods despite the fact that one of the

¹⁴⁰ *Id.* at 18.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

original purposes of the forest was public recreation.¹⁴⁸ This all changed in 1946 with the hiring of Norbert Goebel as project manager. During Goebel's tenure as project manager, Clemson finally received the land in its own name.¹⁴⁹ On December 22, 1954, the US Senate passed a bill deeding 27,469 acres of forest to Clemson for the nominal fee of one dollar.¹⁵⁰

b. Land Utilization Plan for the CUEF

Clemson University has found itself looking for ways to make up for the effects that this State's poor economy has had on its operations. The College has had to find some way to offset the 25 percent budget reduction the state government has handed to it. One such proposal to make up that loss is to open up areas of the CUEF to development. The Urban Land Institute prepared a case study that discussed a number of areas in the CUEF that have the potential for development. Clemson University is receptive to this study because it has a 10 year goal to make itself one of the top 20 public schools in the United States. The College, with this goal in mind and the recent budget cuts, is strongly considering its options.

In the College's *Clemson University Land Utilization Plan*, it outlines seven principles that will guide its decision of any possible development of the CUEF.¹⁵¹ These principles are:

1. The Education, Research and Service missions of the University will have priority for the use of University Land.

¹⁴⁸ *Id.* at 19.

¹⁴⁹ *Id.* at 21.

¹⁵⁰ *Id.*

¹⁵¹ *Clemson University Land Utilization Plan: A Ten-Year Plan to Identify and Leverage Clemson University Land Holdings in Support of University Goals 5* (Clemson University, 2002).

2. In order to ensure that land will be a valuable asset in inventory for the life of the University, the existing acreage of Land Use will be maintained (approximately 20,000 acres).
3. Near term decisions to sell or develop University land will be made in support of specific University goals over the next ten years.
4. The ten-year sale and/or development of university land will be a phased process in order to guarantee strategic benefits while maximizing value.
5. The Clemson University Foundation will develop Land under a plan approved by the University.
6. Proceeds from the sale or development of University land will be assigned to support University goals as determined by the President and Administrative Council and approved by the Board of Trustees.
7. All appropriate federal, state and local laws and regulations will be followed in the sale or exchange of University land.¹⁵²

The focus of the potential development is directed towards Lake Hartwell Properties. Lake Hartwell is one of the largest inland lakes in the United States and over 100 miles of lakeshore, all potential development, are own by Clemson University.¹⁵³ For the purposes of the study the researchers have made five assumptions and they are:

1. The anticipated development includes a potentially broad range of uses and activities that should be of a quality commensurate with the nature and character of Clemson University
2. Only major developments are to be considered. Small-scale developments of 5 or 10 acres are of a wholly different scope and are not addressed in this report.
3. Substantial investments of time and effort will be made to make sites available for development; significant financial investments will be made to improve access and infrastructure on the sites.
4. Any development will include and integral marketing strategy that will appropriately position the project for success.
5. It is the mission of Clemson University to make the wisest and best use of its land resources.¹⁵⁴

The 19,000 acres in the vicinity is “Land Use Property” that the college acquired through the Bankhead-Jones Tenant Act.¹⁵⁵ The report admits that

¹⁵² *Id.* at 5-6.

¹⁵³ *Id.* at 6.

¹⁵⁴ *Id.* at 8.

this act restricts the use of this land to certain public activities but it does very little to clarify what this mean or what effect it will have on the process. There are four major factors that the University will consider in determining what land is best suited for development. These four factors are; 1) Adjacency to the Lake (It has frontage on Lake Harwell); 2) Reasonably good access (It has minimum, direct access to a two lane road); 3) Proximity to deep water (It has property within 100 yards of water 40 feet in depth); 4) Close relationship of the property to the college (It is within 2 miles of the main campus).¹⁵⁶ In relation to adjacency to the lake, at least 90 percent of the land in the vicinity of the campus has “contiguous access to the lake” but only 50 percent of this land has access to a road.¹⁵⁷ Even less of the mention area has access to deep water.¹⁵⁸ How close the land is to the campus will have an effect on the properties “desirability and marketability,” and land meeting the previous criteria within two miles of campus has “a higher potential for speedy return on investment.”¹⁵⁹ When viewed under the previous criteria, only three areas are pinpointed as suitable candidates for development. These three areas labeled Areas 1, 2 and 3 and each is discussed below.

