

# THE ENVIRONMENTAL AND LAND USE LAW SECTION REPORTER

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

## The Inaugural Florida Energy Summit: Three Perspectives

On October 26 - 28, 2011, the Florida Department of Agriculture and Consumer Services ("DACS") held its inaugural Florida Energy Summit. Three attendees of the Energy Summit provided a recounting, or recap, of the Energy Summit from their unique perspectives. The opinions expressed herein are those of these authors and are not the opinion of the ELULS or its Energy Law Committee. The three authors of this article

are DACS Deputy Commissioner Jay Levenstein,<sup>1</sup> Douglas S. Roberts,<sup>2</sup> and George Cavros.<sup>3</sup> The Energy Law Committee is grateful for their contribution to this article.

### The DACS First Energy Summit

by Deputy Commissioner Jay Levenstein

DACS recently hosted more than 550 attendees at the inaugural Florida Energy Summit in Orlando. For the past five years, DACS has hosted the Farm to Fuel Summit, an annual event as part of the Farm to Fuel Initiative that featured speakers and panelists representing international, national, and state perspectives on issues of research, production, and distribution of renewable energy. The purpose of the Farm to Fuel Initiative

See "Energy Summit," page 14

## From the Chair

by Martha Collins

Happy Holidays!! I trust this article finds everyone in a festive spirit. Since our Annual Update in August, we have made great strides in keeping our Section strong. Our goal is to always continue to do so even in challenging times. Our new Energy Sub-Committee is up and running, we are moving forward with our CLE programs, and we hope you have been finding the monthly electronic newsletter helpful. Our Section Reporter and Treatise are up on our website; please visit [www.eluls.org](http://www.eluls.org) to utilize these services. We also wish to thank those of you who have been submitting timely articles for the *Florida Bar Journal*; we appreciate your hard work.

For now, Section leadership is focusing on updating our website and making two very important upcoming CLE's a success. We will be holding a seminar in South Florida in March of

2012 focusing on hot topics particularly relevant to our South Florida members. In addition, our CLE team has recently called for topics and speakers for the Annual Update in August of 2012. We have received great ideas and commitment already for both seminars, and look forward to growing these programs. Your leadership is also taking a hard look at the ELULS website and exploring ways to make it more beneficial for our members. If you are interested in participating in either seminar, or to learn more about our activities, please visit our website and watch for our monthly newsletter.

There are many ways 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 everyone a happy, safe, and prosperous 2012.

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# Caselaw Updates

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

**Previous plat restrictions and representations are only valid if incorporated and referenced in the deed. Evidence that a plot of land was never conveyed with reference to a previous plat is sufficient to uphold a determination that the current owner does not hold rights in the plat or the ability to subdivide according to it. *Miami-Dade Cnty. v. Torbert*, 36 Fla. L. Weekly D1674a (Fla. 3d DCA Aug. 3, 2011).**

On an appeal of a judgment by the circuit court quashing a Miami-Dade County zoning determination, the Third DCA reversed, holding that the County rightfully refused to recognize plat rights. Two landowners requested permission from the County to develop one-acre residences on a sixty-five acre parcel that had a minimum lot size of five acres per residence. The land was previously platted into one-eighth acre homesites in 1926. The landowners relied on a resolution that made valid parcels that were purchased before April 12, 1974 and platted for one-acre-per-home. The County refused to recognize the 1926 plat, claiming that it was invalidated since it was neither referred to nor relied on in later deeds.

On an appeal of the County's decision, the circuit court sided with the landowners, concluding that the decision was not supported by the law. The circuit court held that the county attorney's opinion and a memo from the public works department were not competent substantial evidence to support the County's decision. As a result, the circuit court honored the 1926 plat.

The Third DCA reversed, holding that the circuit court failed to apply the correct law. The DCA noted that the proper application of law on second tier cert review, is that properties must be granted with reference to a plat for purchasers to take rights under that plat. The Third DCA stated that the evidence that the land was never conveyed with reference to the 1926 plat was sufficient by itself to constitute competent substantial evidence. This evidence required the circuit court to affirm the County's decision. Consequently, the Third DCA quashed the circuit court opinion.

**Water Management District had authority pursuant to Chapter**

**373, Part IV, Florida Statutes, to create an administrative rule requiring an environmental resource permit for dredging and filling of surface water or wetlands. *St. Johns River Water Mgmt. Dist. v. Molica*, 2011 WL 3627412 (Fla. 5th DCA Aug. 19, 2011).**

On an appeal of a declaratory judgment granted by the circuit court, the Fifth DCA reversed, holding a Water Management District could require landowners to obtain a permit before clearing, dredging, or filling a wetland. Landowners wanted to clear their property and alter the land's topography to enhance farming. *Id.* at \*2. The District required a permit to make these changes to the land, which included dredging and filling a hardwood swamp. *Id.* at \*1-2.

The Fifth DCA rejected the landowners' assertion that the District had statutory authority for permitting only under Sections 373.413(1) and 373.416(1), Florida Statutes, which govern regulation of the construction, alteration, maintenance, and operation of works, but not dredging or filling. *Id.* at \*7. The Fifth DCA held that the District derived authority to require a permit for dredging and filling from Section 373.414, Florida Statutes, which gives governing boards permitting powers to prevent activities contrary to the public interest. *Id.* at \*9. The Fifth DCA noted that separate dredging and filling permits previously covered in Chapter 403, Part VIII, Florida Statutes, were combined into the broad "environmental resource" permitting in Chapter 373, Part IV, Florida Statutes. *Id.*

The Fifth DCA left the question of whether the proper permitting procedures had been followed in this specific case to be decided in an administrative proceeding. *Id.* at \*10.

**Landowners seeking to divide a residential lot are entitled to certiorari review of their application denial to the extent their petition raises issues other than the consistency of the development order with the local comprehensive plan. *Bush v. Mexico Beach*, 2011 WL 4345169 (Fla. 1st DCA Aug. 31, 2011).**

On an appeal of the denial of a writ

of certiorari from the circuit court, the First DCA reversed, holding landowners could bring by certiorari issues other than the consistency of a development order with a local comprehensive plan. Landowners in Mexico Beach sought permission from the City to divide their residential lot. After waiting for over half a year for a hearing, the landowners filed a mandamus action to force the City to hold a hearing. *Id.* at \*1. The City then adopted a new land development regulation and rejected the landowners' application, stating that the application did not comply with the new regulation or the City's Comprehensive Plan. *Id.* at \*2. The landowners filed a petition for writ of certiorari, claiming that their right to due process had been violated. *Id.* The circuit court denied review, stating that no relief could be provided, as there would be no effect on the validity of the City's denial of the application, since consistency issues could not be raised in a petition for a writ of certiorari. *Id.*

The First DCA agreed that consistency issues could not be raised in a petition for a writ of certiorari. *Id.* However, it held that certiorari could be granted for issues other than consistency, such as the due process issues at hand. *Id.* The First DCA granted the writ of certiorari since these due process issues were not addressed by the circuit court, recognizing that the landowners' success before the circuit court would result in the City's order being quashed. *Id.*

**Property owners do not have riparian rights guaranteeing them an unobstructed view to a body of water unless their property is directly bordered by that body. Even had a legal right to the view existed, a neighbor possessed a superior right to construct a fence on his own land obstructing that view. *Mickel v. Norton*, 2011 WL 4415353 (Fla. 2d DCA Sept. 23, 2011).**

On an appeal of permanent injunctive relief granted by the circuit court, the Second DCA reversed, holding a homeowner could construct a fence blocking his neighbor's view of a bay and that the fence was not a nuisance. A homeowner built a fence to deal with safety concerns and the constant criticism of a neighbor. *Id.* at \*2. The

neighbor filed suit, alleging that the fence was a nuisance, and that his riparian and littoral rights were violated, as the fence blocked his view of a nearby bay. *Id.* at \*1. The trial court agreed, relying on *Lee County v. Kiesel*, 705 So. 2d 1013 (Fla. 2d DCA 1998). *Id.*

In reversing the trial court's decision, the Second DCA concluded that a landowner does not have a special riparian right to a view of waters that their land does not directly border. *Id.* at \*2. The Second DCA noted that the landowner in *Kiesel's* lot was situated directly on the water, while this neighbor's land did not lie directly by the bay. *Id.* at \*1. It also held that special littoral rights of view do not outweigh the established law of nuisance. *Id.* at \*2. As a result, the right to a view of water may be overcome when a useful purpose is being served. *Id.* The Second DCA held that was the case here, where a fence was erected to protect the privacy and increase the safety of a landowner. Such a useful purpose does not qualify as a nuisance. *Id.*

**The same statutory construction standards applied to statutes applies to comprehensive plans. When Future Land Use Element policy limits mining to "only" those activities supporting a limited set of uses, the entire aggregate mined and not just a portion must directly support these uses. 1000 Friends of Fla., Inc. v. Palm Beach Cnty., 2011 WL 4577746 (Fla. 4th DCA Oct. 5, 2011).**

On an appeal of a judgment by the circuit court upholding a development order, the Fourth DCA reversed, holding in favor of nonprofits challenging the development order's consistency with Palm Beach County's comprehensive plan. The County granted a company mining rights, which the company sought to expand into property designated as "agricultural production" in the County's comprehensive plan. The County approved a development order expanding the company's operations into the agricultural territory, stating that the company's proposal was consistent with the comprehensive plan. Two nonprofits filed suit challenging the development order, alleging that the order was inconsistent with a policy of the comprehensive plan restricting mining and excavation activities to only those that support public roadway projects, agricultural activities, or water management projects. *Id.* at \*1.

