



A Brief History of Florida's Energy Efficiency Goals Under the FEECA Statute - Part 1

Introduction

Every five years, the Florida Public Service Commission ("FPSC") sets energy conservation goals pursuant to the Florida Energy Efficiency and Conservation Act ("FEECA"), Sections 366.80-366.83 and 403.519, F.S., and Chapter 25-17, F.A.C. In 1980, FEECA was enacted with the goal of reducing Florida's peak electric demand and energy consumption along with the consumption of scarce energy resources such as petroleum based fuels.¹ Since the enactment of FEECA, the FPSC has held formal and informal proceedings to establish conservation goals, and the FPSC will establish conservation goals once again in 2019. Why is 2019 FEECA goal setting proceeding important? The energy efficiency goals established by the FPSC will affect the majority (more than 83%) of Florida's retail electric utility customers for the next five to ten years.²

This Brief History of FEECA is a two-part article. The first part describes the purpose of FEECA, outlines some of the major amendments to FEECA, briefly describes the cost-effectiveness tests utilized for evaluating energy efficiency measures for establishing goals for demand ("MW") and energy ("MWh") savings, and touches on the role of free riders in establishing energy conservation goals. The second part will provide a brief overview of FEECA goal setting through the decades, starting with 1980 but focusing primarily on the two most goal setting proceedings.

FEECA Stakeholders

In June 2018, the FPSC staff initiated informal discussions with all the stakeholders concerning the upcoming

2019 FEECA goal setting proceeding. Numerous parties attended this "kickoff" meeting. Utility stakeholders include the five-regulated investor owned utilities (the "IOUs") and two municipal electric utilities (the "municipals") subject to FEECA.³ The IOU stakeholders are Florida Power & Light Company ("FPL"), Duke Energy Florida ("DEF"), Tampa Electric Company ("TECO"), Gulf Power Company ("Gulf"), and Florida Public Utilities Company ("FPUC").⁴ The municipals are JEA (formerly known as Jacksonville Electric Authority) and the Orlando Utilities Commission (the "OUC"). Non-utility stakeholders include the Southern Alliance for Clean Energy ("SACE"), the Florida Industrial Power Users Group ("FIPUG"), which represents large industrial customers, the Office of Public Counsel, which is the statutory representative of Florida's regulated ratepayers, and the Florida Department of Agriculture and Consumer Services' (FDACS') Office of Energy, a statutory stakeholder in the FEECA goal setting proceeding.⁵ Additional non-utility stakeholders may intervene in the proceeding in the near future. In late 2018 or early 2019, the FPSC will open dockets for each of the utility stakeholders subject to the jurisdiction of the FEECA goal setting proceedings.⁶

In 2019, the FPSC will hold FEECA goal setting proceedings whereby all the stakeholders can present testimony as to what each stakeholder believes the appropriate energy efficiency goals should be for each of the participating utilities for the next ten (10) years. At the conclusion of the proceedings, FPSC staff

will review the evidence presented by all the stakeholders and draft a memorandum which will recommend appropriate energy efficiency goals for each of the utilities involved in the proceeding. Unique to FPSC practice, the appointed Commissioners can accept, modify, or reject the staff's recommended findings of fact and conclusions of law contained in staff's memorandum as long as there is competent substantial evidence in the record to support the FPSC's ultimate decision. If a stakeholder disagrees with the FPSC's approved goals, that party may seek reconsideration with the FPSC or take an appeal to the Florida Supreme Court;⁷ however, the likelihood of success on appeal is highly doubtful given the deference the Court traditionally extends to FPSC decisions supported by competent substantial evidence.

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From the Chair

by David Bass

Greetings! The 2018-19 year is off to a great start. We have had two well “attended” webinars thus far. On August 28th, Fred Aschauer presented an Environmental Litigation Update, and talked about the ongoing saga of Florida v. Georgia (not the football variety, in which Florida might not fare as well) and the Florida Water and Land Conservation Initiative. Thanks to ELULS Council Members Robert Volpe and Gennaro Scibelli for coordinating this webinar. On September 25th, Adam Blalock and Jason Totoiu gave a webinar presentation on FDEP 404 Assumption. This webinar was organized by Robert Volpe. In addition, Robert Volpe

and CLE co-chair Josh Coldiron have been busy organizing webinars for the rest of the year and have many more in the pipeline. If anyone out there has an idea and/or speakers for a webinar, let us know and we’ll be sure to try to squeeze you in.

