



THE ENVIRONMENTAL AND LAND USE LAW SECTION REPORTER

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March 2012

• Martha M. Collins, Chair • Jeffrey A. Collier, Co-Editor • Anthony J. Cotter, Co-Editor

Florida’s 35 Year-Old Renewable Energy Policy: *Moving Beyond “Avoided Cost”*

by George Cavros, George Cavros Esq., P.A.

Florida is a state that is blessed with significant renewable energy resources. It enjoys brilliant sunny days which has earned it the moniker of the “Sunshine State.” Florida’s solar resource is second only to the US Southwest.¹ The state also has a year round growing season that can provide the state with a feasible capacity of over 2,300 megawatts (MW) of biomass-generated electricity;² and a

proposed 150 MW wind farm project in Palm Beach County is raising the possibility that on-shore wind could be a viable renewable resource in Florida.³

Given the state’s size and renewable resource potential, a comprehensive renewable energy policy could attract significant investment, diversify the state’s economy and create jobs. More than 75 percent of renewable energy jobs are in the manufacturing and

construction industries – the exact skill-sets of many in the construction trade who are now unemployed in Florida.⁴ Other benefits of diversifying Florida’s energy mix with renewable resources include state energy independence, keeping more energy dollars in the state, ratepayer protection by limiting long term risks from fossil fuel price volatility, avoided water use, and avoided greenhouse gas emissions.

See “Renewable Energy,” page 13

From the Chair

by Martha M. Collins

The ELULS continues to roll right along in this new year of 2012. For now, Section leadership is focusing on updating our website and on making our upcoming CLE’s a success. On March 23 our Section will be holding the *South Florida Environmental and Land Use Law: Recent Developments* CLE in Ft. Lauderdale. On April 20 in Tampa, the Section will present the CLE, *Environmental and Land Use Considerations for Real Estate Transactions 2012*. We are also planning our Annual Update for August 9-11th at the Sawgrass Marriott in Ponte Vedra. Please save that date and plan to attend. If you are interested in participating in our CLE’s, or learning more about our activities, please visit our website and keep an eye out for our monthly newsletter. We hope you have been finding the monthly electronic newsletter helpful.

From April 13 through 15 Section leadership will hold our annual retreat

in New Orleans. Many thanks go to our Vice Chair Erin Deady who has confirmed a performance by Tab Benoit and Royal Southern Brotherhood featuring Cyril Neville, Devon Allman, Mike Zito, Charlie Wooton and Yonrico Scott at the House of Blues that the ELULS will host on April 13th. In 2007, Benoit won the dual awards of B.B. King Entertainer of the Year and Best Contemporary Male Performer at the Blues Music Awards in Memphis. The event will be open to the general public through ticket purchases www.tabbenoit.com. Tab Benoit is a driving force behind Voice of the Wetlands, an organization working to save Louisiana’s wetlands. In 2010, he received the Governor’s Award for Conservationist of the Year from the Louisiana Wildlife Federation. We are proud to be hosting this event so please join us if you can. It’s also French Quarter Festival! So we hope to see you there!

There are many areas to participate

in the Section and I encourage you to get involved. It continues to be a pleasure to work with such wonderful and dedicated people. On behalf of your leadership, we wish to thank everyone for getting and staying involved with our Section.

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ELULS Case Law Update

by Gary K. Hunter, Jr. & Jacob T. Cremer

A plat approval constitutes a development order, as defined by section 163.3215(3), Florida Statutes. Development orders are not limited to approvals in the advanced stages of the development process. *Graves v. Pompano Beach*, 74 So. 3d 595 (Fla. 4th DCA 2011).

Appellants appealed from a trial court decision holding that a plat approval was not a development order, as defined in section 163.3215(3), *Florida Statutes*. Appellants challenged a plat approval which revised a plat to allow for more intensive commercial uses, including a new hotel and expansion of a casino. Since a development order must be consistent with the local comprehensive plan, the issue was whether the plat approval constituted a development order.

In *Graves v. Pompano Beach*, 36 Fla. Law Weekly D778, 2011 WL 1376617 (Fla. 4th DCA Apr. 13, 2011), the Fourth DCA held that the plat was not a development order. Upon rehearing, the court withdrew its opinion and replaced it, concluding that the plat approval was a development order because the city explicitly defined a “development permit” to include “plat approval”—and such definition is consistent with the plain language of section 163.3164(8), “or any other official action...having the effect of permitting the development of land.” Although further action is required after a plat approval before building can begin, the court indicated this does not diminish the consequence of plat approvals.

Appellants failed to establish standing on appeal because they could not prove that they were adversely affected by final agency action. Because they were held to have pursued appellate review without any foundation in law or fact, they were sanctioned, as provided by section 57.105(1), Florida Statutes. *Martin Cnty. Conservation Alliance v. Martin Cnty.*, 73 So. 3d 856 (Fla. 1st DCA 2011).

Appellants challenged two ordi-

nances amending the Martin County comprehensive plan, alleging that the amendments would cause environmental harm. The Administrative Law Judge (“ALJ”) concluded the amendments would not cause environmental harm, and the Department of Community Affairs affirmed via issuance of an “in compliance” final order. The appellants appealed, but the First DCA dismissed the appeal for lack of standing, and it ordered appellants to show cause why sanctions should not be imposed for filing an appeal where appellate standing was lacking. The court, on its own initiative, has since withdrawn that order and replaced it with one holding the appeal to be in violation of section 57.105(1), Florida Statutes, and imposing sanctions.

Appellants argued that the ALJ’s conclusion of no environmental harm was based on flawed legal interpretations, but the First DCA held that to be speculation and not ripe for review. Further, the court held that appellants failed to prove with specific facts how the order would adversely affect any of their members, meaning they could not justify an appeal under section 120.68. Consequently, the First DCA imposed sanctions, stating that by advancing legal positions unsupported by material facts or law, appellants were statutorily subject to section 57.105 sanctions. The court was unconvinced by the policy argument that this decision would have a chilling effect on similar litigation. The court explained that the standard under section 57.105 does not require a finding of frivolousness, but only a finding that the claim lacked a basis in fact or law. The court found the appellants’ appeal to be meritless, pointing to the fact that their counsel were experienced in this area of law but ignored controlling case law and filed an appeal without supporting evidence or the issue of standing.

The Florida Supreme Court declined to recognize an exaction under U.S. Supreme Court precedents *Nollan* and *Dolan* because this theory was applicable only to exactions involving real prop-

erty, not a conditional requirement such as offsite mitigation. *St. Johns River Water Mgmt Dist. v. Koontz*, 2011 WL 5218306 (Fla. Nov. 2, 2011).

In 1994, Koontz, a landowner, sought permits from the St. Johns River Water Management District (“SJRWMD”) to develop a greater portion of his property than was allowed by then applicable regulations. SJRWMD conditioned the permit on Koontz deeding the remaining portion of his property into a conservation area and performing offsite mitigation. Koontz agreed to deed his property into a conservation area but refused the offsite mitigation condition. SJRWMD in turn denied the permit. Koontz brought an inverse condemnation claim based on a theory of unconstitutional exactions. The trial court determined that a taking had occurred and assessed damages in favor of Koontz. SJRWMD appealed and the Fifth DCA certified the question of whether an exaction could be recognized under the U.S. and Florida Constitutions and the U.S. Supreme Court precedent of *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*.