At trial, the company admitted that, although aggregate resulting from the mining could be used to support public roadway projects, there was no guarantee that it would all be used in this manner. *Id.* at \*2. The trial court ruled for the company, stating that since part of the aggregate would be used for public roadways, public road construction was sufficiently "supported." *Id.*

The Fourth DCA explained that the trial court could interpret the comprehensive plan independently of the County. *Id.* Because comprehensive plans should be interpreted in the same way as other statutes, the trial court should have used the plain meaning rule focused on the meaning of the word "only" in the statute. *Id.* The Fourth DCA held that "only" means for a sole purpose and nothing else, and that this plainly means that all of the aggregate must be used for the enumerated purposes and nothing else. *Id.* at 3. Furthermore, the Court explained that statutory construction favors the inclusion of one item implying the exclusion of another; since private mining was not listed in the policy, it was presumably not permissible. *Id.* Finally, the Court stated that statutory interpretation should favor assigning meaning to the entirety of a statute; the trial court's ruling would make "only" superfluous and render the list of activities non-exclusive. *Id.* at \*4. As a result, the Fourth DCA ordered the trial court to enjoin enforcement of the inconsistent development order. *Id.*

**City was liable for inverse condemnation where it demolished a structure without providing landowner with sufficient notice of demolition. Landowner was not entitled to writ of mandamus while City was still appealing decision. West Palm Beach v. Roberts, 2011 WL 4949795 (Fla. 4th DCA Oct. 19, 2011).**

On an appeal of a judgment from below, the Fourth DCA affirmed the circuit court in finding the City was liable for inverse condemnation in the demolition of a structure. A landowner's house in a historic district sustained fire damage. The landowner boarded up the house while waiting to receive approval of the building and renovation plans from the historic preservation planning division. The City of West Palm Beach declared the boarded-up house an unsafe public nuisance and began proceedings to demolish it. The planning division sought to halt the

demolition proceedings, but it was overruled by the City. The house was demolished without the landowner receiving notice of the proceedings.

The landowner sued the City, claiming a taking of the house occurred when the house was demolished. The trial court agreed, finding that the landowner did not receive proper notice of the determination to demolish the house. The landowner received damages in the judgment, and the City appealed the ruling. The landowner then filed for a writ of mandamus to compel satisfaction of the judgment, which the trial court dismissed.

The Fourth DCA explained that the trial court's judgment would be upheld as long as it was supported by competent, substantial evidence. After reviewing the City's land development code, the Fourth DCA ruled that the record showed competent substantial evidence supporting the trial court's finding, and that the trial court properly determined that there was a lack of sufficient notice. The Fourth DCA held the action for inverse condemnation was proper, consequently, based on case law that a taking may occur due to an entirely negative act, such as destruction. The Fourth DCA also upheld the trial court's refusal to grant a writ of mandamus, noting that execution on a judgment was automatically stayed when the City filed an appeal in connection with the judgment.

**Inverse condemnation claim was not ripe where planning activities were present but there was no current loss of access. Planning activities differed from regulatory development restrictions, which would have been considered ripe for inverse condemnation claim. Pembroke Ctr., LLC v. Fla. Dep't of Transp., 64 So. 3d 737 (Fla. 4th DCA 2011).**

On an appeal of a judgment by the circuit court dismissing two claims of a landowner, the Fourth DCA reversed the lower Court, granting the property owner the ability to have its rights declared. The landowner holds commercial property at the intersection of two roads, with a thoroughfare dedicated on a plat inside of the property. The Department of Transportation ("DOT") planned to use the thoroughfare to widen one of the roads. The landowner filed an inverse condemnation action against DOT, and also asked the court to determine its rights regarding the

*continued...*

land. DOT initially argued that neither claim was ripe, then stated that only the inverse condemnation claim lacked ripeness. The trial court held that neither claim was ripe, and dismissed the landowner's complaints with prejudice.

The Fourth DCA held initially that, since there was an actual controversy

as to the property owner's rights regarding the thoroughfare, the property owner's claim to have the status of the property determined was ripe. Second, the Fourth DCA stated that an inverse condemnation claim was ripe only when the government has taken property. This is satisfied when a taking has occurred, not when a taking "will" occur in the future. The Fourth DCA held that mere planning activity occurred when DOT posted plans on its website that allegedly caused some of the landowner's tenants to not renew their leases. Mere

planning activity, as opposed to a current loss of access or regulatory development restriction, did not cause a current loss of access that would result in a taking. Because there was no current loss of access or physical invasion of the property, the Fourth DCA held that the landowner's inverse condemnation action was not ripe. However, the Fourth DCA stated that, on remand, the trial court was free to consider any circumstances that changed since the original proceedings supporting a new ripeness determination.

## On Appeal

by Lawrence E. Sellers, Jr.

*Note: Status of cases is as of November 7, 2011. Readers are encouraged to advise the author of pending appeals that should be included.*

### FLORIDA SUPREME COURT

*Board of Trustees of the Internal Improvement Trust Fund v. American Educational Enterprises, LLC.*, Case No. SC10-2251. Petition for review of 3<sup>rd</sup> 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 5<sup>th</sup> 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. 5<sup>th</sup> DCA 2009). Status: On November 3, 2011, the court quashed the decision of the 5<sup>th</sup> DCA.

### FIRST DCA

*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: Joint motion to relinquish jurisdiction to lower tribunal granted October 12, 2011.

*Guidry v. DEP*, Case No. 1D10-6399. Petition for review of final order determining appellants lack stand-

ing to challenge as unadopted rules two conditions in a beach restoration permit and a position with regard to when erosion control lines must be established. Status: Voluntarily dismissed on September 7, 2011.

*Martin County Conservation, et al v. Martin County*, Case No. 1D09-4956. Petition for review of Final Order determining comprehensive plan amendments to be in compliance. Two appellees moved to dismiss the appeal for lack of standing, and requested attorneys fees. Status: Appeal dismissed *per curiam* on June 21, 2010, because "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." On December 14, 2010, the court entered an order concluding that the appeal was filed in contravention of s. 57.105(1), F.S., and imposing sanctions against appellants and their counsel. 35 F.L.W. D2765a. On November 4, 2011, the panel withdrew the opinion issued on December 14, 2010, and imposed a sanction of an award to Appellees of all appellate fees and costs.

### SECOND DCA

*Highland Lakes Estates v. DEP*, Case No. 2D10-6055. Petition for review of Final Order granting permit for Cedar Trail Landfill. Status: Affirmed *per curiam* on November 2, 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: Notice of appeal filed April 11, 2011.

### FOURTH DCA

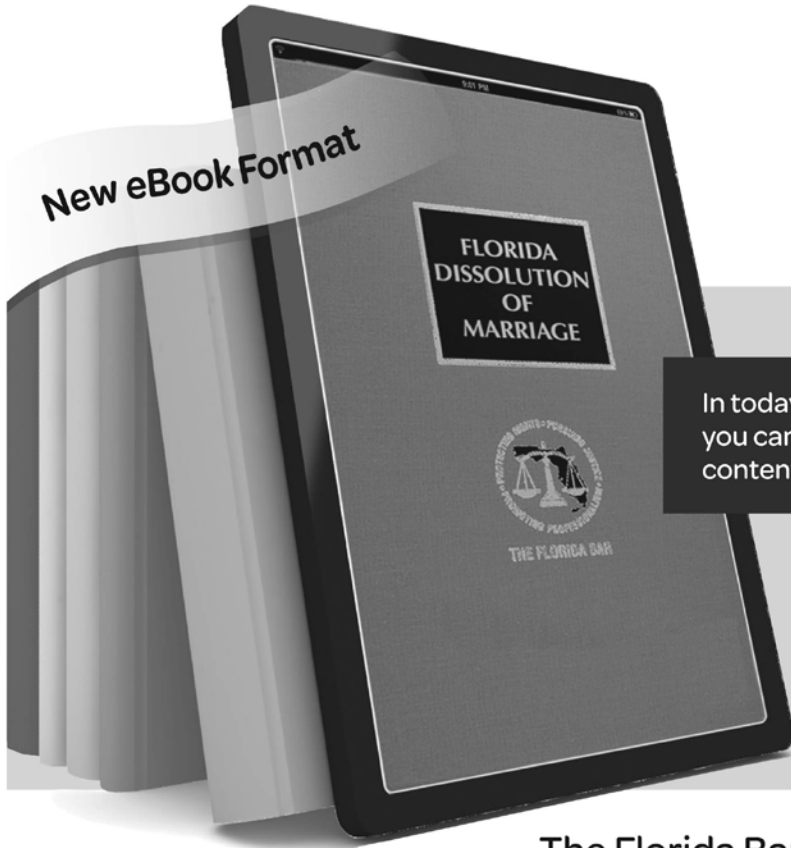
*Rosenblum v. Zimmet*, Case No. 4D10-3049. Petition for review of DEP Final Order finding that Zimmet was entitled to a single family dock exemption for his project and rejecting Rosenblum's claim that his navigation would be impeded to and from the south side of his dock. Status: Affirmed *per curiam* on August 17, 2011.

### FIFTH DCA

*Kennedy v. SJRWMD*, Case No. 5D10-3656. Appeal from a final summary judgment for SJRWMD, rejecting claims that its Governing Board violated the Sunshine Law at the meeting where it considered the ALJ's recommended order on a challenge by the St. John's Riverkeeper to an application for a consumptive use permit by Seminole County. (That final order was affirmed by the 5<sup>th</sup> DCA.) The complaint sought a declaration that the meeting violated the Sunshine Law by not allowing Riverkeeper members an opportunity to speak during the public comment period and by not holding the Board meeting at a location that could seat all the people the SJRWMD "reasonably expected" to attend. Status: Affirmed *per curiam* on October 25, 2011.