We will have our first Executive Council meeting of the year on October 11th in Orlando from 3-5 pm at the law offices of Lowndes, Drosdick, Doster, Kantor & Reed, P.A. at 215 N. Eola Drive, Orlando Florida. Following the meeting, there will be a mixer at the World of Beer on beautiful Lake Eola in downtown Orlando. All Section members are invited to the meeting and mixer, and I hope

you can all make it, especially if you live in the Central Florida area. We will have additional meetings and mixers throughout the year, and are even trying to organize field trips for the Section later in the year. Please be on the lookout on the Section website, and we’ll also send e-mail blasts advertising these events.

Finally, let’s keep our thoughts and prayers for folks in the Carolinas who are dealing with the aftermath of the devastation from Hurricane Florence. We in Florida know all too well the challenges and hardships related to these types of storms.

Anyway, have a great fall and hope to see you soon!



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ON APPEAL

by Larry Sellers, Holland & Knight

Note: Status of cases is as of August 30, 2018. Readers are encouraged to advise the author of pending appeals that should be included.

FLORIDA SUPREME COURT

Lieupo v. Simon's Trucking, Inc., Case No. SC18-657. Petition for review of decision by the First District Court of Appeal ("First DCA") in which the court certified the following question as one of great public importance: "Does the private cause of action contained in s. 376.313(3), Florida Statutes, permit recovery for personal injury?" *Simon's Trucking, Inc. v. Lieupo*, Case No. 1D17-2065 (Fla. 1st DCA, April 18, 2018). Status: Notice filed April 30, 2018.

The Richman Group of Florida, Inc. v. Pinellas County, Case No. SC18-456. Petition for review of decision by the Second District Court of Appeal ("Second DCA") reversing final judgment awarding the Richman Group of Florida, Inc., over \$16.5 million in damages under 42 U.S.C. § 1983, based on the trial court's conclusion that Pinellas County violated Richman's substantive due process and equal protection rights by denying Richman's proposed amendment to Pinellas County's land use plan. 42 Fla. L. Weekly D2526a (Fla. 2nd DCA 2017). Status: Notice filed March 20, 2018.

Pacetta, LLC v. The Town of Ponce Inlet, Case No. SC17-1897. Petition for review of the Fifth District Court of Appeal ("Fifth DCA") decision reversing the trial court's judgment that the Town of Ponce Inlet is liable for taking as a result of its enactment of a planned mixed use redevelopment of waterfront property, including by referendum. 42 Fla. L. Weekly D1367b. Status: Petition for review denied on January 23, 2018; petition

for writ of certiorari filed with U.S. Supreme Court on June 21, 2018 (Docket No. 17-1698),

FIRST DCA

Richard Corcoran, Joe Negron and the Florida Legislature v. Florida Wildlife Federation, Inc., Florida Defenders of the Environment, Inc., et al. Case No. 1D18-3141. Appeal from Final Judgement for the plaintiffs: (1) interpreting Amendment 1 to limit the use of the funds in the Land Acquisition Trust Fund created by Article X, Section 28, of the Florida Constitution to the acquisition of conservation lands or other property interests that the state did not own on the effective date of Amendment 1 and thereafter, and to improve, manage, restore natural systems thereon, and enhance public access or enjoyment of those conservation lands; and (2) determining that numerous specific appropriations inconsistent with that interpretation are unconstitutional. Status: Notice of appeal filed July 26, 2018.

Kanter Real Estate, LLC v. DEP, et al., Case No. 1D17-5096. Appeal from final order denying an application for oil and gas drilling permit, over contrary recommendation by the administrative law judge. Status: Notice of appeal filed December 5, 2017.