The Florida Supreme Court held no taking occurred after a detailed survey of takings jurisprudence. It interpreted the *Nollan/Dolan* test as applicable only to exactions involving real property, and where regulatory entities had actually issued the permits sought with the objected-to exactions imposed. Although a line of cases expand the *Nollan/Dolan* test beyond real property conditions, the Court declined to give credence to those cases, stating it was constrained by U.S. Supreme Court precedent interpreting the Fifth Amendment takings clause. Consequently, the court held that the *Nollan/Dolan* doctrine applies only where the condition or exaction sought by the government “involves a dedication of or over the owner’s interest in real property in exchange for permit approval” and only when the regulatory agency actually issues the permit sought.” *Id.* at *9.

Based on the Court’s interpreta-

tion, Koontz's takings claim failed because the District did not condition approval of the permits on the dedication of any interest in real property in any way to public use. Thus, under the Court's logic, nothing was ever taken from Koontz. The Court pointed to supporting public policy rationales for its conclusion, arguing that it did not want property owners to file an inverse condemnation suit every time a permit is denied, causing land use regulation to be prohibitively expensive, and forcing agencies to simply deny permits outright out of a fear of potential liability. The Court feared the unintended consequence of land development in Florida being

halted by agency fear to issue permits with conditions.

Ordinances that do not deprive all or substantially all of a property's value fail the Penn Central test and thus do not violate the Constitution as uncompensated taking of property. *Venice v. Gwynn*, 2011 WL 6934531 (Fla. 2d DCA Dec. 30, 2011).

In 2009, the City of Venice passed a local ordinance prohibiting single-family dwellings to be rented for short periods of time. A property owner claimed this ordinance was an unconstitutional taking. The circuit court, acting in its appellate

capacity, held that the ordinance was constitutional on its face but unconstitutional as applied. The City appealed.

On appeal, the Second DCA held that the trial court had departed from the essential requirements of law. Namely, the trial court did not apply the "economic impact" prong of the *Penn Central* test: the property owner could still gain value from her house by renting for long-term or by selling the house. Consequently, the ordinance did not deprive all or substantially all of the property and did not violate the Constitution as an uncompensated taking of property.

On Appeal

by Lawrence E. Sellers, Jr.

Note: Status of cases is as of February 6, 2012. Readers are encouraged to advise the author of pending appeals that should be included.

FLORIDA SUPREME COURT

Martin County Conservation Alliance, et al v. Martin County, et al, Case No. SC11-2455. Petition for review of 1st DCA decision in *Martin County Conservation Alliance, et al v. Martin County*, Case No. 1D09-4956, imposing a sanction of an award to appellees of all appellate fees and costs following an earlier decision of the district court that "the appellants have not demonstrated that their interest or the interest of a substantial number of members are adversely affected by the challenged order, so as to give them standing to appeal." Status: Notice to invoke discretionary jurisdiction filed on December 2, 2011.

Board of Trustees of the Internal Improvement Trust Fund v. American Educational Enterprises, LLC., Case No. SC10-2251. Petition for review of 3rd DCA decision quashing the trial court's order compelling production of certain corporate financial documents. Status: Petition filed November 12, 2010; jurisdiction accepted on June 28, 2011.

SJRWMD v. Koontz, Case No. SC09-713. Petition for review of 5th DCA decision in *SJRWMD v. Koontz*, affirming trial court order

that SJRWMD had effected a taking of Koontz's property and awarding damages. 15 So.3d 581 (Fla. 5th DCA 2009). Status: On November 3, 2011, the court quashed the decision of the 5th DCA; motion for rehearing denied January 4, 2012.

FIRST DCA

Sexton v Board of Trustees of the Internal Improvement Trust Fund, Case No. 1D11-5908. Appeal from final order denying as untimely an amended petition for administrative hearing seeking to challenge the issuance of a 50-year sovereign submerged lands easement to FDOT for the reconstruction of the Little Lake Worth Bridge in Palm Beach County. Status: Notice of appeal filed November 4, 2011.

Smith v. Sylvester and DEP, Case No. 1D11-3605. Appeal from DEP final order dismissing petition for hearing because request for extension of time was not timely filed. The appellant argues the request was timely because, in computing the time, the agency should have added 5 days for mailing. Status: Notice of appeal filed July 8, 2011; oral argument set for February 14, 2012.

Washington County v. NFWFMD, et al, and Northern Trust Company v. NFWFMD, et al, Case Nos. 11-3488 and 11-4484. Appeals from final orders by NFWFMD denying petitions

for hearing with respect to portions of NFWFMD's 2008 Region III Regional Water Supply Plan. Status: Notices of appeal filed June 29 and August 23, 2011; oral argument set for February 28, 2012.

City of Marathon v. Discount Rock and Sand and DEP, Case No. 1D11-3141. Appeal from DEP final order dismissing second amended petition for hearing because the allegations were not sufficient to show that the City has standing. Status: Notice of appeal filed June 16, 2011; oral argument set for February 14, 2012.

Clay County v. DCA, Case No. 1D11-3065. Appeal from final order determining a plan amendment to be "in compliance." The amendment includes criteria to be used to achieve the compatibility of lands adjacent or in close proximity to Camp Blanding. The final order generally adopts the recommended order, but makes certain changes. Status: Voluntarily dismissed on November 18, 2011.

THIRD DCA

Flagler Retail Associates v. DCA, Case No. 3D11-948. Petition for review of a final order of the Administration Commission finding that an amendment to the Miami-Dade County Comprehensive Plan is in compliance. Status: Voluntarily dismissed on December 9, 2011.



THE
FLORIDA
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CLE

The Florida Bar Continuing Legal Education Committee and
the Environmental & Land Use Law Section present

South Florida Environmental and Land Use Law: Recent Developments

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

One Location: Friday, March 23, 2012

Shepard Broad Law Center, Classroom Two • Nova Southeastern University
3305 College Avenue • Ft. Lauderdale-Davie, Florida 33314 • (954) 920-3500

Course No. 1327R

8:30 a.m. – 8:55 a.m.

Late Registration

8:55 a.m. – 9:00 a.m.

Opening Remarks

9:00 a.m. – 9:50 a.m.

Water Quality and the Numeric Nutrient Rule

John J. Fumero, Rose, Sundstrom & Bentley, LLP

David G. Guest, EarthJustice

9:55 a.m. – 10:45 a.m.

**Overview of NEPA, CWA and ESA for the Land Use
Lawyer: Recent Developments in Florida**

Douglas M. Halsey, White & Case, LLP

10:45 a.m. – 11:00 a.m.

Break

11:00 a.m. – 12:00 noon

**Comprehensive Planning In the Era of Limited State
Review**

Richard J. Grosso, Nova Southeastern University Law School

12:00 noon – 1:00 p.m.

Lunch (on your own)

1:00 p.m. – 1:50 p.m.

**Ethical and Practical Challenges Facing Attorneys and
Professionals Under the Duty to Preserve Evidence
and Protect Professional Reports**

Rory C. Ryan, Ryan Law, P.A.

Joel Balmat, HSW Engineering, Inc.

1:50 p.m. – 2:45 p.m.

**South Florida Water Management District: Challenges
and Opportunities**

Melissa L. Meeker, South Florida Water Management District

2:45 p.m. – 3:00 p.m.

Break

3:00 p.m. – 3:50 p.m.