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# Department of Economic Opportunity

by Richard E. Shine, Assistant General Counsel

*Flagler Retail Associates, Ltd v. Miami-Dade County, DOAH Case No. 09-4713GM*

The Petitioners challenged a future land use map amendment which did not involve an expansion of Miami-Dade's Urban Development Boundary. The ALJ's Recommended Order found the amendment not in compliance because it was inconsistent with a plan policy that map amendments "satisfy a deficiency in the Plan map to accommodate projected population or economic growth of the County." The ALJ concluded the policy was the "primary" factor in considering map amendments. The Administration Commission rejected the ALJ's recommendation, and issued a Final Order which found that the plan policy relied upon by the ALJ was outweighed by other policies. The Final Order is pending appeal in Third District Court of Appeal Case No. 3D11-948. The Parties have agreed to an extension of time for Flagler to file a REPLY BRIEF.

*Adjutant General v. Clay County, DOAH Case No. 10-0912GM*

Section 163.3177(6)(a), F.S., requires local governments to "update or amend their comprehensive plan to include criteria and address compatibility of lands adjacent or closely proximate to existing military installations..." Clay County adopted a plan amendment to meet this requirement with regard to Camp Blanding, and

the Adjutant General and Florida Department of Military Affairs challenged the amendment. The ALJ's Recommended Order found that the plan amendment complied with the base compatibility requirements in the 2009 statutes, but did not rule upon compliance with the requirements adopted by the 2010 Legislature. The Department of Economic Opportunity's Final Order was challenged by Clay County and landowners granted intervenor status. The parties agreed to settlement which included a modification of certain conclusions of law as reflected in the Amended Final Order.

*Yankeetown v. Department of Community Affairs and the Administration Commission, State of Florida, CA, Case No. 37201 CA 002036*

Yankeetown filed an Amended Complaint for Declaratory Judgment pursuant to Chapter 86, Florida Statutes, seeking an Order of the Court declaring that House Bill 7207 (Chapter 2011-139 Laws of Florida) is unconstitutional. The Complaint alleges that the Bill violates The Florida Constitution because it contains more than one subject, was adopted in violation of the single subject rule and was read by an inaccurate, misleading title as an Act "related to trust funds," a subject matter unrelated to the actual subjects of the Act. On September 28, 2011, the parties entered into a Settlement Agreement providing that

the Department of Community Affairs and Yankeetown will use their best efforts to seek a legislative amendment to section 163.3178(8), F.S., which, if it becomes law, will allow the Town to continue to require voter approval for comprehensive plan amendments pursuant to Section 11 of the Town of Yankeetown Charter, while retaining the ban on referenda for local governments which did not have a charter provision authorizing referenda on June 2, 2011. If a Proposed Amendment becomes law, the Town will dismiss the above described case with prejudice.

*Thomas F. Collins et al., v. Monroe County and the State of Florida, Case No. CA-M-04-379*

Eleven Plaintiffs filed a Complaint alleging that application of Monroe County's Comprehensive Plan and Land Development Regulations to their properties resulted in compensable regulatory takings. Prior to trial the Court dismissed three of the eleven plaintiffs whose cases have been appealed to the Third District Court of Appeal. Two of the dismissed Plaintiffs obtained building permits prior to trial and the third Plaintiff was represented by his estate. Of the remaining eight plaintiffs who went to a ten day trial during the first two weeks of April, the Court found that Monroe County and State of Florida are not liable for a regulatory taking for seven plaintiffs who failed to show by a preponderance of evidence that they have a reasonable investment backed expectation for developing their properties, and that there remains no viable use for the subject properties. Defendants showed that a variety of uses remain for each of the properties, including development, sale as Rate of Growth Ordinance (ROGO) lots, Transfer of Development Rights (TDR) and speculative sales. With respect to Plaintiff Davis, the Court found that despite conflicting evidence on the issue of whether the County lost Mr. Davis' building permit application, he was unable to proceed through the ROGO process and liability was found due to the County's malfeasance or misfeasance.



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# ABA/ELULS Fellowship

by Heather Culp

Over this past summer I was a recipient of the American Bar Association in conjunction with the Florida Bar Section of the Environment, Energy, and Resources (ABA-SEER) 2011 Diversity Fellowship in Environmental Law. I was fortunate to remain in Orlando, Florida, as I worked with WildLaw, a non-profit Environmental Law firm. I learned many things during my time at WildLaw and gained real-world legal experience. As a Fellow at WildLaw, I was given the opportunity to experience and participate in an administrative hearing challenging the Department of Environmental Protection's approval of clean-up efforts at a contaminated site. The lessons I learned from that experience can only be found in law offices and courtrooms.

As a result of my Fellowship experience, I was able to work directly with attorneys and other law students in a close-knit setting. Working with a non-profit law firm allowed me to have a hands-on experience with Environmental Justice Law. I gained great insight on the perspectives of both clients and their attorneys prior to and following the litigation of their case. I made many valuable observations about the field, which I will take with me as I complete my law school education and embark on a career path that incorporates environmental law. I would first like to thank WildLaw for allowing me to work as their Fellow this past summer. I know that I made the right choice in choosing to remain in Orlando, where I could work with an organization that always puts their client's interests first and never backs down from the challenges faced by many non-profit environmental law firms. I would also like to thank The Florida Bar and the American Bar Association for awarding me the Diversity Fellowship for summer 2011. The Fellowship gave me an opportunity that many students dream of having, but may feel is unattainable following their first year in law school.

While gearing up for a two-day pre-hearing and eight-day administrative hearing, I spent many late nights

working on the case. I not only gained the necessary drafting and research skills required of law students and first-year lawyers, I also learned that working in non-profit Environmental Law means long hours that can lead to rewarding experiences. First-year law students read about the discovery process, drafting motions, and applying legal concepts to real-world problems. This summer, I was able to experience and participate in those activities first-hand and under the guidance of experienced supervising attorneys. At WildLaw, I was able to put my newly-gained legal knowledge and skills to the test. Not only did I learn about and observe the unique nuances of Environmental Law, but I was given the rare opportunity to interact with our clients, while working with other attorneys and experts in the field. The confidence I gained from this experience cannot be adequately described in words.

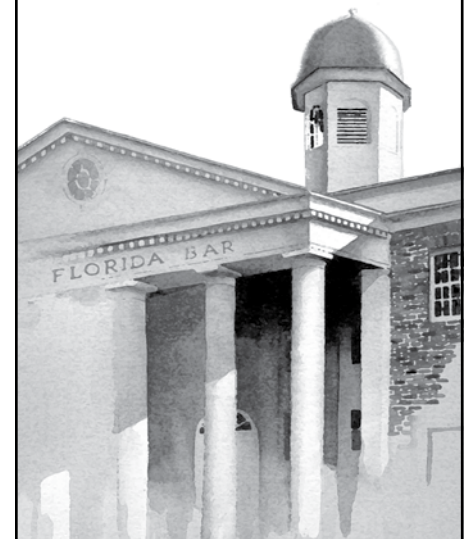
My experience with WildLaw taught me many things, some of which simply cannot be learned in the classroom. For instance, long nights making copies of evidence may not be mentioned in one's casebook, but it just might occur in the real world when something is left behind at your office the day before trial begins. For me, those things are incidental to a successful career in environmental law. Lawyers that are willing to stay up late to put the finishing touches on exhibits or wade through what sometimes feels like thousands of discovery documents, experience the greatest satisfaction that comes at the end of the day when there is a smile on the clients' faces because they know their case was adequately represented. That is what I experienced at WildLaw as I watched skilled attorneys defend their clients with the upmost professionalism and care.

My Fellowship experience concluded with a trip to Jacksonville, Florida for the ELULS Annual Update. While attending the Update, I met judges, attorneys, and consulting experts in the field as well as other Fellowship recipients and law students. I gained access to useful resources and information on current and emerg-

ing issues in the environmental law field. As a result, I hope to continue to participate in future Updates for the Section as a student volunteer and eventually as an attorney. Although my Fellowship with WildLaw ended following the administrative hearing, I remained with the firm and its co-counsel for the rest of the summer as a volunteer. As a result of my ABA-SEER Diversity Fellowship, I was offered a Public Service Fellowship with Barry University School of Law's Earth Advocacy Clinic for the fall semester.

I was fortunate to receive the ABA-SEER Diversity Fellowship and I am grateful for the knowledge and skills gained through the opportunities provided to me during my time at WildLaw. Once more, I would like to thank the American Bar Association, the Florida Bar, ELULS, the Fellowship Committee, and WildLaw for affording me a chance to work under the supervision of experienced environmental law attorneys. The knowledge and skills that I have gained will remain with me always as I continue to develop into a future environmental law attorney.

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# Law School Liaisons

## Barry University School of Law Hosts Third Annual Environmental Justice Summit

Over 60 lawyers, law students, academics, and local community members gathered at Barry University School of Law's third annual Environmental Justice Summit, *Serving People and the Planet*, on October 21, 2011. The program was presented by the Environmental Responsibility Committee, the Center for Earth Jurisprudence, Black Law Students Association, Hispanic American Law Students Association, Earth Jurisprudence & Environmental Justice Journal, Environmental Law Society, and Women Lawyers Association. It was funded in part by the Environmental Law and Land Use Section (ELULS) of the Florida Bar.