FWCC v. Daws, et al., Case No. 1D16-4839. Florida Fish and Wildlife Conservation Commission ("FWCC") appeal from order granting a temporary injunction requiring the FWCC to stop deer hunters and their dogs from trespassing onto appellees' property, "to abate the nuisance of the deer hunting dogs from trespassing onto the property of the Plaintiffs, and of the deer dogs and their hunters from interfering with the plaintiffs' right to the quiet enjoyment of their

private property." Status: reversed on August 16, 2018 by opinion on motion for rehearing and motion for certification, denying appellees' motion for certification, but granting in part appellees' motion for rehearing and withdrawing opinion dated April 10, 2018; dissenting opinion by J. Lewis.

THIRD DCA

Cruz v. City of Miami, Case No. 3D17-2708. Appeal from trial court order granting the City of Miami's motion for summary judgment, concluding that a consistency challenge is limited to whether the challenged development order authorizes a use, density or intensity of development in conflict with the applicable comprehensive plan. In so ruling, the trial court applied the Second DCA's holding in *Heine v Lee County*, 221 So. 3d 1254 (Fla. 2d DCA 2017). Status: Oral argument date set for September 11, 2018.

Florida Retail Federation, Inc., et al. v. The City of Coral Gables, Case No. 3D17-562. Appeal from final summary judgment upholding the City of Coral Gables' ordinance prohibiting the sale or use of certain polystyrene containers, based upon the trial court's determination that three state laws preempting the ordinance are unconstitutional. Status: Oral argument held on December 13, 2017.

FOURTH DCA

Everglades Law Center Inc. v. SFWMD, Case Nos. 4D18-1220, -1519 and -2124. Appeals from Order Denying Writ of Mandamus Against Plaintiff South Florida Water Management District and Entering Final Judgment on Defendant Everglades Law Center's Counterclaim. The Everglades Law Center sought to require

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ON APPEAL

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disclosure of the transcripts of a “shade” meeting held by the South Florida Water Management District (“SFWMD”) Governing Board involving discussions regarding mediation between the SFWMD and its Governing Board in attorney-client sessions. The order concludes that the transcripts of such discussions constitute communications at a mediation proceeding within the meaning of Section 44.102(3), Florida Statutes, and therefore are exempt from disclosure under the public records law. Status: Notice of appeal filed April 20, 2018.

Maggy Hurchalla v Lake Point Phase I LLC, Case No. 4D18-763. Petition for expedited writs of prohibition, mandamus and certiorari related to trial court rulings during and after a trial. The jury found Ms. Hurchalla liable for \$4.4 million in damages on a claim of tortious interference with a contract for a public project, due to her public comments in opposition to the project. Status: Petition for writ

of prohibition dismissed on May 11, 2018; to the extent the petition seeks certiorari relief, it is denied; to the extent the petition seeks mandamus, the writ is dismissed without prejudice to file a separate petition for writ of mandamus; motion for rehearing denied June 13, 2018.

Maggy Hurchalla v Lake Point Phase I LLC, Case Nos. 4D18-1221 and 1632. Plenary appeal from jury verdict finding Ms. Hurchalla liable for \$4.4 million in damages on a claim of tortious interference with a contract for a public project because of her Ms. Hurchalla’s comments in opposition to the project. Status: Notice of appeal filed April 20, 2018.

City of West Palm Beach v. SFWMD, et al., Case No. 4D17-1412. Appeal from final order granting an environmental resource permit for the extension of State Road 7 in Palm Beach County. Status: Reversed and remanded on August 8, 2018; South Florida Water Management District’s motion for rehearing and clarification denied on September 4, 2018.

Bluefield Ranch Mitigation Bank

Trust v. SFWMD and FDOT, Case No. 4D16-3023. Appeal from South Florida Water Management District’s (“SFWMD”) final order dismissing petition for hearing seeking to challenge issuance of permit to FDOT. Status: Reversed and remanded on July 11, 2018; DOT filed a motion for rehearing and SFWMD filed a motion for clarification or correction, both on August 27, 2018.