2012 Legislative Update

Kirk Fordham, Everglades Foundation

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THE
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The Florida Bar Continuing Legal Education Committee and the Environmental & Land Use Law Section and the Real Property, Probate & Trust Law Section present

Environmental and Land Use Considerations for Real Estate Transactions 2012

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Live Presentation and Webcast: April 20, 2012

Tampa Airport Marriott • 4200 George J. Bean Parkway
Tampa, FL 33607 • 813-879-5151



Course No. 1315R

8:00 a.m. – 8:30 a.m.

Late Registration

8:30 a.m. – 8:45 a.m.

Welcome & Case Study Introduction

Eleanor W. Taft, Eleanor W. Taft, P.A.

Jacob T. Cremer, Hopping Green & Sams, P.A.

8:45 a.m. – 9:30 a.m.

Contract Issues for Land Transactions for Properties with Environmental & Land Use Concerns

Barry B. Ansbacher, Ansbacher & Associates, P.A.

9:30 a.m. – 10:15 a.m.

Practical Considerations for Incorporating Sustainable Development into Real Estate Projects

Nicole C. Kibert, Carlton Fields

10:15 a.m. – 10:30 a.m.

Break

10:30 a.m. – 11:15 a.m.

Growth Management after the Community Planning Act

Adam J. Gormly, Hillsborough County Attorney's Office

11:15 a.m. – 12:00 noon

Local Government Land Use Hearings: What Does Quasi-Judicial Mean, Anyway?

Laura B. Belflower, Laura B. Belflower, P.A.

12:00 noon – 1:15 p.m.

Lunch (on your own)

1:15 p.m. – 2:00 p.m.

Old & New: Bert Harris Issues and Property Rights Cases (Including Koontz)

Ronald L. Weaver, Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

2:00 p.m. – 2:45 p.m.

Who Controls Entitlements and Permits after Foreclosure?

Jason E. Merritt, Hopping Green & Sams, P.A.

2:45 p.m. – 3:00 p.m.

Break

3:00 p.m. – 3:45 p.m.

Wetlands Permitting Issues

Amy Wells Brennan, SWFWMD

3:45 p.m. – 4:30 p.m.

Sovereign Submerged Lands Issues: Permitting & Leasing

Virginia C. Dailey, Hopping Green & Sams, P.A.

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Law School Liaisons

Center for Earth Jurisprudence Explores “True Wealth in a Green World” at Future Generations Conference

by Jane Goddard
(321) 206-5788; jgoddard@barry.edu

More than 50 lawyers, law students, and community members gathered on February 10, 2012, at the Barry University School of Law for the third annual Future Generations Conference, hosted by the Center for Earth Jurisprudence. The program, titled “True Wealth in a Green World,” explored an expanded definition of wealth that is economically, socially and environmentally sustainable.

For its theme, the conference drew upon an older definition of wealth that meant “welfare, weal, and abundance,” an original meaning not tied to material possessions or money value. As Sister Patricia Siemen, director of the Center for Earth Jurisprudence, observed, “This underlying other meaning remains: that which gives abundance, welfare, good living. True wealth is the welfare and the well-being of the larger community that includes the needs and good of the individual.”

The conference was opened by award-winning environmental writer and documentary filmmaker Bill Belleville, who encouraged the audience to re-encounter the unique “sense of place” created by Florida’s natural areas, and to appreciate the essential contributions of land, water, plants and animals, as well as Florida’s human explorers and inhabitants, to the Florida experience. Mr. Belleville’s latest book, *Salvaging the Real Florida: Lost & Found in the State of Dreams*, was recently awarded the National Outdoor Book Award for natural history literature.

Janelle Orsi, a “sharing lawyer” from California who co-directs the Sustainable Economies Law Center, introduced the new practice area of sharing law, which has recently been recognized by the American Bar Association as a new specialty area, helping clients navigate the legal challenges posed by such environmentally friendly practices as food co-operatives, car



sharing, and urban farming. She offered a new model for legal practice, based upon data showing that about 70% of potential clients, those in the middle of the economic spectrum, are underserved by the legal community, and suggesting that legal job growth will come from serving that client base. Her approach generated much interest among the Barry law school alumni in attendance. Ms. Orsi is finishing a book on sharing law, following the success of her earlier work, *The Sharing Solution: How to Save Money, Simplify Your Life & Build Community*.

Janie Barrera, president and CEO of AccionTexas, the largest non-profit microlender in the United States, explained the vision and philosophy that created the company and grew it into a multi-million dollar operation with ten offices in three states, more than 2,200 active clients, and a payback rate above 90%. Under her leadership, ACCIONTexas provides vital funding to small businesses that do not qualify through banks. Ms. Barrera credits the company’s relationship-building with their borrowers—car lots, hair salons, restaurants, and daycare centers, to name a few—to their high payback rate. She emphasized how a new model of lending can benefit communities by overcoming the flaws in the traditional economic system.

The individual presentations were followed by a panel discussion of additional aspects of true wealth. Kelly Swartz, Esq., founder of Ingenuity-

Law, a boutique intellectual property firm, explained how she “rebalanced her life account” by choosing to start her own firm. Tia Meer, president of the Simple Living Institute, discussed the real value of food and included information about sustainable gardening in Florida. Don Hall, executive director of Transition Sarasota, provided a history of energy consumption and current consumer lifestyles, and offered a model for communities to transition to more sustainable ways of living and working.

The Future Generations conference represents an ongoing effort by the Center for Earth Jurisprudence to provide education and probe significant areas of the essential task of this generation: reconciling current human needs and the needs of future generations of all species.

Key presentations will be available via video at www.earthjuris.org. To join the Center for Earth Jurisprudence mailing list and receive notification of future conferences and events, contact Jane Goddard at jgoddard@barry.edu or (321) 206-5788.

Founded in 2006, the Center for Earth Jurisprudence is an initiative of the Barry University School of Law to advance a transformative Earth-centered paradigm that advocates protecting the intrinsic value and legal rights of nature. The Center’s work includes research, education, publication, and policy advocacy.

Recent Developments at the Florida State University College of Law: A Welcome to New Faculty Members and a Summary of Upcoming Activities and Recent Student and Alumni Accomplishments

by Profs. David Markell, Robin Craig, and Donna Christie

A Warm Welcome to Two Distinguished New Faculty Members:

Prof. Hannah J. Wiseman, a rising star in environmental, energy, and land use law, joined the faculty this semester from the University of Tulsa College of Law. Prof. Wiseman is a graduate of Yale Law School, where she served as managing editor of the *Yale Journal on Regulation*. Prof. Wiseman clerked for the Honorable Patrick E. Higginbotham of the United States Court of Appeals for the Fifth Circuit and spent two years as a Visiting Assistant Professor at the University of Texas School of Law. Prof. Wiseman's areas of expertise include hydraulic fracturing regulation, land use, and energy.

We are also delighted to welcome **Prof. Shi-Ling Hsu**, a leading scholar who is joining the faculty this fall from the University of British Columbia Faculty of Law. Prof. Hsu earned his J.D. from Columbia Law School. Prof. Hsu also has a Ph.D. in Agricultural and Resource Economics and an M.S. in Ecology from the University of California at Davis and earned his B.S. in Electrical Engineering from Columbia. Prof. Hsu has considerable expertise in the areas of law and economics, climate change, and comparative and international environmental law, as well as property.