Majora Carter, an Eco-Entrepre-

neur and McArthur "genius" Fellowship recipient, delivered the keynote address. In the late 1990's, Carter re-routed a Giuliani-era plan for additional waste handling in the South Bronx, and converted policy towards positive green development in environmental justice neighborhoods. A \$1.25M Federal Transportation planning grant gave way to designs and plans for the South Bronx Greenway – an 11 mile network of bike and pedestrian paths meant to connect neighborhoods to the river front and each other with cost-effective, low impact storm water management capacity, local entrepreneurship opportunities, and active living features to improve public health and reduce

traffic congestion. In 2001, Carter founded a vanguard non-profit environmental justice solutions corporation: Sustainable South Bronx (SSBx). In her keynote address, Carter discussed urban green-collar job training and placement.

The Summit began with community members from Florida and across the United States, who shared their experiences with environmental injustices occurring in their local communities. Colleen Swan, a native from Kivalina, Alaska discussed the impacts of climate change occurring in her village and the damage that strong storm surges and high levels of pollution have wrought upon the land and animals. Residents from Ft. Lauderdale and Perry, Florida, also spoke on the pollution that has affected the health and vitality of their communities. Panels of attorneys, consultants, journalists, and community organizers then discussed the impact of wrongful environmental practices on disadvantaged communities, the limits of current laws and regulations, and the need for all members of the community, including attorneys and experts, to work together to implement change. Among the speakers was Robert Martin, former National Ombudsman for the United States Environmental Protection Agency. The Summit concluded with a roundtable discussion of the next steps toward working and collaborating with survivors of environmental injustice communities.

The Summit introduced participants to the plight of impacted communities and the obstacles they face on a daily basis in regard to their environment. The Summit also informed participants of positive steps to take in furthering efforts to benefit communities and the planet.

For further information or to be included in the mailing list for future Summit updates, please email [envjusticesummit@mail.barry.edu](mailto:envjusticesummit@mail.barry.edu).



***Ethics Questions?***  
**Call The Florida Bar's**  
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**1/800/235-8619**

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

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# 3<sup>rd</sup> Annual Environmental Justice Summit Barry University School of Law Friday, Oct. 21, 2011 Orlando, FL



## Summit Organizers



Denise May, Melissa Strassner, Jessica Smith (Volunteer), Courtney Thomas, Jane Goddard, Esq., Professor Pat Tolan, Mary Athey, and Heather Culp.

## Affected Community Members Panel



Heather Culp, Colleen Swan, Onetha Terry, Joy Towles-Ezell, Professor Zokovitch-Paben, and Professor Pat Tolan.

## Attorneys Panel



Robert Martin, Tracy Moye, David Deganian, Louise Caro, and Melissa Strassner.



## Keynote Speaker



Professor Jeanne Zokovitch-Paben, Majora Carter, and Mary Athey.

## Professional Collaborators



Matt Athey, Barbara Evans, Ronnie Green, Jeannie Economos, and Nadia Locke

*Law School Liaisons continued....*

## Barry University School of Law - Center for Earth Jurisprudence

by Jane Goddard, Center for Earth Jurisprudence

### Save the Date for "True Wealth in a Green World" Conference at Barry Law

The third annual Future Generations Conference will be held on February 10, 2012, at the Barry University School of Law in Orlando. Presented by the Center for Earth Jurisprudence, this year's program titled "True Wealth in a Green World" brings together speakers from green business, microlending, law, and other fields to examine what makes a society rich and explore methods of creating true wealth.

Speakers will include:

- Bill Belleville, award-winning environmental writer and documentary filmmaker, author of *Salvaging the Real Florida: Lost & Found in the State of Dreams*;

- Janelle Orsi, Esq., pioneer in the field of sharing law, author of *The Sharing Solution: How to Save Money, Simplify Your Life & Build Community* (invited); and

- Janie Barrera, President and CEO of AccionTexas, the largest non-profit microlender in the United States.

CLE credit will be offered. For further information, please visit [www.earthjuris.org](http://www.earthjuris.org) or contact [jgoddard@barry.edu](mailto:jgoddard@barry.edu).

### Journalist and Author Cynthia Barnett Introduces Blue Revolution at Center for Earth Jurisprudence

Award-winning environmental journalist and author Cynthia Barnett discussed Florida's need for a water ethic and launched her latest book, *Blue Revolution: Unmaking America's Water Crisis*, at an October 5 reception hosted by the Center for Earth Jurisprudence and the Sierra Club of Central Florida at the Barry University School of Law. *Blue Revolution* reports on the many ways we have squandered our way to scarcity, and argues that a water ethic is the best, simplest, and least expensive solution to Florida's water challenges.

Barnett also accepted the Sierra Club of Central Florida's Indigo Award for Environmental Reporting at the event. The award recognizes the efforts of a writer/journalist who provides balanced reports on Florida's environmental issues. Marge Holt, the club's Conservation Chair, made the presentation.

Barnett's previous book, *Mirage: Florida and the Vanishing Water of the*

*Eastern U.S.*, won the Florida Book Award gold medal for nonfiction in 2008. Barnett is a senior writer for *Florida Trend* magazine who writes frequently on environmental and public policy issues.

### Center for Earth Jurisprudence Premieres *The Journey of the Universe*

Producer, co-creator, and historian of religions, Mary Evelyn Tucker, appeared at the Orlando premiere of her extraordinary new film, *The Journey of the Universe*, hosted by Barry University School of Law's Center for Earth Jurisprudence on September 28. The premiere was co-hosted by the First Unitarian Church of Orlando at the Orlando Science Center's Darden Theatre.

Dr. Tucker led a discussion and question-and-answer period immediately following the premiere. Dr. Tucker is a senior lecturer and research scholar at Yale University, where she co-directs the Forum on Religion and Ecology. The film project and its companion book are a collaboration of Dr. Tucker with evolutionary philosopher Brian Thomas Swimme, a professor at the California Institute of Integral Studies in San Francisco.

The film draws on the latest scientific knowledge to weave its themes of interdependence, relationship, and responsibility to future generations of all who share Earth as home. It has received outstanding reviews from scientists, environmentalists, and thought leaders from various disciplines. It will be featured on PBS during the December pledge drive.

*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.*



Sr. Patricia Siemen, Cynthia Barnett, Marge Holt – Indigio Award



Dr. Mary Evelyn Tucker & Guests

# A Fall 2011 Update on the Florida State University College of Law's Environmental and Land Use Program

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

We are delighted to provide this update on recent developments and accomplishments at the Florida State University College of Law and on upcoming events. We continue to be gratified to be ranked the # 6 Environmental Law Program in the country by *U.S. News & World Report*. We are off to another exciting and productive year for the Program.

## Upcoming Programs

**November 9, 2011**, Fall 2011 *Environmental Forum: A New Era for Land Use Management in Florida: So What Happens Next?* During the 2011 legislative session, the Florida Legislature passed and Governor Rick Scott signed into law the Community Planning Act (CPA), which makes significant changes to Florida's growth management laws. The Department of Community Affairs (DCA), the state agency overseeing growth management, was abolished and its regulations, Rule 9J-5, repealed. The DCA's successor, the Division of Community Development, resides within a new agency, the Department of Economic Opportunity. The legislation is intended to encourage growth by removing barriers to development.

The *Forum* will feature panelists who bring a wealth of experience and range of perspectives on the future of land use management in Florida. **Tom Pelham** ('71) served as the Secretary of DCA from 1987-1991 and 2007-2011, and is a recognized leader in both the legal and planning professions. **Robert C. Apgar** ('77), a land use attorney practicing with Apgar & Spiers, has represented local governments, homeowners and developers in a wide range of land use matters during his thirty year career. **Nancy G. Linnan** ('74), managing shareholder of the Carlton Fields law firm in Tallahassee, practices primarily in

the areas of environmental/land use and administrative law and government consulting and played an integral role in the development of the Community Planning Act. **Charles Pattison**, President of 1000 Friends of Florida, a leading non-profit organization that promotes healthy urban and natural places, is a fellow of the American Institute of Certified Planners and serves on the Florida Conflict Resolution Consortium Advisory Council and Apalachee Land Conservancy. **David A. Theriaque** ('89), an attorney with a Master's degree in Urban and Regional Planning from Florida State University, practices with Theriaque and Spain, where he focuses primarily on land use planning law, growth management law and environmental permitting. **(Time and location: 3 p.m., in B.K. Roberts Hall, Room 310, with a reception to follow in the College of Law Rotunda).**

**25th Distinguished Lecture Anniversary:** The Florida State University College of Law is marking the 25<sup>th</sup> anniversary of its Distinguished Environmental Lecture Series this spring. Please mark your calendars for March 14, 2012 for a special program on ocean and coastal development. Please monitor our website for further details as the date for this event approaches.

## Faculty Updates

We are delighted that **Professor Hannah Wiseman** is joining the faculty this spring from Tulsa University School of Law. Prof. Wiseman is an expert in land use and energy law.

We also are delighted that **Peter A. Appel**, Alex W. Smith Professor at the University of Georgia School of Law, will be visiting with us this spring. Prof. Appel will be teaching courses in Sustainable Business:

Transactions & Strategy and Wilderness Law & Policy.

## Alumni Updates and Honors

**Kristina Garcia Nelson** ('01) works with the Office of General Counsel for the City of Jacksonville. For the past four years she has been practicing in the Regulatory and Environmental Division as the Division's lead environmental attorney. Ms. Nelson assesses environmental liability and provides ongoing legal advice to the Mayor's Office, the City's Departments, Council Members, and independent agencies and authorities.

**Jesse Unruh** ('11) has had his paper *The Florida Water-Energy Nexus: Planning for Climate Change in Florida's Water and Energy Law* selected for publication in the Chicago-Kent JOURNAL OF ENVIRONMENTAL AND ENERGY LAW.