FIFTH DCA

Adele Simons, et al v Orange County, et al, Case No. 5D18-1418. Appeal from a final order of the Administration Commission finding the “Lake Pickett” plan amendments adopted by Orange County “in compliance”. The administrative law judge recommended that the Administration Commission find the plan amendments not in compliance. Status: Notice of appeal filed April 30, 2018; joint motion to dismiss for lack of standing filed May 21, 2018; motion to dismiss denied June 19, 2018, without prejudice for raising arguments in answer brief.

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What is the Replacement Value of a Regulatory Conservation Easement?

Jaime Elizabeth Northrup, Esq.

Regulatory conservation easements are frequently granted to state and federal agencies to preserve natural areas as compensatory mitigation for projects incurring environmental resource impacts. The purpose of a regulatory conservation easement is to provide mitigation for environmental impacts by setting aside land to replace the ecological value of the land being impacted. When circumstances require amendment or release of a conservation easement, how should the easement be valued for the purpose of its replacement?

Replacement of ecological value of a regulatory conservation easement encumbering mitigation land is easily justified by environmental resource permitting regulations. If compensatory mitigation for an environmental impact is lost, it should be replaced in kind to ensure no net loss of ecological value. However, requiring of monetary compensation for this type of easement lies in direct conflict with the principles of environmental protection regulations, the Takings Clause of the Fifth Amendment of the U.S. Constitution, and U.S. Supreme Court case law precedent.

An “easement” is a nonpossessory right to enter and use land in the possession of another that obligates the owner of the land not to interfere with the uses reserved by the holder of the easement. Restatement (Third) of Property: Servitudes § 1.2(1) (2000). Conveyance of an easement, however, does not convey fee simple ownership of property. The grantor of a conservation easement retains ownership of the servient land and may use the property for any purpose not inconsistent with the servitude. *Racine v. U.S.*, 858 F.2d 506, 507-509 (9th Cir. 1988).

Conservation easements are intended to remain in place in perpetuity. However, circumstances sometimes arise that require amendment or release of these encumbrances. For example, it may be impossible to identify a feasible roadway alignment that traverses entirely through unencumbered land. Alternatively, the ecological value of an encumbered

mitigation area may have severely decreased as a result of changed conditions on the site or in the surrounding area since the easement was recorded, to the point where the economic detriment to the development potential of the parcel outweighs the intended ecological utility of the easement. While disturbance of a conservation easement is not a desirable solution in any situation, it is sometimes the only solution.

The Restatements (Third) of Property: Servitudes suggest payment of damages and/or restitution if the servitude is terminated. § 7.11(2) (2000). Payment of damages is suggested in order to compensate the public for loss of the servitude if the changed conditions necessitating release are brought about by the servient owner, measured by the replacement value of the servitude or the increase in value resulting from removal of the encumbrance. *Id.* § 7.11 cmt. c (2000). If the changed conditions are not attributable to the servient owner, restitution including amounts invested in acquisition and improvement of the servitude, as well as tax and other governmental benefits received as a result of creation of the servitude, may be appropriate. *Id.*

The goal of a regulatory conservation easement is to mitigate environmental impact. While this type of easement provides a public benefit through conservation of ecological resources, the public benefit is retained through conveyance of a replacement easement that is ecologically similar to the release area. Therefore, payment of damages appears superfluous in the environmental permitting context.

In Florida, the St. Johns River Water Management District (“SJRWMD”) adopted a rule in 2010 that required replacement of ecological and monetary value for certain types of conservation easement releases including those on single family lots and for public projects. Fla. Admin. Code r. 40C-1.1101(c,e). SJRWMD was the only one of Florida’s five water management districts to implement this requirement. The rule

was amended two years later to require economic value replacement for “other requests” for conservation easement release that exceeded minor thresholds such as boundary adjustment, legal errors, or easements no longer needed for mitigation. Fla. Admin. Code r. 40C-1.1101(g).