Our Fall 2011 Environmental Forum:

The Environmental Law Program at The Florida State University College of Law hosted a very interesting Fall 2011 *Environmental Forum* on the future of land use regulation in Florida that featured many of the key players. Entitled **A New Era for Land Use Management in Florida: So What Happens Next?**, the *Forum* focused on the enactment in 2011 of the Community Planning Act (CPA), which makes significant changes to Florida's growth management laws, including abolishing the Department of Community Affairs (DCA). The DCA's successor, the

Division of Community Development, resides within a new agency, the Department of Economic Opportunity. The *Forum* included **Tom Pelham** ('71), panel chair; **David A. Theriaque** ('89), providing insights from a local government perspective; **Robert C. Apgar** ('77), offering a state perspective; **Nancy G. Linnan** ('74), providing views from the perspective of the development community; and **Charles Pattison**, participating on behalf of interested citizens.

Upcoming Events:

Environmental Law Distinguished Lecture 25th Anniversary Symposium: the Florida State University College of Law is marking the 25th anniversary of its Distinguished Environmental Lecture Series on March 14, 2012, with a special program that will focus on developments in ocean and coastal law and policy. Presenters include **Prof. Josh Eagle**, Professor of Law at University of South Carolina School of Law; **Prof. Alison Rieser**, Director of the Graduate Ocean Policy Certificate Program (GOPC) and Dai Ho Chun Distinguished Professor at

University of Hawai'i at Mānoa College of Social Sciences; **Prof. William H. Rodgers, Jr.**, Stimson Bullitt Professor of Law at University of Washington School of Law; **Prof. Michael Allan Wolf**, Richard E. Nelson Chair in Local Government Law at University of Florida College of Law; **Prof. John D. Echeverria**, Professor of Law and Acting Director for the Environmental Law Center at Vermont Law School; and **Dr. Richard McLaughlin**, Endowed Chair for Marine Policy and Law at Harte Research Institute. The symposium is co-sponsored by the Inter-American Seas Research Consortium.

Environmental Forum (Spring 2012): this *Forum*, to be held in late March, will focus on the practical ins and outs of citizen interaction with the legislature. It will feature Section member Janet Bowman of The Nature Conservancy, Charles Pattison of 1000 Friends of Florida, and other distinguished speakers. The Section will serve as a co-sponsor of this program.

Student Achievements:

Stephanie Dodson Dougherty (FSU Law 2012) recently had her

Law School Liaisons continued....

This newsletter is prepared and published by the Environmental and Land Use Law Section of The Florida Bar.

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paper entitled "Arctic Justice: Addressing Persistent Organic Pollutants" accepted for publication by the University of Minnesota Law School's *Law and Inequality: A Journal of Theory and Practice*.

Kevin Schneider (FSU Law 2012) was named "Volunteer of the Month" for the month of January 2012 by the Nonhuman Rights Project (NhRP), a group of advocates on behalf of legal rights for orcas, great apes, and other highly intelligent animals. Schneider recently contributed to a memorandum in connection with NhRP's first court filing, which is part of a case

against SeaWorld in the Southern District of California.

This year's Environmental Moot Court Team, consisting of **Kevin Schneider** (FSU Law 2012), **Trevor Smith** (FSU Law 2013) and **Angela Wuerth** (FSU Law 2013) and coached by **Tony Cleveland**, **Segundo Fernandez**, and **Preston McLane**, participated in the 2012 Annual National Environmental Law Moot Court Competition at Pace Law School in White Plains, New York in February. This competition tests skills in appellate brief writing and oral advocacy involving issues drawn from real environmental law cases.

Alumni Updates and Honors:

Jesse Unruh ('11) of the Miami,

Florida law firm of Tew Cardenas LLP is the third associate to join the firm's expanding commercial litigation practice in the last year. Unruh focuses his practice on commercial and business litigation matters as well as environmental, land use and governmental law issues.

We hope you will join us for one or more of our programs. For more information about our programs, please consult our web site at: <http://www.law.fsu.edu>, or please feel free to contact Prof. David Markell, at dmarkell@law.fsu.edu. For more information about our Environmental Law Program, please see our environmental brochure, available online at http://www.law.fsu.edu/academic_programs/environmental/documents/environmental_brochure_11.pdf.

St. Thomas Law – LL.M. in Environmental Sustainability

St. Thomas University School of Law's LL.M. program in Environmental Sustainability offers courses, for CLE credit and available by remote access, that may be of interest to practitioners who work in the area of environmental law as well as those whose practice is only peripherally affected by environmental rules.

On February 24 and 25 the [Energy and Environmental Law and Policy Workshops](#) hosted a Renewable Fuels Workshop. Organized by Steven Heller, chief legal officer, Epec Biofuels Holdings; James McDonald, a partner at McLuskey & McDonald P.A.; and Professor Alfred Light, LL.M. program director, the workshop focused on biofuels from feedstocks and cellulosic biomass. A line-up of a dozen industry experts explored the properties of different biofuels as well

as topics ranging from the history of biofuels to algae technologies and aviation fuels to EPA registration issues under RFS.

The two-day workshop series will soon draw to a close. Remaining programs are "**Climate Change and the Law**" with Daniel Kreeger, executive director of the Association of Climate Change Officers, on March 2 - 3. Finally, Mechanical and nuclear engineer Charles J. Kibert, director of Powell Center for Construction & Environment at University of Florida, leads "**Green Buildings**," March 30 - 31, which prepares participants to pass the first step in LEED certification. Both are remotely accessible and offered for CLE credit.

The academic year may be winding down but the LL.M. program will not be idle. In partnership with the

Florida Earth Foundation, in May the LL.M. in Environmental Sustainability program is taking students to the Netherlands to study water policy and management as experienced in a nation below sea level. The week-long course investigates climate change and growth stewardship concepts, and includes briefings at IHE-UNESCO in Delft, and at the Headquarters of the Ministry of Transport, Public Works and Water Management in The Hague. Field trips are scheduled to locations such as Rotterdam, Kinderdijk and Zeeland for on-site lectures and presentations.

For more information about any of these programs, please visit www.stu.edu/law/environmentLLM or send an e-mail to environmentLLM@stu.edu. Please let us know in advance to allow us to arrange remote access.



Mark Your Calendar!

2012 ELULS Annual Update

~ August 9-11 ~

Sawgrass Marriott • Ponte Vedra Beach

UF Law Update

by Mary Jane Angelo, Director, Environmental and Land Use Law Program, University of Florida Levin College of Law

Carol Browner Headlines PIEC

UF law alumna, Carol Browner, former director of the White House Office of Energy and Climate Change Policy and former EPA Administrator, was the scheduled keynote speaker at the 18th Annual Public Interest Environmental Conference (PIEC) at the UF Levin College of Law. Browner currently is senior counselor of Albright Stonebridge Group in Washington, D.C.

The PIEC, which annually discusses issues affecting Florida's natural environment, was held February 23 to 25 in Gainesville. This year's theme was "Fishable, Swimmable? 40 Years of Water Law in Florida and the United States." The conference featured topics on the current state of affairs with respect to water regulation and the future of federal and state water resources, with special focus on the federal Clean Water Act and the 1972 Florida Water Resources Act. UF law had a major role in the development of the Florida act when former UF Law Dean Frank Maloney developed a model water code, and it became law in 1972. Dean Maloney was honored with a special remembrance at the opening conference reception.