**Zachary Kobrin** ('11) took the Honorable Mention award in the 28th Annual Smith-Babcock-Williams Student Writing Competition for his paper *Sustainable Procurement is Smart Procurement: A Primer for Local Governments to Successfully Implement Sustainable Procurement Policies*. He received a \$250 prize as part of the Award.

**Sarah Rissman Taitt** ('08) was recently hired by the Osceola County Attorney's Office in Kissimmee as an assistant county attorney, focusing on land use and animal law. She previously worked at the Lake County Attorney's Office for the past three years.

For more information about our *Distinguished Lectures* and our *Environmental Forum* series, and to keep apprised of other programs at the College of Law, please see: [http://www.law.fsu.edu/academic\\_programs/environmental\\_events.html](http://www.law.fsu.edu/academic_programs/environmental_events.html). Please also feel free to contact David Markell, Steven M. Goldstein Professor, at [dmarkell@law.fsu.edu](mailto:dmarkell@law.fsu.edu).

*Law School Liaisons continued....*

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

St. Thomas Law's new interdisciplinary LL.M. program in Environmental Sustainability is now well into its first year of existence. Highlights from last term included a course led by John C. Dernbach, of Widener University School of Law; a discussion led by James Strock, CEO of James Strock & Co. and former founding secretary of the Cal/EPA, about sustainability's critical role as a core element of business strategy; onsite immersion workshops in the Everglades, the Loxahatchee National Wildlife Refuge and the Everglades Agricultural Area led by Stan Bronson of the Florida Earth Foundation; and coursework in Homestead's agricultural community to examine real-world environmental justice issues, led by Randall S. Abate, associate professor of law and project director in the Environment, Development & Justice Program at Florida A & M College of Law.

Keeping the practice of enlisting current professionals to share their expertise, the spring line-up begins with Professor Keith Rizzardi's semester-long seminar on **"Florida Environmental Law and Policy,"** January 13, 2012. Among the scheduled guest lecturers are Howard Nelson, Bilzin Sumberg Baena Price & Axelrod LLP, discussing condemnation blight and the consequences of environmental planning; Anne

Savage, Walt Disney World's Animal Kingdom, on challenges to the recovery of Florida's endangered species; Julie Morris, New College, on the future of Florida's fisheries; James Nutt, South Florida Water Management District, on Clean Water Act regulation; Michelle Diffenderfer, Lewis Longman & Walker, on the influence of Florida's Seminole Tribe; Neal MacAliley, White & Case, on NEPA, 404 permits & prior converted croplands; and Kevin Carter, South Florida Water Management District on public utility water, re-use and salt water intrusion.

Two-day workshops begin with Professors Steven Heller, chief legal officer, Epec Biofuels Holdings, and James McDonald, a partner at McLuskey & McDonald P.A., who lead a **"Renewable Fuels Workshop"** to introduce a variety of bio-fuels from feedstocks such as corn, sugarcane, soy bean oil, algae, biogenic wastes, and cellulosic biomass such as switchgrass and woodchips (February 24 -25).

They are followed by Daniel Kreeger, executive director of the Association of Climate Change Officers, who leads a course in **"Climate Change and the Law"** that addresses the evolving law and policy of climate change in the U.S. (March 2 - 3).

Next up is "Remediation and Environmental Sustainability," led by attorney Jeffrey Martin of the Washington-based firm, Hunton & Williams. Specializing in complex, multi-party environmental cases, he has both mediated and litigated environmental disputes, representing companies in more than 100 cases brought under the Superfund statute (March 16 - 17).

Concluding the spring series is Charles J. Kibert, professor and director of Powell Center for Construction & Environment at the University of Florida. He prepares students for the first step in LEED certification with **"Green Buildings,"** a process that is environmentally responsible and resource-efficient throughout a building's life-cycle from siting to demolition (March 30 - 31).

**The above courses are available for CLE credit.** "Florida Environmental Law and Policy," the "Renewable Fuels Workshop" and "Remediation and Environmental Sustainability" are available by remote access. For more information about the Environmental Sustainability short course series or to register for CLE credit, please visit [www.stu.edu/law/environmentLLM](http://www.stu.edu/law/environmentLLM) or contact 305-623-2389; [environmentLLM@stu.edu](mailto:environmentLLM@stu.edu).

## University of Florida Law Update

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

### Upcoming Events Focus on 40 Years of Water Law

Two major events at the University of Florida Levin College of Law will commemorate the 40<sup>th</sup> anniversary of the Florida Water Resources Act and of the federal Clean Water Act. The Florida Water Resources Act was developed by former Dean Frank Maloney of the UF law school as a model water code, and it became law

in 1972. Some 40 years later, the act is still considered a model for other states and nations. The Clean Water Act, also enacted in 1972, addressed the growing problem of water pollution in the country.

### 18<sup>th</sup> Annual Public Interest Environmental Conference

The PIEC will be held Feb. 23-25, 2012, at the UF College of Law. This

year's theme is "Fishable, Swimmable? 40 Years of Water Law in Florida and the United States." The conference features topics on the current state of affairs with respect to water regulation and the future of federal and state water resources. Registration information is available through conference co-chairs Jennilyn Thibault ([jennilynft@mac.com](mailto:jennilynft@mac.com)) and Allison Fischman ([fischman@ufl.edu](mailto:fischman@ufl.edu)).

## **2012 Spring Environmental Capstone Colloquium**

The colloquium features a theme of "All About Water," and includes presentations from six experts throughout the spring semester. Speakers and topics are: 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," Jan. 12; 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," Jan. 19; 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," Feb. 2; Steve Neugeboren, Environmental Protection Agency, Associate General Counsel for Water, "Water and the Clean Water Act," Feb. 9; Richard G. Hamann, Associate in Law, Center for Governmental Responsibility, UF Levin College of Law, "Florida Water Challenges," Feb. 17; and Nicolas Bogelin, University of Costa Rica, "The Human Right to Water," Feb. 23.

Additional information is available from Lena Hinson, ELULP Program Assistant, at [hinson@law.ufl.edu](mailto:hinson@law.ufl.edu).

The Capstone Colloquium is sponsored through a generous donation from the Law Firm of Hopping Green & Sams.

## **Oil Spill Report Completed**

The Center for Governmental Responsibility at the Levin College of Law published its report to The McIntosh Foundation on "Legal and Policy Issues from the BP *Deepwater Horizon* Oil Spill: Moving from Response to Recovery" in August, 2011. The McIntosh Foundation funded the one-year study, which was led by Jon Mills, UF Law Dean Emeritus and CGR Director; Tim McLendon, CGR Staff Attorney; and JoAnn Klein, CGR Associate Director and Assistant Director, UF Law Environmental and Land Use Law Program. The research team included eight UF law students – Alyssa Cameron, James Davies, Carli Koshal, Austin Moretz, Fay Pappas, Jesse Reiblich, Dominique Lochridge-Gonzales, and Yvette Sturkes.

Topics included in the study are Responses to the oil spill; Recovery

and Process; Impacts and Damage; Multi-jurisdictional Models; and Future Threats, including the pending offshore drilling in Cuba. Copies of the report are available from CGR Senior Secretary Lenny Kennedy at [lkennedy@law.ufl.edu](mailto:lkennedy@law.ufl.edu).

The next phase of the project is ongoing at CGR and focuses on threats of drilling in international locations and on the status of litigation brought as a result of the Gulf oil spill. UF law students Lochridge-Gonzales and Aaron Goldman are assisting with the research.

## **New Environmental Law Courses Offered**

Four new environmental law courses are being offered at UF Law during the 2011-2012 academic year. The courses are "Florida Land Use Law", taught by Adjunct Professor Thomas Hawkins of W. Thomas Hawkins, PA, Gainesville; "Regulating Climate Change: Carbon Finance," taught by Foreign Enrichment Program Visiting Professor Jiaxian Zhu, CUFU Professor, Beijing, China; "International Law of the Sea," taught by International Visiting Professor Robert Virzo, University of Sannino, Benevento, Italy; and "Agricultural Policy and the Environment," taught by Mary Jane Angelo, UF Research Foundation Professor, and Director, UF Environmental and Land Use Law Program.

## **Environmental Law Students Receive Career Planning Help**

UF environmental law students are receiving targeted assistance in career planning from UF Law's Center for Career Development through several activities. A specialized career Job Bulletin is being prepared by Rob Birrenkott, Jr., Assistant Director for Career Development. It includes notices of job opportunities and related activities and will be circulated to environmental students and recent UF law graduates. It is designed to help UF law students and graduates pursue environmental legal career positions. To post an announcement in the Bulletin, please contact Lenny Kennedy ([lkennedy@law.ufl.edu](mailto:lkennedy@law.ufl.edu)). Additionally, environmental law students were offered an informational session with Birrenkott and ELULP Director Mary Jane Angelo, focusing on resources and timelines for students pursuing environmental legal career paths.

## **ELULP Faculty & Student Accomplishments**

ELULP Director Mary Jane Angelo was appointed by the National Academies, National Research Council to serve on the Committee, "Ecological Risk Assessment under FIFRA and ESA," which will make recommendations to the EPA, the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. She also published "Small, Slow and Local: Essays on Building a More Sustainable and Local Food System," 12 *Vermont Journal of Environmental Law* 353 (2011).

Thomas T. Ankersen, Director of UF Law's Conservation Clinic, served as Editor for a special issue of the *National Sea Grant Law Journal*. All but one of the articles were authored or co-authored by law and graduate students affiliated with the University of Florida Conservation Clinic. Thomas T. Ankersen, Editor, Special Issue; Focus on Florida, 4:1 *Sea Grant Law and Policy Journal* (Summer 2011).