For public projects and “other requests,” the monetary value of the conservation easement was calculated by rule as the difference between the full fee simple valuation of the area as encumbered and as if unencumbered. Fla. Admin. Code r. 40C-1.1101(3)(d)(1).

Though the rule was subsequently repealed in December 2015, it is important to illustrate the lack of connection between economic value and environmental resource permitting goals. A hypothetical case study will be used for comparison purposes. Assume that two regulatory conservation easements must be released to facilitate construction of a roadway. The first easement will be referred to as Prime Commercial (“PC”). It is surrounded by a high-traffic roadway, thriving commercial development, and high-density residential neighborhoods. The second easement will be referred to as Rural Residential (“RR”), as it is located in a sparsely populated residential region, with no direct roadway access to the encumbered area. Both easements are one acre in size, encumbering the entirety of the underlying parcels.

Comparison of the monetary valuation of the easements in the hypothetical case study yields startling results. The PC site, located in a commercial area on a high-traffic roadway, could have a value of \$500,000 if it were unencumbered. However, the value of the site in its encumbered state could be \$50,000. The RR site, given its rural setting, would likely have an assessed value of around \$10,000 if unencumbered. A parcel of land zoned for residential use in a rural area is exponentially less expensive than a comparable parcel zoned for commercial use in densely developed surroundings. The encumbered value

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of the RR site will be set at \$5,000.

The monetary value of the conservation easement (market value of the land without the easement minus market value of the land as it is currently encumbered) on the PC site is \$450,000, while the value of the easement on the RR site is \$5,000. If the PC and RR sites provide comparable ecological value, injection of monetary value into the equation yields arbitrary and excessive replacement requirements.

In *Nollan v. California Coastal Commission*, the Supreme Court held that an exaction imposed by a government body must be substantially related to a legitimate government interest, and that there must be an “essential nexus” between the exaction and that interest. 483 U.S. 825 (1987). The Nollans appealed from a decision of the California Court of Appeals, holding that the Coastal Commission could condition its grant of permission to the Nollans to rebuild their house on their transfer to the public of an easement across their beachfront property to allow access to a public beach. *Id.* at 827.

Justice Scalia, writing the majority opinion for the Supreme Court, stated that “. . . if the Commission attached to the permit some condition that would have protected the public’s ability to see the beach notwithstanding construction of the new house – for example, a height limitation, a width restriction, or a ban on fences – so long as the Commission could have exercised its police power . . . to forbid construction of the house altogether, imposition of the condition would . . . be constitutional.” *Id.* at 836. The constitutional propriety was lost, however, if the condition substituted for the prohibition failed to further the end advanced as the justification for the prohibition. *Id.* at 837. The Court determined that unless the permit condition served the same governmental purpose as the development ban, the building restriction was not a valid regulation of land use but “an out-and-out plan of extortion.” *Id.* (citing *J.E.D. Associates, Inc. v. Atkinson*, 121 N.H. 581, 584 (1981)).

The requirement to replace monetary value of a regulatory conservation

easement, if imposed by the easement holder as a condition of easement release, does not have an essential nexus to the goals and objectives of natural resource protection. Conveyance of an easement over additional mitigation land in order to satisfy the monetary value replacement requirement, above and beyond what is required for ecological purposes, does not serve the same governmental purpose of ecological offset that is achieved by environmental impact regulations.

If monetary payment is made to the agency to offset the difference, with no statutory direction regarding how the payment is used for conservation purposes, the nexus is even more tenuous. In *Koontz v. St. Johns River Water Management District*, the Supreme Court stated that they have “repeatedly found takings where the government, by confiscating financial obligations, achieved a result that could have been obtained by imposing a tax.” 133 S. Ct. 2586, 2601 (U.S. 2013). The purpose of a regulatory conservation easement is to provide environmental mitigation, not to provide a valuable real estate asset for the agency. Requirement for compensation of monetary value of the easement upon release, however, treats them as such in practice. If the agency’s goal is to receive funding, the *Koontz* methodology prevails. If the agency’s goal is to dissuade release of easements, it contradicts general property law provisions stating that an easement may be extinguished by an agreement of the parties to the easement or their successors. *Restatement (Third) of Property: Servitudes* § 7.1 (2000). Further, a ban on all conservation easement release is unreasonable. While easement release must be considered only as a last resort, it must remain available as an option in order to maintain the ability to adapt to changing circumstances in a reasonable manner.