The conference also featured UF law alumnus John Hankinson, Executive Director of the Gulf Coast Ecosystem Restoration Task Force, and Cynthia Barnett, journalist and author of *Blue Revolution: Unmaking America's Water Crisis and Mirage: Florida and the Vanishing Water of the Eastern U.S.*

UF Law's Nelson Symposium hosts experts in 'dirt law'

The University of Florida Levin College of Law's 11th annual Richard E. Nelson Symposium featured top national and state experts on recent and proposed changes in "dirt law" — real property law dealing with adverse possession, eminent domain, easements and mortgages — and their impact on landowners and local governments. "Digging Up Some Dirt (Law)" was held February 10 in Gainesville. The symposium was co-sponsored by The Florida Bar Environmental and Land Use Law Section and by The Florida

Bar City, County and Local Government Section.

During the past decade, profound changes have occurred in real property law in America. Among the topics explored were recent legislative efforts to make it more difficult for trespassers to acquire land through adverse possession and for public entities to acquire title by eminent domain. Experts examined growing concerns regarding the use and abuse of conservation easements and the securitization of traditional and alternative mortgages.

The symposium is named in honor of Richard E. Nelson, who served with distinction as Sarasota County attorney for 30 years, and his wife, Jane Nelson, two UF alumni who gave more than \$1 million to establish the Richard E. Nelson Chair in Local Government Law, which is held by UF law professor Michael Allan Wolf. Their support of the Levin College of Law's Environmental and Land Use Program has been key to the program's success and national recognition for excellence.

Costa Rica Study Abroad Program

The UF Law Costa Rica summer study abroad program will be a field intensive and interdisciplinary collaboration in 2012. In addition to core international and comparative environmental law courses, law students will work with Ph.D. students and faculty from the UF Water Institute in a skills-based practicum setting designed to address basin-scale tropical water management in the face of anthropogenic change.

The results of the work performed by students will inform a multi-university initiative to create a field laboratory for the study of climate change and water management in Central America. Externships and other unique opportunities may also be available for students fluent in Spanish.

UF Law's Marine and Coastal Policy Field Course Offered

The Environmental and Land Use Law Program is offering its one-credit Spring Break Field Course in Marine and Coastal Law and Policy during

March. This five-day course introduces a range of substantive issues through faculty and practitioner lectures and field trips at the campus of the UF Whitney Lab and Marineland Coastal Policy Center, on Florida's east coast. This unique location provides a legal laboratory for a wealth of ongoing legal and policy issues including coastal development and beach management, coastal and estuarine water quality, and boating and inland waterway management. Other topics include ocean energy (including fossil fuels, wind and tides) and the international and domestic law of living marine resources (such as whales, dolphins and sea turtles). The graded course is taught by Legal Skills Professor and Conservation Clinic Director Tom Ankersen and Center for Governmental Responsibility Associate in Law Richard Hamann.

The program provides a guided backwater kayak trip on the Matanzas River estuary, a boat tour of the St. Augustine Working Waterfront, a sunset coastal ecosystem hike, and a "sand in your shoes" look at beach erosion/inlet management issues that are the subject of ongoing litigation. Students are given the opportunity to visit the historic Marineland attraction, recently acquired by the Atlanta Aquarium, and enjoy a "dolphin encounter" if they choose. Second- and third-year law students participate in the course.

Top legal adviser speaks at UF Law

The UF Law Costa Rica Program and Conservation Clinic, the Center for Latin American Studies, and Gators for Alternative Dispute Resolution hosted Dr. Mario Mancilla, the legal adviser to the Secretariat of Environmental Matters (SEM) of the Dominican Republic – Central American Free Trade Agreement (CAFTA-DR) this fall. Dr. Mancilla presented "Environmental Dispute Resolution under the CAFTA-DR: Obstacles and Opportunities." He described the difficulties inherent in environmental disputes among the CAFTA countries (including the United States), the role of the

Law School Liaisons continued...

LAW SCHOOL LIAISONS

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SEM in resolving these disputes, and the increasing importance of environmental dispute resolution within trade agreements.

UF Law's Annual Spring Environmental Speaker Series

The annual Spring Environmental Capstone Colloquium, like the PIEC, featured a theme of "All About Water" and commemorated the 40th anniversary of the Florida Water Resources Act and the federal Clean Water Act. Speakers and topics were: John D. Echeverria, Professor of Law and Acting Director of Environmental Programs, Vermont Law School, "The Nature and Scope of Private Rights in Water in California;" Federico Cheever, Associate Dean of Academic Affairs and Professor of Law, University of Denver Sturm College of Law, "Water, Biodiversity and Real Estate in the Anthropocene;" Hannah Wiseman, Assistant Professor of Law, Florida State University College of Law, "Water and 'Clean' Energy: Water Quality and Quantity Battles in Renewable Energy and Natural Gas Production;" Steve Neugeboren, Environmental Protection Agency, Associate General Counsel for Water, "Water and the Clean Water Act;" Richard G. Hamann, Associate in Law, Center for Governmental Responsibility, UF Levin College of Law, "Florida Water Challenges;" and Nicolas Bogelin, University of Costa Rica, "The Human Right to Water."

Florida Law Review's Focus on Climate Change

The *Florida Law Review* dedicated its January 2012 issue to climate change in an effort to raise awareness and provide a platform for dialogue on legal programs related to the environment. The articles addressed a range of issues in environmental law and explored various social, political, and legal responses to threats posed by global climate change. For further information, please visit www.floridawalawreview.com.

Faculty Courses, Publications & Activities

Steve Powell, Director of the UF

Law International Trade Law Program, is developing a new course/seminar in International Environmental Law.

Powell also authored *Global Laws, Local Lives: Impact of the New Regionalism on Human Rights [including a healthy environment] Compliance*, 17 *Buffalo Human Rights Law Review* 117 (2011, with Patricia Camino Pérez).

ELULP Director Mary Jane Angelo published *Reclaiming Global Environmental Leadership: Why the United States Should Ratify Ten Pending Environmental Treaties*, 1201 *Center for Progressive Reform White Paper* #1201 (With Rebecca Bratspies, David Hunter, John H. Know, Noah Sachs and Sandra Zellmer, 2012).

Michael Allan Wolf, Richard E. Nelson Chair in Local Government Law and Professor, authored *The Supreme Court and the Environment: The Reluctant Protector*, published by CQ Press/Sage in 2012. He also has an article forthcoming in *The Urban Lawyer*. He has signed a contract with LexisNexis to be the co-author (with Daniel Mandelker) of the Sixth Edition of *Land Use Law*, a one-volume treatise.

Professor Wolf is teaching a course on The Supreme Court and the Environment this semester.

Christine A. Klein, Chesterfield Smith Professor and Director of the LL.M. in Environmental and Land Use Law Program, authored: *Compartmentalized Thinking and the Clean Water Act*, *George Washington Journal of Energy and Environmental Law* (symposium piece solicited for 2012 publication); *Survey of Florida Water Law*, in *WATERS AND WATER RIGHTS* (Robert E. Beck, ed., Matthew Bender & Co., Inc. (including annual updates 2005 - present); *The Dormant Commerce Clause and Water Export: Toward a New Analytical Paradigm*, 35 *HARVARD ENVIRONMENTAL LAW REVIEW* 131(2011); and National Research Council, Panel Member, Panel to Review California's Draft Bay Delta Conservation Plan, *A Review of the Use of Science and Adaptive Management in California's Draft Bay Delta Conservation Plan* (2011).