Area 1 has two potential sites within its location; Sites 1A and 1B.¹⁶⁰ Site 1A is commonly know as Horse Head Point and it consists of 450 acres with access to Hwy 123, Old Clemson Road, and a country road.¹⁶¹ Currently the

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 9.

¹⁵⁷ *Id.* at 10.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 15.

¹⁶⁰ *Id.* at 16.

¹⁶¹ *Id.*

property is only being used for forest and wildlife research and some areas surrounding this location are already developed.¹⁶² The site is very rugged and portions would require a great deal of investment to develop but the land lends itself to residential development.¹⁶³ Site 1B is commonly known as Keeowee Heights Plantation northwest of the college campus and consists of approximately 423 acres with access to Hwy 133.¹⁶⁴ The property is located immediately across the lake from Site 1A and is currently being used only for forest and wildlife research with minimal surrounding land use.¹⁶⁵ Land is rugged and due to the terrain a large portion of the area would require a large investment to be developed.¹⁶⁶

Area 2 has three potential sites within its location; Sites 2A, 2B, and 2C.¹⁶⁷ Sites 2A and 2B are sixty acres in total size and both site are level and even.¹⁶⁸ Both lend themselves to development with minimal improvement and have access to a newly completed four-lane highway.¹⁶⁹ One negative is that the YMCA is currently using the property and it will require discussion as to how those recreational facilities could be displaced. Some improvements necessary may be related to surrounding University properties as well as the need for development of the roadway corridors.¹⁷⁰ Site 2C consists of 190 acres and has access to Seneca Creek Road on the East side of the site and an improved

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 17.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 18.

¹⁶⁸ *Id.* at 19.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

two lane road through the middle of the property.¹⁷¹ The site is currently used for forest research and management and some other areas have been harvested for timber.¹⁷² The property has good character and is close to the airport and campus.¹⁷³

Area 3 consists of 60 acres and is located on the southern edge of campus and is adjacent to a golf course.¹⁷⁴ There is some use already in place but it has the potential for development although it will most likely not be a single contiguous development. The site contains a cemetery, used as a buffer zone, and has a Poultry Center.¹⁷⁵ Area is primarily used for cultural and recreational purposes and some areas could be considered a working farm.¹⁷⁶ Site 3B has already been developed to a degree by university departments such as the Seed Lab, Foundation Seed Building, Hopewell Historic Home, some facilities of the Eutomology Department, office of USDA, and facility for DNR.¹⁷⁷ This site is not suitable for consideration because it is inconsistent with the identified assumptions.¹⁷⁸ Site 3C is known as LaMaster Dairy and consists of 250 acres.¹⁷⁹ Area is good for development although it has poor access to the lake because it is adjacent to areas that do have access.¹⁸⁰ Road access is available by way of Cherry's Crossing, Old Stone Church Road, and US 76.¹⁸¹

¹⁷¹ *Id.* at 20.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 22

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 23.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 24.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

It is currently being used for pasture and dairy production and a small portion is used for forest management.¹⁸² Land uses adjacent to the property include residential, religious, forest and wildlife management, and a cemetery.¹⁸³ One negative is that it would be necessary to relocate the dairy but the may need to be done for “accreditation and environmental reasons” even absent development.¹⁸⁴ Site 3D is part of Fants Grove and consists of 540 acres.¹⁸⁵ Area is adjacent to the lake and has good access from the highways. It is currently being used for forest and wildlife management, recreation, and the Starkey Swine Center.¹⁸⁶ As with the dairy the Swine Center may have to be moved for “accreditation and environmental” concerns even without development.