Following their decision in *Nollan v. California Coastal Commission*, the Supreme Court granted certiorari to determine the degree of required connection between government-imposed exactions and the projected impacts of a proposed development in *Dolan v. City of Tigard*. 483 U.S. 825 (1987). The Court held in *Dolan* that an exaction is legitimate only if it is roughly proportional to the impact of the proposed activity. *Id.* at 391.

In application of the “rough proportionality” test to the hypothetical case study, the test may be satisfied on the RR site if an ecologically comparable replacement area is found nearby. As discussed above, the monetary value of the hypothetical RR conservation easement is \$5,000. It is possible that a replacement site large enough to provide adequate mitigation for ecological offset of the RR conservation easement would be worth at least \$5,000, which would satisfy the requirement to replace monetary value.

However, replacement of the monetary value of the easement on the hypothetical PC site is highly unlikely to result in a replacement area that is “roughly proportional” to the impact, thereby failing the *Dolan* test. Since the PC site lies in a densely developed area, it is possible that a replacement area large enough to provide adequate ecological offset would be far enough away from the densely developed region that the per-acre land costs could be less than half that of the PC site. If the value of the replacement parcel is one-half of the value of the PC site, the one-acre PC conservation easement must be replaced with two acres of land in order to satisfy the monetary offset requirement. The replacement site would then provide twice the amount of required ecological value.

If the replacement site is further away from the PC site, the ratio could be even higher. If land values around the proposed replacement site are \$50,000 per acre, then the applicant would be required to provide nine times the ecological value of the impacted conservation easement in order to satisfy the monetary offset requirement. Providing two or more times the required ecological value in order to meet the monetary replacement requirement fails the “rough proportionality” test. The Court in *Dolan* stated, “[a] strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.” *Id.* at 396. (citing *Pennsylvania Coal v. Mahon*, 260 U.S. 393, 416 (1922)).

In *Koontz v. St. Johns River Water Management District*, the Supreme Court held that the government’s demands from a land-use permit applicant must satisfy the requirements

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of Nollan and Dolan even when the permit is denied, and even when the demand is for money. 133 S.Ct. 2586, 2603 (2013). “Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation.” *Id.* at 2596.

Based on the findings in *Koontz*, it is clear that the requirement for replacement of monetary value of a conservation easement as a condition of a permit allowing amendment or release of a regulatory conservation easement would qualify as an exaction that must meet the Nollan and Dolan tests of essential nexus and rough proportionality, respectively. 133 S.Ct. 2586 (2013). These tests are clearly not met. Replacement of monetary value does not have an essential nexus to the goals and objectives of environmental resource permitting regulations. Further, the requirement to replace monetary value of a conservation easement will often result in required dedication of land in such excess that it is not roughly proportional to the proposed impact, thereby failing the “rough proportionality” test. In *Koontz*, the Court stated that by conditioning a building permit on the owner’s deeding over a public right-of-way, the government can pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation. *Id.* at 2594. Conveyance of an easement over an acreage of land that far exceeds the mitigation requirements is a directly comparable situation. Land owners must accede to the agency’s demand if they want the agency to agree to release their easement.

“So long as the building permit is more valuable than any just compensation the owner could hope to receive for the right-of-way, the owner is likely to accede to the government’s demand, no matter how unreasonable. Extortionate demands of this sort frustrate the Fifth Amendment right to just compensation, and the unconstitutional conditions doctrine prohibits them.” *Id.* at 2595.

In practice, the requirement to replace monetary value of a conservation easement is an exaction that results in imposition of punitive cost upon owners of the encumbered land, and fails the tests of essential nexus and rough proportionality. While arguments may differ for other types of easements, the only permissible method of valuation of a regulatory conservation easement conveyed for the purpose of environmental mitigation is through consideration of its ecological value.