Ankersen served as a commissioned peer reviewer to EPA for the report entitled "Rolling Easements," an extensive legal treatment of a coastal property law concept of considerable interest to the climate change adaptation community. James G. Titus, Rolling Easements, U.S. Environmental Protection Agency. EPA-430-R-11-001 (2011).

The 3<sup>rd</sup> edition of the Florida Sea Grant technical report "Anchoring Away: Government Regulation and the Rights of Navigation in Florida" has been released. The report includes important updates to Florida boating law resulting from legislation in 2009. The report can be downloaded at: [http://www.flseagrant.org/images/PDFs/anchoring%20away 03 09 11 full web3.pdf](http://www.flseagrant.org/images/PDFs/anchoring%20away%2003%2009%20full%20web3.pdf). Hard copies can be ordered at FSG headquarters in Gainesville.

Dawn Jourdan, Assistant Professor, Urban and Regional Planning, Joint Appointment with Levin College of Law, and Director, Center for Building Better Communities University of Florida, was a keynote speaker at the Utah Land Institute in Salt Lake City in October, 2011. Additionally, law and planning students enrolled in her spring land use law course received the Student Project Planning Award from the Florida Chapter of

*Law School Liaisons continued....*

## LAW SCHOOL LIAISONS

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the American Planning Association for their work on post disaster mitigation for Pinellas County at its annual conference in September. Professor Jourdan served on two panels at the conference, including (1) parking as a growth management strategy and (2) greening planning practice and pedagogy.

Christine Klein, Director of ELULP's LL.M. in Environmental Law, published an article, "The Dormant Commerce Clause and Water Export" in 35 *Harvard Environmental L. Rev.* 131 (2011).

Steve Powell, Director of UF Law's International Trade Law Program, published: Stephen Joseph Powell and Patricia Camino Pérez, GLOBAL LAWS, LOCAL LIVES: IMPACT OF THE NEW REGIONALISM ON HUMAN RIGHTS COMPLIANCE [including a healthy environment], 17

Buff. Hum. Rts. L.Rev.117-153 (2011).

Jeff Wade, CGR's Director of Environmental Law Programs, received a Fulbright-Nehru Fellowship to conduct research into potential synergies between local participatory water governance processes and the more formal water management structures and policies in India. He will be based in Ahmedabad, Gujarat, India, from January-May, 2012.

UF doctoral students in the National Science Foundation-funded IGERT Program in Water, Wetlands and Watersheds have continued working with UF Law's Conservation Clinic on an interdisciplinary "black water to blue water initiative" designed to characterize the regulatory and biophysical status of selected Florida watersheds. Each of these watersheds discharges to important estuarine and marine environments, hosts a traditional working waterfront that participates in the Waterfronts Florida Partnership Program, and includes a watershed-based stakeholder organization with whom the clinic works. The work of

the Clinic-IGERT partnership in the St. Marys River, Blackwater River and Withlacoochee River watersheds is posted on the Clinic website at <http://www.law.ufl.edu/conservation>. Recent results of this work include:

- Facilitated the establishment of an interstate water quality technical subcommittee under the auspices of the St. Marys River Management Committee that has resulted in changes to the way agencies monitor water quality on the River to avoid duplication, share data and make the data more policy relevant.

- Catalyzed the establishment of a US EPA Center for Watershed Excellence at UF that encourages UF researchers to work at the watershed level with stakeholders to achieve measurable improvements in water quality.

- Identified a policy gap in the way the State of Florida treats the management of large woody material in sand bed streams; then drafted Best Management Practices that address that gap within the existing legal framework.

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## ENERGY SUMMIT

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was to enhance the market for and promote the production and distribution of renewable energy from Florida-grown crops, agricultural wastes and residues and other biomass.

The creation of the Farm to Fuel Summit marked the beginning of a concerted effort by DACS to bring agriculture and energy interests together in a collaborative manner. Prior to 2006, Florida produced very little energy using agricultural and other biomass resources. With a \$100 billion agriculture industry in Florida, including more than 40,000 farms and ranches, 15.9 million acres of timberland, 10 million acres of cropland and 3.4 million acres of pastureland, Florida ranks as one of the top agriculture producing states in the nation. Florida has the ability to convert fast-growing trees and crops, agricultural residues, forest debris, undergrowth in timber stands, leftover materials from the wood

products industry, animal manures, urban wood waste, invasive plant species, and algae to various forms of renewable energy.

Partnering Florida's agricultural and energy industries has contributed to the agricultural industry remaining strong and viable by increasing farm income, adding value to crops, livestock, agricultural residues and byproducts, and creating alternative agricultural and rural enterprises. Other benefits of bringing the agriculture and energy industries together include maintenance of green space and increased rural development with many job opportunities created through the processing of agricultural products and byproducts.

During the 2011 Legislative Session, the Florida Legislature transferred the responsibilities of the State Energy Office and the Energy and Climate Commission to DACS. Consequently, the scope of DACS's Farm to Fuel Summit was expanded beyond renewable energy production from Florida's farms to include other forms of renewable energy production and energy efficiency and conservation.

The topics of this year's Florida Energy Summit included Green Jobs, Sustainability of Florida's Water and Land, Renewable Energy Technologies including biomass and bio-fuels, Solar Power, and Alternative Vehicles. A Florida Energy Policy Panel included Representative Seth McKeel, Chairman, House State Affairs Committee; Commissioner Art Graham, Chairman, Florida Public Service Commission; Dr. Mary Bane, Adviser on Energy Policy, Executive Office of the Governor; and Jim Murrey, Interim Executive Director, South Florida Regional Planning Council and the former Chair of the Florida Energy and Climate Commission. Another panel on Federal Energy Policy included speakers from the US Department of Navy, US Department of Agriculture and the US Department of Energy and a Local Government Initiatives panel including panelists from Leon and Lee counties and the City of Gainesville.

The attendees of the Florida Energy Summit also heard from Michael Lynch, Managing Director of NASCAR Green Innovation, regarding the

modification of the NASCAR racecars to run on E15 fuel (a blend of gasoline and ethanol) as part of a new effort to reduce NASCAR's impact on the environment. During the summit, participants were able to climb inside a NASCAR race car and imagine taking the last turn to victory lane or sit comfortably in any of the fleet of alternative fuel vehicles on display. Another presenter, Jim Ball, the Planning and Development Deputy Manager at the Kennedy Space Center, discussed NASA's efforts to build a sustainable future for Kennedy Space Center and the Space Coast.

Agriculture Commissioner Adam Putnam called on the stakeholders in Florida's energy industry to work together to secure a stable, reliable and diverse energy supply. During his keynote address, Commissioner Putnam stated that "by eliminating barriers, reducing burdens and creating incentives – in a technology-agnostic way – we can have a significant impact on the growth of the clean energy industry and increase diversity in the state's energy supply." Commissioner Putnam further emphasized that our state as a whole will benefit in many ways from efforts to secure a stable, reliable, and diverse supply of energy. Natural resources will be conserved and our dependence on foreign sources will be lessened. Growing the energy industry will yield much-needed job opportunities for Floridians, which is especially important in this difficult economic environment.

Discussing the transfer of the State Energy Office (now renamed, Office of Energy) to DACS, Commissioner

Putnam stated that one of DACS's top priorities was to fulfill the commitment to the Legislature and to the people of Florida by completing the solar rebate program and distributing the available funds to eligible applicants. Notably, within 100 days of receiving the transfer of the Office of Energy, DACS issued rebate checks to over 8,800 applicants. The Office of Energy will continue to monitor the projects that have received a part of the more than \$233 million dollars in grant money from the federal government to support the development of renewable energy and energy efficiency projects. Commissioner Putnam reiterated his goal to hold the projects that have been funded in Florida accountable for the commitments they have made to the taxpayers.

While the continued monitoring of grant money remains a priority for the Office of Energy, the Florida Energy Summit marked a shift from focusing on administering grants to working to develop an energy policy. Under the leadership of Commissioner Putnam, the Office of Energy, working with Governor Scott, the Florida Public Service Commission and legislative partners, will develop a comprehensive energy policy, with the objective to secure a stable, reliable, and diverse supply of energy. Stability is the key to keeping the prices of energy predictable and affordable; reliability is important to ensure that Floridians can count on a supply of electricity; and diversity is imperative to minimize risk, increase and improve energy security, ensure long-term sustainability, and foster economic development. In working

towards this goal, the Office of Energy will promote energy efficiency and conservation, support investments in Florida's energy infrastructure, promote the expansion of clean energy sources and new technologies and support clean energy, which includes nuclear.

Commissioner Putnam explained his vision for Florida's energy policy, stating that Florida needs an "all of the above" strategy. Further, he stated that government "cannot be in the business of picking winners and losers in the race to explore renewable energy options. Our strategy must support research and development to explore all the options ... and must rely on the market to determine what works and what does not."

DACS's plan for the upcoming legislative session includes working with members of the Legislature to advance legislative measures that will reduce burdens on businesses that may be keeping them from investing in renewable technology. DACS will also work to incentivize growth in the renewable energy industry by continuing tax exemptions on investments in renewable energy production. Commissioner Putnam noted that many incentives have expired before the industry was ready to utilize them.

Commissioner Putnam also announced that DACS will partner with the Florida Systems Energy Consortium to host a joint summit next year. This partnership will combine briefings from researchers on emerging technologies with discussions among leaders on the future of energy.