In looking at these properties, the school is contemplating a higher return on investment while protecting the interests of the institution.¹⁸⁷ The school is also aware that the community must play a large role in the process of planning and in the life of the development.¹⁸⁸ The College boasts that developments will demonstrate exemplary planning, design and development practices and its financial objective is to realize a net gain of 40-50 percent on its investment.¹⁸⁹ The college also notes that “a significant portion of the profits will be placed in the University Endowment and the remainder will be reinvested in further

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 25.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 27.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 28.

development.¹⁹⁰ The College expects an educational benefit to realized through enhanced scholarships, new programs, and benefits that will be shared by future students.¹⁹¹ If this project goes forward, it is Clemson’s intention to develop Sites 1A, 1B, 2A, 2B, 2C, 3A, 3C, and 3D over the next ten years.¹⁹²

c. Public Response to Land Utilization Plan

The public has mixed emotions about the fate of the CUEF. Some believe that Clemson’s plan “will optimize use of the selected land and continue to protect from development the bulk of its 20,000 acres of forest.”¹⁹³ Still others believe “development could one day sprawl across not only the selected land but also most of the CUEF.”¹⁹⁴ The College responds to these concerns by assuring the public that there are no immediate plans for development and that further discussion and study will be exercises before any decisions are made. Still critics are worried that giving up green space is a dangerous thing when the CUEF is one of the few large green space areas left. A forestry professor at Clemson believes it to be a start to urban sprawl and any development would be a “travesty.”¹⁹⁵ Another Clemson professor believes stewardship of lands “means also potential development in concert with research, teaching, and the service missions of the University.”¹⁹⁶ Critics also of development also believe that Clemson’s lands are federally protected and anything that occurs will “impacts tens of thousands of acres nationally because other universities and

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Anna Simon, *Clemson Community Not Sold on Land Proposal*, Greenville News 17B (October, 23 2004)

¹⁹⁴ *Id.*

¹⁹⁵ Anna Simon, *Development Divides Clemson Community*, Greenville News 13B (January 8, 2005)

¹⁹⁶ *Id.*

agencies that hold federal land use property are in the same position as Clemson.”¹⁹⁷ Some upstate residents have even formed an organization to protest against possible development of the CUEF. The organization is known as “Friends of the CUEF.”

On January 21, 2005, Clemson held a press conference to speak to any questions that people might have about the proposal. Attending the meeting was a diverse group of concerned citizens including students, faculty, hikers, mountain bikers, people interested in local history, people interested in wildlife, and people interested about green space.¹⁹⁸ The President of Clemson was sure to let everyone know that the Land Utilization Plan was simply in response to a request for any possible revenue streams and that there were no plans for development or sale of any property at the present time.¹⁹⁹ He also stated that the Land Utilization Plan, was “unfortunately written as if it was an action plan but it was not.”²⁰⁰

Conservation groups are also concerned about the development of the CUEF such as the South Carolina Wildlife Federation (SCWF). It is the SCWF’s view that the taxpaying public owns these lands and conversion would take place at the expense of natural resource loss while individuals are profiting. The SCWF is concerned that the CUEF will lose site of its original purpose which included “improving the quality of water as well as prevent

¹⁹⁷ *Id.*

¹⁹⁸ Jeanne Brooks, *Clemson Unites to Protest Forest*, Greenville News 13B (January 30, 2005)

¹⁹⁹ Anna Simon, *Public Has Say on University Land*, Greenville News 1B (January 27, 2005).

²⁰⁰ *Id.*

erosion and to provide timber for commercial users.”²⁰¹ The SCWF also claims that any development of the CUEF is in violation of the Bankhead-Jones Tenant Act that requires that any sale or exchange of lands shall be made only to public authorities and agencies and only on the condition that the property is used for public purposes. Also the value of the forest to students is immeasurable and the CUEF:

Serves many public functions within the university, community, and the state. Recreational opportunities abound in the forest. Its many trails and picnic areas are heavily utilized by horseback and mountain bike riders, hunters and anglers, hikers, bird watchers, and others. The forest vastly improves the quality of life for students and faculty as well as residents of Clemson and nearby towns by enhancing air and water quality and providing a buffer against urban sprawl.²⁰²

Also, money could be better spent in reclaiming “one of the many existing poor examples of community developments in the I-85 corridor.”²⁰³

The Society of American Foresters has weighed in on this debate as well. They feel that “any commercial development of the CUEF would be a breach of public trust and would be illegal according to the laws under which Clemson acquired the property.”²⁰⁴ Their position is that the forest is far too valuable as a managed natural resource to be considered for development. The forest is “the Experimental Forest of South Carolina and should be managed in perpetuity under principles of adaptive forest management.”²⁰⁵ They, along with others, believe that this could have an effect far beyond the borders of

²⁰¹ Sorrells, *Clemson Experimental Forest* at 29.