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ELULS Case Law Update

Defenders of Crooked Lake, Inc. and Phillip and Priscilla Gerard v. Krista Howard and Department of Environment , 2018 Fla. Div. Adm. Hear. LEXIS 535 (DOAH July 05, 2018).

At issue was the Department of Environmental Protection's issuance of a Consolidated Environmental Resource Permit (CERP) to a residential landowner for a dock construction. DEP issued a CERP to Howard for the construction of a two-level dock with four slips and a flat platform roof. Howard's neighbors, the Gerards, challenged DEP's permit issuance, alleging that the dock would interfere with their riparian rights.

As proposed, the dock would occupy a total area of approximately 2,591 square feet. Several other docks on Crooked Lake are of similar size to the proposed dock, and eight are larger. The dock is designed to compensate for known fluctuations in Crooked Lake's water level and extends out to the bottom elevation point of the lake, which is approximately 109.9 feet National Geodetic Vertical Datum (NGVD). Howard's boat has a 25-inch draft and will be stored on a boat lift. The Consolidated Authorization granted to Howard required various environmental quality procedures, including a minimum 12-inch clearance between the deepest draft of the vessel (with motor in the down position) and the top of submerged resources. The ALJ found that the dock will not adversely affect or degrade the water quality or the fish, wildlife, or listed species of Crooked Lake.

The issue was whether Howard's proposed dock was of sufficient length to unreasonably infringe upon or restrict the Gerards' right to an unobstructed view of Crooked Lake. The ALJ found that Howard's dock does not interfere with the Gerards' right to view the lake. The right to an "unobstructed" view does not entail a view free of any infringement upon or restriction whatsoever by neighboring structures or activities. An "unobstructed" view is not an unfettered right to a view of the water completely free of any lateral encroachment but is the right of a view toward the channel or the center of a

lake without unreasonable infringement or restriction. Even though the dock will infringe upon the Gerards' lateral view, this merely constitutes an annoyance. The ALJ concluded that the dock will not unreasonably infringe upon or restrict the Gerards' riparian right to an unobstructed view or create a navigational hazard.

Bluefield Ranch Mitigation Bank Trust v. South Florida Water Management District and Florida Dept. of Transportation, No. 4D16-3023 (Fla. 4 DCA July 11, 2018).

Bluefield Ranch sought to challenge the South Florida Water Management District's permit (District) to the Department of Transportation (DOT) for a road-widening project. The District dismissed Bluefield's petition with prejudice, determining that Bluefield lacked standing and that Bluefield only specifically alleged economic injury. The Fourth District court disagreed, reversed the District's dismissal order, and remanded for a formal administrative hearing, finding that Bluefield did have standing and alleged more than just economic injury.

The District issued a permit to DOT that required DOT to purchase mitigation credits to offset the environmental impact of the road-widening project. DOT purchased most of the credits from Dupuis Reserve (Dupuis) and some credits from Bluefield. In the original petition, Bluefield argued that DOT was required to consider the credits provided by Dupuis because Dupuis did not meet the statutory criteria to qualify as a mitigation bank. Bluefield claimed that its substantial interests are (1) to prevent environmental harm caused by unlawful mitigation and (2) the preservation of wetlands as a landowner in the affected area.

Under the Agrico test, which evaluates (1) whether there is an injury in fact with sufficient immediacy and (2) a substantial injury of the type which the proceeding is designed to protect, the court found that Bluefield adequately alleged standing because it was reasonably foreseeable that Bluefield's property would be adversely affected by the DOT's selection of an allegedly unlawful

mitigation option. *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981).