Professor Klein also presented the following: Vermont Law School, After Irene, Legal and Policy Lessons for the Future, *The National Flood Insurance Program* (invited

as speaker for April 20, 2012 conference); George Washington University Law School, Environmental Law Institute & Center for Progressive Reform (Washington, D.C.), 50th Anniversary of the Clean Water Act, *Compartmentalized Thinking and the Clean Water Act* (invited as panelist for March 22-23, 2012 conference); Association for Law, Property and Society, Georgetown Law School, Washington, D.C. ALPS 3rd Annual Meeting, *Water Bankruptcy* (scheduled to present paper on March 3, 2012); University of Florida Levin College of Law, 18th Annual Public Interest Environmental Law Conference, Fishable, Swimmable? 40 Years of Water Law in Florida and the United States, *The Writers Speak: Do Water Books Matter in the Smart Phone Era?* (confirmed panelist), February 24, 2012; University of Florida Levin College of Law, 18th Annual Public Interest Environmental Law Conference, Fishable, Swimmable? 40 Years of Water Law in Florida and the United States, *Private Rights in Public Waters* (confirmed panelist), February 24, 2012; International Symposium, University of Florida, Water, Forests and People: Toward Integrative Research on Dams, Natural Resources and Society in the Amazon, *Dam Licensing in the United States*, January 23, 2012; and Florida State University College of Law (Tallahassee, Florida), Faculty Colloquium, *Unnatural Disasters*, October 17, 2011.

Jeff Wade, Director of Environmental Law Programs at the Center for Governmental Responsibility presented "Coastal Development in an Unstable Climate: Precaution, Adaptation and Resilience," at the University of Delhi Faculty of Law's conference on "Contribution of International Environmental Law to Sustainable Development: Global and National Perspectives," held February 17-18 in New Delhi, India. The conference is preliminary to the Rio+20 Conference in June. Director Wade is in India during the spring semester for a Fulbright-Nehru Fellowship, conducting research into potential synergies between local participatory water governance processes and the more formal water management structures and policies in India. He is based in Ahmedabad, Gujarat, India, from January-May, 2012.

Join us for
**The Basics of State Licensing of Power Plants and
Electrical Transmission Lines in Florida**

Webinar

April 5, 2012, from 12:00 noon - 1:30 p.m.

Speakers:

Douglas S. Roberts, Hopping Green & Sams, P.A.

Robert Scheffel "Schef" Wright, Gardner, Bist, Wiener, Wadsworth & Bowden, P.A.

Cindy Mulkey, Florida Department of Environmental Protection Siting Coordination Office

Richard Zwolak, Golder Associates

The webinar will provide participants with an overview of licensing power plants and electrical transmission lines in Florida. Topics include Florida's Electrical Power Plant Siting Act (PPSA) and Transmission Line Siting Act (TLSA); the Florida Public Service Commission's review of the need for new electrical generation; the Florida Department of Environmental Protection Siting Coordination Office's role in licensing power plants and transmission lines; and practical aspects of licensing power plants and transmission lines.

Registration information, when available, will be posted at www.eluls.org.

RENEWABLE ENERGY

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The Florida Legislature has acknowledged the same in statute.

It is the intent of the Legislature to promote the development of renewable energy; protect the economic viability of Florida's existing renewable energy facilities; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on natural gas and fuel oil for the production of electricity; minimize the volatility of fuel costs; encourage investment within the state; improve environmental conditions; and, at the same time, minimize the costs of power supply to electric utilities and their customers.⁵

Florida renewable resources are defined as electrical energy produced from biomass, solar energy, geothermal energy, wind energy, ocean energy, hydroelectric power, waste heat from sulfuric acid manufacturing operations, and hydrogen produced from a source other than fossil fuels.⁶

Florida Renewable Energy Development Is Lagging

Given Florida's renewable resources and the legislature's intent to promote renewable energy, one would

think the state is attracting significant investment in renewable energy development. Yet, Florida's electricity generation mix incorporates little renewable energy. Non-hydro renewable energy resources account for approximately two percent of electricity generation in Florida.⁷ By comparison, in 2009, Texas' non-hydro renewable energy generation was 5.3 percent of electricity generation; Colorado's was 6.5 percent of electricity generation, and California's non-hydro renewable energy generation accounted for 12.5 percent its energy mix.⁸

A majority of renewable-generated electricity in Florida is derived from municipal solid waste (MSW). A much smaller share comes from agricultural and wood waste, and an even smaller amount from solar photovoltaic (PV) and solar thermal facilities. There is no wind or ocean energy electricity generation currently in Florida.⁹

There have been some recent additions to the Florida renewable energy mix. Projects of note include Florida Power and Light's (FPL) recent addition of three solar projects totaling 110 MW. These solar projects were developed as a result of a provision in a 2008 Florida energy bill that granted guaranteed cost recovery for 110 MW of renewable energy development, without the typical regulatory reviews for new power

projects, in order to "demonstrate the feasibility and viability of clean energy systems."¹⁰ FPL took advantage of this provision to develop the whole 110 MW and passed the capital and operating costs directly to its customers.

Additionally, American Renewables, Inc., has begun construction of a 100 MW biomass plant that will use forest residue and sustainably managed forests for fuel. Gainesville Regional Utilities (GRU), the municipally-owned utility that serves the Gainesville community, has a 30-year power purchase agreement (PPA) to buy all power generated from the plant.¹¹

Yet, the development of these projects is the exception in Florida, not the rule. The main hurdle is the "avoided cost" rate, or the price paid to renewable energy developers for renewable-generated electricity in Florida. It is based on a 35-year old federal law passed during President Carter's Administration called the Public Utility Regulatory Policies Act (PURPA). The Florida legislature has attempted to move beyond the restrictive avoided cost framework during the last three legislative sessions, but no legislation has passed. Will the fourth time be a charm?

Stuck in a 35 Year-old Renewable Energy Policy

PURPA establishes the price retail

continued....

utilities pay to third-party renewable energy developers. PURPA was enacted in 1978 with a goal of encouraging increased energy independence in the United States. It requires retail electric utilities to offer to buy power from qualifying facilities (QF) at a utility's avoided cost. Under PURPA, two types of facilities are eligible for QF status: small power production and cogeneration facilities.¹² A small power production facility is a generating facility with capacity of 80 MW or less whose primary energy source is renewable energy, such as hydro, wind, solar, biomass, waste or geothermal resources.¹³

While the Federal Energy Regulatory Commission (FERC) determines QF status, state utility commissions, such as the Florida Public Service Commission (FPSC), determine a utility's "avoided cost." Avoided cost is defined in PURPA as "the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source."¹⁴ It can also be described as the cost to the utility of its next incremental unit of power. The prices paid to QFs depends on several factors including the time of day the power is delivered and whether the power provided by the QF can explicitly avoid or defer the construction of additional conventional power plants. If so, the renewable energy developer is also entitled to a capacity payment in addition to the payment for energy. The avoided cost rates vary slightly among the state's investor owned utilities (IOUs), but are generally 4.5 cents to 6 cents / kilowatt hour (kWh). By comparison, the typical retail rate paid by the state's utility customers is about 12 cents per kWh. With the exception of several biomass projects, most notably energy from MSW projects, the avoided cost rate has not been successful in Florida in encouraging private renewable energy development.