²⁰² David Van Lear, *The Clemson University Experimental Forest Yet Another Threat to Public Land*

²⁰³ *Id.*

²⁰⁴ Society of American Foresters, *Position of the Keowee Chapter of the Society of the American Foresters.*

²⁰⁵ *Id.*

South Carolina in that “a total of 1.7 million acres of lands in the federal land utilization program were transferred to state and local agencies prior to 1954.”²⁰⁶ These lands were distributed to 80 projects across the nation and a change in the law for development of the CUEF could affect management of all of these lands and would establish a dangerous precedent.²⁰⁷ The issue has become one of national importance. It is the opinion of the Society that following purchase of these lands by the United States, the lands became part of the Public Domain.²⁰⁸

d. Legal Issues of the Land Utilization Plan

Upon receipt of ownership of the CUEF, Clemson was governed by the rules of the Bankhead-Jones Farm Tenant Act of 1937 (“the Act”). Section 1010 of the Act restricts the uses of the CUEF to those considered as “public purposes.”

Under the Act those purposes are defined as:

“The Secretary (of Agriculture) is authorized and directed to develop a program of land conservation and land utilization, in order thereby to correct maladjustments in land use, control soil erosion, reforestation, preserve natural resources, protect fish and wildlife, develop and protect recreational facilities, mitigate floods, prevent impairment of dams and reservoirs, develop energy resources, conserve surface and sub-surface moisture, protect watersheds of navigable streams, protect watersheds of navigable streams, protect the public lands, health, safety and welfare, but not to build industrial parks or establish private industrial or commercial enterprises on subject properties.”²⁰⁹

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ 7 U.S.C. 1010

Section 1011 of the Act controls the disposal of land by agents of the Secretary of Agriculture;

“To sell, exchange, lease, or otherwise dispose of...any property so acquired, under such terms and conditions as he deems will best accomplish the purposes of this subchapter, but any sale, exchange, or grant shall be made only to public authorities and agencies and only on condition that the property is used for public purposes.”²¹⁰

It was under this section that the Secretary of Agriculture was permitted to transfer the deed for the CUEF to Clemson. The term “public purposes” is not confined to the Act and it can also be found in the deed granted to Clemson in 1954. The provision in the deed reads, “This conveyance is...made subject to the condition that the ...land shall be used for public purposes.”²¹¹ In the event that this provision is violated, the deed also contains a reverter clause. The reverter clause reinforces the restrictions found in the Act. In the event that the lands cease to be used for “public purposes” as required by both the deed and the Act then the “land ceases to be so used the estate hereby conveyed shall immediately revert to and become revested in the United States.”²¹²

In 1955, Congress passed P.L. 84-237, which allows Clemson an exemption to the provisions of Section 1011. Meaning that Clemson has the authority to sell, exchange, lease, buy, or otherwise dispose of lands without having to get authorization from Congress. It is important to note that PL 84-

²¹⁰ 7 U.S.C. 1011(c).

²¹¹ Page 10 of the Anderson and Oconee County deed

²¹² *Id.*

237 does impose its own restrictions on Clemson's use of the CUEF. Under PL 84-237, Clemson can dispose of lands only if;

“(1) all proceeds from the sale or exchange of such lands shall be by the college for the acquisition of lands within the exterior boundaries of the project or for the development or improvement of lands within the project;

(2) any lands acquired by the sale or exchange of the lands covered by such agreement shall become part of the project established on the lands conveyed by the two deeds referred to in section 1 and shall be subject to the conditions with respect to the use of such lands of public purposes contained in such deeds; and

(3) that all proceeds from the sale, lease or other disposition of the lands covered by such agreement shall be maintained by the college in a separate fund and that the record of all transactions involving such fund shall be open to inspection by the Secretary.²¹³

What this means for Clemson is that any income derived from the sale of lands can only be used to purchase adverse in-holdings, which are tracts of private property, found within the exterior boundaries of the CUEF.