*continued....*



*Mark Your Calendar!*

**2012 ELULS Annual Update**

**~ August 9-11 ~**

**Sawgrass Marriott • Ponte Vedra Beach**

## **Whither Florida's Energy Policy?**

by Douglas S. Roberts

Mark Twain is alleged to have said, "History may not repeat itself, but it sure does rhyme a lot." For lawyers, that may be why we study old cases as precedent for current legal disputes. But the same seems to hold for Florida's energy policies, as reflected in the recent discussions at the Florida Energy Summit. "Solar and renewable energy are almost competitive with fossil sources of energy," a refrain heard from the 1970's (and which seems to be closer to reality than the recent past.) "Nuclear cannot be part of our energy future," as the state's electric utilities seek, with supportive policies from the state and national governments, to add new nuclear-powered electrical power plants in Florida. "We must diversify our sources of fuel for electrical production," as natural gas prices fall and supplies expand while its use for the generation of electricity in Florida increases above 50 percent, and seems headed toward 60 percent. "Florida, as the 'Sunshine State,' should be a leader in renewable energy," while renewable energy sources continue to grow and show promise for more growth but are not yet a significant source of energy for Florida.

So while the discussions and debates at the Florida Energy Summit are fresh and current due to recent events and current energy and environmental policy initiatives, they are a continuation of discussions that have dominated the energy policy debate for the past 40 years, since the oil shocks of the 1970's focused the nation's and the state's attention on the over-reliance on one source of energy for much of the energy we use. These debates are meaningful and are not to be made light of, but demonstrate that much remains to be done as Florida wrestles with energy policy. The lessons of the past and prospects for the future, which were highlighted at the Summit, can help establish the energy policies of today and tomorrow. And the Summit

demonstrated that these energy policies are now being established at all levels of government, from Washington, D.C., to Tallahassee to cities and counties and to new communities that are being created. Thus, energy policy making has become more decentralized and more accessible across the state.

### *Enhancing the State's Energy Diversity*

In his key note address on the future of Florida's energy industry, Florida Agriculture Commissioner Adam Putnam emphasized that the market place should be the arena in which innovation in energy should take place, with winners and losers in the competition among energy sources and suppliers being selected by market forces. While government may have a meaningful role to facilitate new technologies such as through incentives and support for university-based research and development, he stated that the market place should decide the winners in this competition.

In addressing the need for greater energy diversity to enhance the state's energy security, Commissioner Putnam noted the growing reliance on natural gas for the generation of electricity in Florida. He pointed to the recent trend that has seen Florida generate over 57 percent of its electricity from natural gas and noted projections that natural gas would generate over 60 percent of the state's electricity in ten years.<sup>4</sup> The percent of the state's generating capacity that is fueled by natural gas was 48 percent in 2009 and is forecasted to increase to over 51 percent by 2019.<sup>5</sup> Natural gas-fired electrical generating units operate more frequently than other units that use other fuel types; and thus, natural gas-fired units provide a larger share of the actual electricity generated in the state.

This increasing reliance on natural gas is a result, in part, of the recent decisions to disapprove the construction of additional coal units in the state. Due to the natural gas supply disruptions caused by hurricanes in 2004 and 2005 and a concern about over-reliance on natural gas for electrical generation, the state's electric utilities had proposed several coal-fired electric generating units across the state. However, in 2007, state energy policy shifted course due to

concerns over climate change, The four proposed coal-fired power plants, totaling 4000 megawatts of generating capacity, were subsequently disapproved or otherwise did not receive necessary approvals to allow their construction.<sup>6</sup> Whether these decisions to forego new coal fired generating units were wise or not, that sudden change in energy policy reflected the most recent shift in the state's energy policy.

Commissioner Putnam noted that the state's energy policies have been erratic. He called for the development of a long-term energy strategy that does not change with every election. To that end, the Florida Energy Office, which the Legislature shifted to DACS in 2011, will be playing a role in developing a comprehensive state energy policy, working with the Governor, the Public Service Commission, and the Legislature. Commissioner Putnam stated that this long-term strategy must be based upon the three pillars of stability, reliability and diversity. With the plans for future energy summits, Florida's energy policy will continue to receive continued and comprehensive discussions.

### *Expanding Florida's Renewable Energy Resources*

The Summit highlighted that Florida has abundant renewable energy resources, including sunshine, biomass, and offshore marine resources, such as ocean currents. While several renewable energy technologies have closed the cost gap with traditional energy sources, discussions at the Summit suggest they are not quite yet cost-competitive with those traditional energy sources in many circumstances or applications. Many of these renewable technologies receive incentives and subsidies that allow them to be competitive. In some applications, renewable resources, such as solar, are able to economically compete with traditional energy sources. Continued research, development and cost reductions in their manufacture will likely continue to lower costs for renewable energy sources, leading to their wider use. Expanded use of renewable energy sources will continue to diversify the state's energy resources and lessen potential environmental impacts from electric generation.

Renewable energy electrical



generating facilities, including solar facilities, currently represent about 1200 megawatts of the state's 53,000 megawatts of electrical generating capacity, or just over two percent of the state's generating facilities. And Florida Power & Light Company has recently brought on line 110 megawatts at three new solar electrical generating facilities in the state. Florida electric utilities forecast another 620 megawatts of renewable electric generating facilities by 2019.<sup>7</sup> Thus, on the electric generation side, renewable energy is forecasted to provide an increasing, but still limited, share of the state's electricity.

Existing and potential incentives at the state and federal level have supported this expansion of renewal energy, from federal tax credits and grants, state sales tax exemptions and renewable energy grants, and local property tax exemptions. Florida has yet to adopt a Renewable Portfolio Standard ("RPS"), which mandates that a certain portion of the state's electrical supplies be generated from renewable or clean energy sources by a date certain in the future. In 2008, the Legislature directed the Florida Public Service Commission to consider and propose rules to establish an RPS in Florida.<sup>8</sup> However, to date, the Florida Legislature has not approved those PSC rules, and an RPS remains in limbo in Florida.

Another major driver for the development of renewable energy in Florida is the development of biofuels from new crops grown in the State. The federal Renewable Fuel Standard was enacted by Congress in 2005 to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel, currently set at 36 billion gallons by 2022. That standard will create an expanded opportunity for Florida to grow and convert crops for renewable liquid fuels to meet this federal standard. In addition, as highlighted at the Summit, the US Navy, along with the US Department of Agriculture are undertaking a program to develop "drop in" renewable fuels that can be used to fuel the Navy's fleet and aircrafts. Given its large presence in Florida, the Navy will provide an opportunity for Florida to supply these renewable fuels. If these biofuels are to be produced in Florida, that will mean that there will be the need for land and irrigation water for these

crops, in addition to the introduction of new plant species designed for energy production.

#### *Local Government Innovation and Incubation*

Local governments in Florida are taking a significant role in expanding the use of renewable energy supplies and in implementing sustainable practices to reduce the use of energy and other resources, as noted in several presentations. As one example, Lee County has created an economic development zone near the Southwest Florida International Airport to encourage economic development of sustainable industries and businesses, while leveraging the energy-related research at Florida Gulf Coast University. This zone has become the site for an innovative algae-based fuel company. Broward County has created a sustainability program to ingrain sustainable practices into that County's governmental operations, in an effort to reduce the County's greenhouse gas emissions. Gainesville Regional Utilities has taken steps to add renewable sources of energy to its municipal electric system. GRU has established the first-in-the-nation feed in tariff by which GRU purchases electricity from small-scale renewable electrical generating facilities such as residential and commercial scale solar photovoltaic systems. GRU hopes to promote a market for renewable energy, and thereby reduce the future cost of these systems through a competitive market. In addition, GRU has contracted for the delivery of electricity from a 100 megawatt biomass-fueled power plant under construction in Gainesville, Florida, as part of that city's efforts to diversify its sources of electricity and to achieve a goal of 20 percent renewable energy. The planned 18,000 acre Babcock Ranch development in Charlotte County was highlighted as example of a future sustainable development designed to be powered solely by solar energy. Babcock is focused on addressing the issue of storage of energy generated from solar facilities, which was described as the "holy grail" in the ongoing development of solar energy.

The Summit provided a good summary of where Florida currently stands in implementing current energy policies and highlighted many opportunities that are on the horizon.

Future Florida Energy Summits will provide an on-going opportunity for these debates to continue and for consensus on energy policy to be sought.

## **The Discussion on Florida's Energy Future Begins Anew**

**by George Cavros**

Agriculture Commissioner Adam Putnam greeted over 500 attendees at the first annual Florida Energy Summit by stating that "today marks the beginning of a new chapter in Florida's energy potential." The Summit is an extension of the agency's former Farm to Fuel Summit and its expanded agenda is the result of the Legislature's transfer of the responsibilities of the Office of Energy, and the Energy and Climate Commission to DACS this year. Commissioner Putnam has clearly accepted that additional responsibility and pledged to work with the Legislature and Governor Scott to develop an energy policy in Florida, as he stated, built on the pillars of stability, reliability, and diversity.

The Commissioner identified energy opportunities as having "tremendous job creation potential." That message was not lost on the attendees, many of which represented established renewable energy developers, entrepreneurs, and investors all looking for "market certainty" to inject private investment into the state. Florida with its year-round growing season and abundant sunshine has vast renewable resources. Yet, Commissioner Putnam noted that energy policy uncertainty at the state and federal level hinders energy project investment in the state.

A major concern raised by Commissioner Putnam and panel participants was the lack of diversity in Florida's current energy mix. Natural gas may soon comprise up to 70 percent of the fuel used to generate electricity in Florida. While natural gas is regarded as the cleanest-burning fossil fuel for electricity generation, the Commissioner noted that over-reliance on one fuel source is not indicative of a well-managed energy portfolio.

#### *Diversifying the energy portfolio*

The Florida Energy Policy panel focused on the energy diversity issue.