Once the avoided cost for a utility is approved by a state utility commission, such as the FPSC, the utility cannot be required to purchase power from a renewable energy producer above the avoided cost price point. Any mandate to do so, could be legally challenged, likely by utility interests,

and determined by FERC to be a violation of federal law. That said, a utility can technically purchase power in the wholesale electricity market at a price point above the avoided cost price point, if not in pursuance of its PURPA obligation, contingent on a rigorous FERC approval process.¹⁵

The PPA avoided cost price paid to QFs for power is not the only obstacle to renewable energy development. Other roadblocks include PPA contract provisions, such as: performance mandates that require 97 percent capacity (essentially around the clock availability to produce electricity); the utility's ability to dictate the generator's maintenance schedule; and excessive time frames for the utility to exercise first right of refusal over the purchase of Renewable Energy Credits (REC).¹⁶

A recent FERC order, not fully discussed in this article, appears to allow state utility commissions to utilize multi-tiered avoided cost structures depending on the type of generation resource that is being "avoided" through the purchase of power from different renewable energy technologies. It concludes that "full avoided cost" under PURPA need not be the *lowest* possible avoided cost and can properly take into account real limitations on "alternate" sources of energy imposed by state law.¹⁷ Therefore, if a utility is obligated to purchase a certain amount of renewable energy, a state utility commission may establish multi-tiered avoided cost rates to reflect the various avoided costs that stem from the characteristics of different renewable energy technologies. Such an arrangement would not violate PURPA since renewable energy developers would still be offered power payments at the utilities avoided cost – albeit presumably at a higher rate than the utilities lowest possible avoided cost. The implications of the FERC order is still a developing area of law.

Moving Beyond Avoided Cost

Most states have moved to a so-called Renewable Portfolio Standard (RPS) as a policy tool to provide a revenue stream to developers above the avoided cost rate while avoiding federal preemption under PURPA. The RPS sets targets and timelines for the generation or procurement of renewable energy generation by the state's retail utilities – usually IOUs. Most importantly, it provides

for the establishment of RECs for the generation of renewable-generated electricity. A REC provides another revenue stream, in addition to the payment for power at avoided cost, which helps make renewable energy projects financially viable.

A REC is a tradable commodity representing proof that a unit of electricity (e.g. 1 MW hour) was generated from an eligible renewable energy resource. A utility must produce renewable energy itself to obtain a REC or it must procure it from a 3rd party – generally an in-state renewable energy developer to comply with state mandated targets for renewable energy generation.

Therefore, the REC serves as a compliance mechanism, and as a financial production-based incentive in a state RPS. The financial value of a REC offers states one way to compensate renewable generators above the utility's avoided cost. The renewable energy developer can sell the REC with or separately from the energy produced. The extra compensation does not violate PURPA's avoided cost provisions. FERC has held that:

RECs are relatively recent creations of the States. Seven States have adopted Renewable Portfolio Standards that use unbundled RECs. What is relevant here is that the RECs are created by the States. They exist outside the confines of PURPA. PURPA thus does not address the ownership of RECs. And the contracts for sales of QF capacity and energy, entered into pursuant to PURPA, likewise do not control the ownership of the RECs (absent an express provision in the contract). States, in creating RECs, have the power to determine who owns the REC in the initial instance, and how they may be sold or traded; it is not an issue controlled by PURPA.¹⁸

FERC has thus concluded that states have authority that is unrestricted by federal law to create RECs and determine procedure for their purchase and sale. Since FERC doesn't consider a REC to be part of an energy or capacity payment, the REC compensation to a third party seller of power will not violate PURPA provisions.

Most states utilize the RPS / REC framework. The design of the policies varies from state to state. North Carolina, for instance, has committed to obtaining 12.5% of its energy from

renewable resources by 2021 and allowing energy savings from efficiency programs to meet part of the goal¹⁹; while California has recently increased its target to 33% renewable generation by 2020.²⁰ RPS policy design options include targets and timelines for renewable energy generation; eligible resources; set-asides for preferred technologies; cost caps, and REC contracting practices.

Florida currently offers production-based incentives, but these incentives have not encouraged much renewable energy development. One is the PPA offered by Florida utilities to QFs with a price point at the utility's avoided cost. As stated earlier, this rate is often too low to support renewable energy development, with the exception of some biomass projects. Another production based incentive is net-metering. Net metering programs allow residential and commercial customers to offset their use of electricity at the retail rate with renewable energy resources. Excess generation is credited back to the owner at the utilities' avoided cost or at the retail rate. This program has also not encouraged much renewable energy development. For instance, in FPL's territory of 4.5 million customers, there have been 650 systems that have been interconnected through the net metering program.²¹ This highlights the importance of establishing a more meaningful production-based incentive, such as a REC, in Florida. It should be noted that non-production-based incentives such as tax-incentives, grants or rebates have not been effective on their own in creating the certainty and price points that foster a meaningful renewable energy market.²²

Florida's Attempts at Comprehensive Renewable Energy Policy

Governor Crist signed Executive Order 07-127 on July 13, 2007, which called on the FPSC to "not later than September 17, 2007, initiate rulemaking to require that utilities produce at least 20% of their electricity from renewable energy sources with a strong focus on solar and wind energy."²³ The legislature provided authority in 2008 to the agency to promulgate a RPS rule, but with a provision that the legislature would have to "ratify" the rule.²⁴ The FPSC was fully engaged in rulemaking in 2008 – holding numerous workshops.

Navigant Consulting, Inc. (NCI), was hired to provide the technical and achievable renewable energy potential

in Florida. The potential modeling utilized a host of factors that comprised three modeling scenarios. In its report, issued December 30, 2008, NCI concluded that under a mid-favorable scenario for renewable energy development with a two percent rate cap, Florida could achieve twelve percent renewable energy production; while under a favorable scenario with a five percent rate cap, Florida could achieve 24 percent renewable energy production by 2020.²⁵

Ultimately, the FPSC promulgated a draft rule with a 20 percent goal by 2021.²⁶ It included a two percent rate cap to control costs and a 25 percent set-aside for "Class 1" renewable resources: wind and solar. Seventy five percent of the rate cap was allocated to solar and wind resources and the remainder to other resources, such as biomass. Having promulgated and delivered a draft rule to the legislature in early 2009, attention turned to the 2009 legislative session.

The Senate, under the leadership of the late-Senator King, Chairman of the Senate Communications, Energy and Public Utilities Committee, passed a modified version of the RPS proposed rule. Senate Bill 1154, contemplated a "Clean Energy Standard" that kept the 20 x 20 target but allowed nuclear sources to account for 25 percent of the target with no impact on the rate cap – essentially creating a 15 percent by 2020 RPS.²⁷ The bill, however, stalled in the House for a host of reasons, including some political concerns and some substantive concerns over the cost and attainability.

In 2010, the House Energy Utilities Policy Committee took up the issue of renewable energy. It established priorities to guide it through its deliberations. The principles included, in order of importance: ensuring adequate and reliable energy supply, minimizing cost volatility, mitigating adverse environmental impacts and promoting investment and job creation.²⁸ The bill that emerged called for the development of up to 700 MW of renewable energy in 3 years.²⁹ It granted "sole discretion" to the state's IOUs to decide how much renewable energy would ultimately be built and who would build it, subject to a two percent rate impact cap.³⁰ It provided that at least five percent of the solar projects for which the IOU could seek cost recovery must be purchased from non-utility renewable energy developers.³¹ The bill, however, did not

provide a production-based mechanism for paying renewable energy developers an additional revenue stream above the utility's avoided cost power payment. As such, it was an open legal question as to whether the bill would have avoided federal preemption if the IOUs had paid above avoided cost for the purchased power in pursuance of their PURPA obligation. The bill garnered criticism from renewable energy advocates for its lack of transparency and competition.³² In the end, the bill passed the House in the final days of session but was never voted upon in the Senate.