Under these laws it appears Clemson does not have the authority to implement its Land Utilization plan because it intends to use the profits from sale of this land for uses other than the purchase of adverse in-holdings. If Clemson were to continue in developing the land inside the CUEF it would not comply with “the public purposes” requirement in the Act or the Deed. The threat appears to be that Clemson would run the risk of triggering the reverter clause. It does not appear that the reverter clause makes a distinction between

²¹³ P.L. 84-237

partial and total misuse of the CUEF. With that in mind Clemson has very few options for development.

One possible option would be to lobby Congress for a vote to change the provisions of the deed so that it would be allowed to develop those areas outlined in the Land Utilization Plan. However, this seems to be a dead end considering the recent report by the Faculty Senate Select Committee on Clemson Land Use Proposal. The report reveals that in addition to the plan being in violation of federal law, it is also contrary to Clemson University Board of Trustee's policy on land sale or exchange.²¹⁴ The Select Committee was charged:

“To study the recommendations presented by the Urban Land Institute (ULI) in an objective manner and to report your findings and any recommendations you may have to the Faculty Senate. Also consider the immediate effects of change as well as any long-time affects of change for the University. In addition, it would be interesting to be apprised of any legal and political ramifications of the recommendations presented by the ULI.”²¹⁵

The Committee found among other things that the proposed developmental actions were in not consistent with the Bankhead-Jones Farm Tenant Act, PL 84-237 or the CU Board of Trustees policy on land sale or exchange.²¹⁶ The Committee found that “development as outlined in these plans is in direct conflict with the Clemson University Board of Trustees policy

²¹⁴ *Final Report of the Faculty Senate Select Committee on Clemson Land Use Property* (March 2005) at

1.

²¹⁵ *Id.*

²¹⁶ *Id.*

on land sale or exchange.²¹⁷ Along with these legal issues the Committee found that the public had “organized in opposition to these plans,” and that those groups could become “politically active if they perceive that their input is not being sought or it is being ignored.”²¹⁸

The Committee reviewed the Land Utilization in detail and reported its findings to the Committee. The first issue that the Committee had with the Plan was that it acknowledged the fact that there are legal issues and internal issues associated with Development but it failed to discuss any resolution to these issues.²¹⁹ The Committee was also concerned about the discussion pertaining to the parcel considered for development and the potential that university research and service functions would be displaced.²²⁰ It also took issue with the possible encroachment “on areas of historic interest including the Colhoun Plantation and Keowee Heights Plantation.”²²¹ Nowhere in the Plan does it take issue with the fate of these programs nor does it address the fact that development would restrict future expansion of the University.²²² The Plan mentions an expected return of 40 to 50 percent through commercial development but it gives no basis for this projection and neither the real cost of replacement property nor the cost of program dislocation were a part of these estimates.²²³ The Committee is unconvinced that all 2,000 acres can be replaced with lands of equal value within the boundary of the Land Use Project,

²¹⁷ *Id.* at 2

²¹⁸ *Id.*

²¹⁹ *Id.* at 9.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

which is a requirement if it is to meet the standards of the controlling laws.²²⁴ The Committee also took concern with the “very existence of this Committee, this report, recent public meetings, and the formation and expressions of concerned citizens” because it indicates that there is a real need for concern among the public.²²⁵

e. Assessment

There is a continuing heated debate over the CUEF to say the least. For now it seems as though the situation has been silenced. By the University’s own admission, the proposal is in violation of the federal laws that govern Clemson’s control over the CUEF. The possibility still exists that proponents will one day find a way to put this plan into action but it will be very difficult without the support of the community. As was mentioned in the history of the CUEF, it was always meant to be a part of the community and it has always has some provision in its governing document that states that it must be used for public purposes. It is unlikely that Congress will grant Clemson the ability to develop these lands without a very strong reason for it. The government has explicitly stated that its policy is to reserve public lands for the good of the public and it is unlikely that policy will change anytime soon.