*continued...*

Dr. Mary Bane, Advisor on Energy Policy to Governor Scott, stated that renewable energy may play a role in increasing energy diversity, but it had to be done in a cost-effective and responsible way. Jim Murley, Interim Executive Director of the South Florida Regional Planning Council reminded the panel that the Public Service Commission had developed a draft rule in 2009 for legislative ratification that set a target of 20 percent renewable energy generation by 2020 – also referred to as a renewable portfolio standard or RPS. That same year, under the leadership of the late-Senator King, the Florida Senate reached a compromise on a comprehensive clean energy policy to diversify the state's energy mix. The bill included nuclear energy as an eligible resource to meet the 20 percent goal.<sup>9</sup> The bill did not pass the Florida House that year and consensus on a comprehensive state renewable energy policy in 2010 and 2011 has been noticeably absent. Commissioner Putnam, recognizing the absence of consensus on energy policy, encouraged all stakeholders in his opening address to work together to

secure a diverse energy mix. Renewable energy currently accounts for about two percent of Florida's energy portfolio.<sup>10</sup>

Renewable Energy Technologies panelist Joe Treshler, Vice President and Business Management & Development of Covanta Energy, mentioned that a RPS would benefit his industry. A RPS is policy utilized by 30 other states that sets targets for renewable energy production and creates an in-state market for renewable energy credits ("RECs"). RECs represent the renewable attributes of energy produced from renewable resources and provide renewable energy developers another revenue stream in addition to the payment for power from the incumbent electric utility. By federal law, a utility cannot pay a renewable energy producer more than its "avoided cost" for the purchase of power. The avoided cost is defined as "the cost to the electric utility of the electric energy which, but for the purchase from a [renewable energy provider], such utility would generate or purchase from another source."<sup>11</sup> The avoided cost payment for energy in Florida is approximately 5 to 6 cents per kilowatt hour (kWh) which is too low to make most renewable energy projects financially viable, except for some biopower projects. Any policy that intends to provide

payments for power above a utility's avoided cost for renewable energy generation must be carefully crafted to avoid federal preemption.<sup>12</sup>

#### *Energy efficiency as a resource*

The importance of energy efficiency as a component of Florida's energy mix was a common theme during the conference. Commissioner Putnam emphasized that the cheapest kWh is the one that is never used; referring to it as "the cheapest source of savings." Public Service Commissioner Chairman Graham also highlighted the importance of reducing energy consumption. It was Ed Regan, assistant General Manager of Strategic Planning for Gainesville Regional Utilities that really drove the point home on energy efficiency as a valuable resource. GRU abandoned its use of the Rate Impact Measure ("RIM") cost-effectiveness test for energy efficiency measures in 2006 for the more expansive Total Resource Cost ("TRC") cost-effectiveness test. This shift made a wider array of energy efficiency programs available to customers to reduce energy use and save money on their bills. One behavioral energy efficiency program that passed the TRC test sends "report cards" to homeowners which helps them compare their energy use to similarly-sized homes in the City. This program

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has, on its own, reduced energy use by two percent in just one year. While this two percent energy savings level may not seem significant, it is orders of magnitude greater than the historical annual energy savings from efficiency programs captured by the state's largest power companies. To add to its success in helping customers reduce energy use, GRU anticipates that 21 percent of its energy will be generated from renewable energy sources by 2014. GRU instituted an aggressive solar development program in 2009 based on offering solar photovoltaic ("PV") developers long term contracts with production-based incentives. That program is expected to create 32 megawatts of solar PV capacity by 2017. By way of comparison, the rest of the state currently has a total of about 55 megawatts ("MW") of solar PV capacity. GRU is also partnering with American Renewables, LLC to develop a 100 MW biomass plant. It will utilize wood waste as its fuel source and generate power by 2014. The project is expected to create more than 1,300 jobs in the region during construction, and over 700 direct and indirect jobs during operations including 47 at the facility, 160 in providing biomass fuel, and over 500 in project-induced jobs. GRU's success is its clean energy policy is indicative of Florida's vast energy efficiency potential and home-grown renewable energy resources that can diversify the state's energy mix and drive job creation.

#### *Local government and private initiatives*

Local municipalities are taking on broad clean energy and sustainability initiatives in the absence of comprehensive state and federal clean energy policies. Broward County, for instance, has adopted a Climate Change Action Plan and committed to reducing its carbon dioxide emissions by seven percent below 1997 emission levels by 2015. It is also developing adaptation strategies to meet the challenges that rising sea levels will place on critical infrastructure in South Florida. Broward County, Miami-Dade County, Palm Beach County, and Monroe County have joined together in an unprecedented four-county Southeast Florida Regional Climate Compact to address and coordinate efforts on carbon dioxide mitigation and adaptation

strategies at the regional level. This is a significant undertaking as the population of the four-county area represents one-third of the state's 18 million person population.

Private sustainability initiatives were on display at the summit as well. For instance, Darden Restaurants, the world's largest full-service restaurant company which owns and operates nearly 1,800 restaurants, has adopted a 15 x 15 / zero plan whereby it intends to reduce its energy and water use by 15 percent by 2015 and eliminate its waste stream to landfills. The company recently constructed the state's largest state-of-the-art LEED Gold-certified<sup>13</sup> building in Orlando which serves as its restaurant support center.

#### *Conclusion*

The panel discussions and presentations at the first annual Florida Energy Summit were varied, informative, and focused on an exploration of Florida's current energy landscape. At the panel presentations that this author attended, there was limited discussion on specific policy tools that might improve the state's energy landscape moving forward. But, like any good business plan, the state must assess today's energy landscape, and consider a wide array of stakeholder views, before charting a course for Florida's energy future. In that respect, the Summit was a clear success. The challenge for second annual Florida Energy Summit will be to explore the development of policy tools that will encourage a more stable, reliable, and diverse state energy portfolio.

For more information about the 2011 Florida Energy Summit, please visit [www.floridaenergysummit.com](http://www.floridaenergysummit.com).

#### **Endnotes**

<sup>1</sup> **Jay Levenstein** is one of three Deputy Commissioners and oversees the Divisions of Consumer Services, Standards, Licensing, and the Office of AG Law. He also developed the Department's Farm to Fuel Initiative and serves on the USDA/DOE Biomass Research and Development Technical Advisory Committee, the University of Florida's Institute for Sustainable Energy Advisory Board. He joined the Department in November 1993 and prior to his appointment in 2002 as Deputy Commissioner, served as DACS's State-Federal Relations Director, Legislative Affairs Director, Chief of the Bureau of Animal Disease Control, and Senior Attorney. He received a Bachelor of Science in Business Administration from the

University of Florida and his law degree from the University of Miami.

<sup>2</sup> **Douglas S. Roberts** is a shareholder with Hopping Green & Sams in Tallahassee. He represents clients on a range of issues related to the environmental licensing and operation of electrical generating facilities and other large-scale facilities. He has worked on a wide range of electrical generating facilities using a variety of fuels, including nuclear, coal, natural gas, solar, and biomass. He graduated from Florida State University's College of Law in 1985.

<sup>3</sup> **George Cavros** is a Fort-Lauderdale-based attorney whose practice is focused on energy and utility law. His clients include renewable energy developers, and clean energy non-profit organizations that advocate for meaningful energy efficiency implementation and a comprehensive state renewable energy policy.

<sup>4</sup> See Florida Public Service Commission, 2010 Statistics of the Florida Electric Utility Industry, p. 16, Table 8. (September 2011) Available at <http://www.psc.state.fl.us/utilities/electric-gas/statistics/statistics-2010.pdf>

<sup>5</sup> Florida Public Service Commission, Review of 2010 Ten Year Site Plans for Florida's Electric Utilities, p. 37, Figure 11 (October 2010) Available at <http://www.psc.state.fl.us/publications/pdf/electricgas/tyasp2010.pdf>

<sup>6</sup> See Florida Public Service Commission, Review of 2007 Ten Year Site Plans for Florida's Electric Utilities, p. 1.

<sup>7</sup> Florida Public Service Commission, Review of 2010 Ten Year Site Plans for Florida's Electric Utilities, p. 37, Figure 11 (October 2010) Available at <http://www.psc.state.fl.us/publications/pdf/electricgas/tyasp2010.pdf>

<sup>8</sup> Chapter 2008-227, section 42, Laws of Florida; see Florida Public Service Commission Docket, No. 080503-EI – Establishment of Renewable Portfolio Standard. Available at <http://www.psc.state.fl.us/dockets/cms/docketFilings3.aspx?docket=080503>.

<sup>9</sup> See 2009 Fla. Sess. Law-2009 (S.B. 1154).

<sup>10</sup> Energy Information Administration, Florida Renewable Electricity Profile, at: [http://www.eia.doe.gov/cneaf/solar/renewables/page/state\\_profiles/florida.html](http://www.eia.doe.gov/cneaf/solar/renewables/page/state_profiles/florida.html).

<sup>11</sup> 16 U.S.C. §824a-3(d). The Public Utility Regulatory Policies Act ("PURPA") was enacted in 1978 with a goal of encouraging increased energy independence in the US. It requires retail utilities to buy power from qualifying facilities ("QF") at the utility's avoided cost.

<sup>12</sup> See Hempling, et al., Renewable Energy Prices in State-Level Feed-in Tariffs: Federal Law Constraints and Possible Solutions, NREL, January 2010. See also: 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.").

<sup>13</sup> LEED, or Leadership in Energy and Environmental Design, is an internationally-recognized green building certification system. More information on LEED is available at <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1988>, and this building is available at <http://investor.darden.com/leasedetail.cfm?releaseid=462130>.

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