Last year, it was the Senate Communications, Energy and Public Utilities Committee that took up renewable energy legislation. Its committee bill was modeled after the failed House bill of the previous year.³³ It allowed the state's IOUs to develop renewable energy projects up to a two percent rate impact cap. The IOU would be entitled to recover all costs, including a rate of return on the project as long as the FPSC deemed its project costs reasonable and prudent – even if the levelized cost to build and operate cost of the project was well above the avoided cost rate. It again, left unanswered the question of how the state would bypass federal preemption if a utility was required to purchase power pursuant to PURPA from a private developer above the utility's avoided cost. This bill was also criticized from several fronts, including industrial users, who raised concerns over bill impacts.³⁴ Renewable energy advocates argued that the bill provided no competition or transparency for non-utility renewable energy developers and would lead to higher project costs.³⁵ The bill died in the Budget Committee and never made it to the Senate for a floor vote. In 2011, the Florida Legislature transferred the Florida Office of Energy to the Department of Agriculture and Consumer Services (DACS).

For the 2012 Legislative Session, DACS Commissioner Adam Putnam has offered policy recommendations for advancing renewable energy development in Florida. At the time this article was prepared for publication, a proposed committee bill (PCB) was drafted in the Florida Senate as SB 7202, addressing some of Commissioner Putnam's recommendations.

Looking Forward

If the Florida Legislature considers

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a comprehensive renewable energy policy in future legislative sessions, it can benefit from the lessons learned from Florida's recent legislative history on renewable energy. First, the legislation should be designed to avoid possible federal preemption by PURPA. Secondly, the legislation must be designed to be transparent and competitive to promote private investment in Florida, reduce project costs, and to garner support from the widest group of stakeholders. The RPS framework provides a one readily available and time-tested template that can help Florida achieve both objectives. The other framework may be multi-tiered avoided cost rates established for various renewable energy technologies that satisfy retail utilities' renewable energy purchase obligations.

The benefits of renewable energy are not in dispute. The legislature considered an RPS policy in 2009. It abandoned that approach in 2010 and 2011 for bills that granted considerable discretion to the state's IOUs to dictate a state renewable energy program. Perhaps a fourth attempt at a crafting a comprehensive renewable energy bill in a future legislative session will yield a policy that will ultimately place Florida in the majority of states that already have laws and rules in place to capture the full economic and environmental benefits of renewable energy development.

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Endnotes:

¹ National Renewable Energy Laboratory, at: <http://www.nrel.gov/gis/solar.html> (last visited September 6, 2011).

² Southern Alliance for Clean Energy, *Yes We Can: Southern Solutions for a National Renewable Energy Standard*, February 23, 2009. A MW from a base load energy facility is enough to power approximately 700 homes.

³ Herman K. Trabish, *Wind Capital Group Goes for Another "Can't Be Done" Wind Farm*, Greentech Media, February 14, 2011.

⁴ Navigant Consulting, Inc., *Job Impact of a National Renewable Electricity Standard*, Feb. 2, 2010.

⁵ § 366.91, Fla. Stat. (2010).

⁶ § 366.92, Fla. Stat. (2011).

⁷ Energy Information Administration, *State Renewable Electricity Profiles*, at: http://www.eia.gov/cneaf/solar.renewables/page/state_profiles/r_profiles_sum.html (last visited September 6, 2011).

⁸ *Id.*

⁹ See Navigant Consulting, Inc., *Florida Renewable Energy Potential Assessment*, December 30, 2008.

¹⁰ § 366.92(4) Fla. Stat. (2008). The investor-owned utilities in Florida are Florida Power and Light Company, Progress Energy Florida, Inc., Gulf Power Company, Tampa Electric Company, and Florida Public Utilities Company.

¹¹ American Renewables, LLC, *Gainesville Biomass Plant Clears Remaining Regulatory Hurdles*, December 8, 2010.

¹² 16 U.S.C. § 824a-3(a).

¹³ 16 U.S.C. § 796(17)(A).

¹⁴ 16 U.S.C. § 824a-3(d). In keeping with PURPA requirements, § 366.051, Fla. Stat. states that a utility must purchase power from small power producers at the utilities "full avoided cost."

¹⁵ See Hempling, et al., *Renewable Energy Prices in State-Level Feed-in Tariffs: Federal Law Constraints and Possible Solutions*, NREL, January 2010.

¹⁶ Wheelabrator Technology Inc., *Protest of Commission Order No. PSC-080544*, September 9, 2008.

¹⁷ FERC Order 134 FERC ¶ 61,044, January 20, 2011 ("[b]ecause avoided cost rates are defined in terms of costs that an electric utility avoids by purchasing capacity from a QF, and because a state may determine what particular capacity is being avoided, the state may rely on the cost of such avoided capacity to determine the avoided cost rate. Thus, the avoided cost rate may take into account the cost of electric energy from the generators being avoided, e.g., generators with certain characteristics."). This multi-tiered avoided cost rate structure is contingent on a public utility obligation to purchase a certain amount of renewable energy.

¹⁸ CGE Fulton 70 FERC § 61,290 (2009), see also Hempling, et al., *Renewable Energy Prices in State-Level Feed-in Tariffs: Federal Law Constraints and Possible Solutions*, NREL, January 2010.

¹⁹ N.C. Gen. Stat. § 62-133.7(b) (2007).

²⁰ California Senate Bill X1-2 (SBX1-2), signed in April 2011, increased California's renewable energy target to 33% by 2020.

²¹ Florida Power and Light, *2010 Power Plant Ten Year Site Plan*, April 2010.

²² Lantz and Doris, *State Clean Energy Practices, Renewable Energy Rebates*, NREL, p. 16, March 2009.

²³ See Executive Orders, at: <http://www.flgov.com/release/9217>.

²⁴ 2008 Fla. Sess. Law-2008 (H.B. 7135).

²⁵ Navigant Consulting, Inc., *Florida Renewable Energy Potential Assessment*, December 30, 2008.

²⁶ Florida Public Service Commission, *Draft Renewable Portfolio Standard Rule*, January 30, 2009.

²⁷ See 2009 Fla. Sess. Law-2009 (S.B. 1154).

²⁸ House Energy Utilities Policy Committee, February 3, 2010, at: <http://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?SessionId=64&CommitteeId=2472> (last visited September 6, 2011).

²⁹ 2010 Fla. Sess. Law-2010 (H.B. 7229).

³⁰ *Id.*

³¹ *Id.*

³² Mary Ellen Klas, *Florida House Committee Approves Renewables Energy Bill*, Miami Herald, April 10, 2010.

³³ 2011 Fla. Sess. Law-2011 (S.B. 2078).

³⁴ Nancy Stephens, *Don't Soak Customers for Big Utilities Green Investment*, Palm Beach Post, April 13, 2011.

³⁵ Bill Herrle, *Closing the Door on Green Business is a Bad idea*, Tallahassee Democrat, April 24, 2011.