V. PROPOSAL TO DAM THE TYGER RIVER

Union County has proposed is an area impacted by a poor economy. It has an increasing unemployment rate of 13 percent.²²⁶ A group is trying to

²²⁴ *Id.* at 10

²²⁵ *Id.*

²²⁶ Jeffery Collins, *Lake Proposal Gives Glimmer of Hope to Struggling County* The State (March 7, 2004)

change this situation by proposing a 5,300-acre lake in the Sumter National Forest²²⁷ The Sumter National Forest was established in 1936 when “tens of thousands of acres were bought by the U.S. government from people who could no longer afford to farm their land, in some cases for as little as three or four dollars and acre. Those who could not make enough money from farming to pay the real estate taxes on their land during the Depression were happy to get whatever they could.”²²⁸

The proposal entails the damming of the Tyger River and it would be located slightly upstream of Highway 176 approximately seven miles south of Union. The “current effort to create a lake actually started in the 1980’s ...with the idea to expand recreational opportunities in our national forestlands.”²²⁹ In February 2003 community leaders met to discuss ways to improve Union County and from that meeting, a committee was formed to discuss the building of the lake.²³⁰ In June of the same year, the committee made a formal presentation to the Union County Development Board and to members of Union City and County councils.²³¹ The lake is meant to be a “focus for full time retirement residents.”²³² The hope for Union is that the creation of this lake would create jobs in the construction industry, retail services medical care and a “long list of other categories.”²³³

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ William Jeter, *Benefits to Suffering area would be Multifaceted* Spartanburg Herald-Journal (December 5, 2004)

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

Many conservation groups are strongly against this proposal because it would “result in 1400 acres of land being converted to private ownership with major areas of shoreline development along the northern boundary of the former Fairforest Creek.”²³⁴ There are immediate natural resource concerns including the loss of floodplain habitat, bottomland hardwoods, riparian wetlands and other wildlife habitats.²³⁵ The SCWF is especially concerned about the existence in the area of waterfowl impoundments and a large number of trees that would be destroyed if the area were flooded due the building of this lake. The Audobon Society prepared a response to the Commission’s plan to build this damn. It outlines a number of areas that will be affected by the creation of this lake including bird conservation, and drought response. It also outlines its concerns about lakefront development and recreational public lands.²³⁶

The response refers to bird conservation as any area that will be impacted by the creation of this lake. The Tyger River “represents some of the best habitat within the upstate, supporting significant populations...of bird species and other wildlife.”²³⁷ The creation of this lake could potentially result in the loss of over 60,000 adult birds.²³⁸ The Audubon Society requires strong justification for the destruction of “federally managed and protected bird habitat.”²³⁹ The Society also takes issue with the proposition that the lake will help with drought

²³⁴ The South Carolina Wildlife Federation, *Save the Tyger River –Dam Proposed*, <http://www.scwf.org/articles/index.php?view=260> (accessed 4/25/2005).

²³⁵ *Id.*

²³⁶ Audubon Society, *In Response to the Union County Economic Development Commission’s Plans for the Creation of Patriots Lake*.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

response. Currently Union County has a system that is fully capable of supplying enough water in the event of a drought and the system has yet to be fully utilized and the Society does not feel that the creation of Patriots Lake is the right response.²⁴⁰ Lakefront development is another issue of contention with the Society because it feels as though this is the principle motivation behind the creation of the lake and if it occurs then it will be setting a “dangerous precedent for South Carolina’s National Forests.”²⁴¹ The Society is very concerned that the creation of this lake will be created at the expense of outdoor enthusiasts who now use the area to hunt. If the lake is built then it will infringe on the rights of those who depend on our National Forests for these “worthwhile pastimes.”²⁴²

It is unclear as to what legal backing the conservationist will have in this fight because there do not appear to be any laws against the creation of a Lake to support recreation. This dispute is mainly one over what is more important to the community. The argument is that the lake will do more harm to wildlife than it will do good for the community. This is a hard position to win especially if the area you are talking about has a 13 percent unemployment rate.

VI. CONCLUSION

The CUEF and the Dam proposal are two examples of how the community around it can affect the public lands. The CUEF

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

stands in direct contrast to the dam proposal because the people in Clemson feel that the land should be preserved for the public and not be developed. It just so happens that the legal position for the CUEF is on the community's side and in favor of not disturbing the natural beauty of the CUEF. On the other hand Union County has different circumstances where they feel that the land could better serve them by being privatized and the conservation groups are the one who are left without a remedy in the matter. I am of the opinion that the CUEF was handled in the appropriate way and the law did turn out the way it should have. The dam proposal seems like a debate that will continue for a long time.