The court first addressed Bluefield's alleged injury. Per Fla. Stat. § 373.4137(2)(c), DOT must consider using credits from a permitted mitigation bank and must consider the availability of suitable and sufficient mitigation bank credits. Bluefield alleged that Dupuis is not a permitted mitigation bank, and does not qualify for "must consider" status. A mitigation bank must provide reasonable assurance that it will comply with relevant statutory and regulatory standards. See § 373.4136(1), Fla. Stat. Bluefield's petition raised a disputed question of fact that, if taken as true, satisfied the first prong of the Agrico test. The court next addressed Bluefield's substantial injury claim. If Dupuis is not qualified to provide mitigation bank services, the question becomes whether Bluefield has a substantial interest in challenging the permit. The court found (1) that an economic interest in the outcome of a case does not bar Bluefield's standing and (2) that Bluefield has a substantial interest in the enforcement of statutory compliance for mitigation banks in the area.

GSK Hollywood Dev. Grp., LLC v. City of Hollywood, 2018 Fla. App. LEXIS 6083

GSK Hollywood alleged that the City of Hollywood (1) violated the Bert Harris Act and (2) violated GSK's substantive due process rights. The Seventeenth Judicial Circuit ruled in favor of GSK Hollywood on the Harris claim and ruled in favor of the City on the substantive due process claim. The Fourth District Court of Appeal reversed the circuit court's Harris ruling.

In 2002, GSK purchased property in Hollywood Beach to construct a luxury condominium. At the time, the property was zoned to allow construction up to 150 feet. Later, the City, after numerous failed ordinance proposals, lowered the construction allowance to 65 feet. GSK sued, having not applied for a permit, variance, or other formal relief. Regarding the Harris claim, the circuit court

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granted summary judgment for GSK and rejected the City's argument that, because GSK did not apply for formal relief, recovery was precluded under the Harris Act. The City appealed.

The Fourth District held that a property owner cannot state a Harris

claim (albeit a former version of the act) when the property owner did not formally apply to develop the property. Noting the plain language of Chapter 70, Florida Statutes, the court made two observations: The "as applied" and the "specific action of a governmental entity" language throughout Chapter 70 evidences that a Harris claim "does not ripen until the governmental

entity specifically applies the law or ordinance to the property in question." The court also likened to and distinguished the case from First and Fifth District precedent.

Because GSK did not apply for formal relief, and because the City did not take specific action involving GSK's property, the district court reversed and remanded the case.

Florida's Community Planning Act: Bridging the Predictability Gap

Robert M. Rhodes

The 2011 Community Planning Act (CPA)¹ was enacted with the intent and purpose to strengthen local government's role, processes, and powers in the state intergovernmental planning program and to focus the state's role on protecting important state resources and facilities.² Underlying this major, consequential revision to the 1985 Local Government Comprehensive Planning and Land Development Regulation Act was a concern the state program overreached and had become burdened with stultifying process that caused unnecessary delay in decisions and produced unacceptable costs to government and the private sector. This, in turn, hampered economic development and new growth. Additionally, the 1985 Act had been regularly amended by the Legislature and accumulated outdated provisions that were ripe for review, revision, repeal, and streamlining. Separately in 2011, the Department of Community Affairs, which served as the state planning agency, was abolished and the state planning program moved into a new Department of Economic Opportunity (DEO).³

As with any organic public policy, it's useful to review and evaluate how well a program is achieving its intended purpose. Assessing the CPA, there's little doubt legislative goals to devolve more planning authority to local government, focus the state role, and streamline the program are being accomplished.

Recent DEO data relating to state review of local plan amendments is informative. In 2017, DEO received

470 amendment packages from local governments, comprising 17,700 amendments.⁴ Approximately 86% of the amendments underwent expedited review and 14% coordinated review.⁵ The Department may comment on expedited review amendments⁶ and may issue objections, recommendations, and comments (ORC) on larger scale proposals and plan updates that are subject to a more expansive coordinated review.⁷ Subject to certain conditions, the DEO may administratively challenge amendments as not in compliance with state standards.⁸

Of the 62 packages reviewed in 2017 under coordinated review, DEO issued ORC objections for 26 packages, 17 with comments only and 19 with no comments or objections.⁹ The Department did not provide any comments on expedited review amendments.¹⁰ All amendments were found in compliance so no state challenges were initiated.¹¹

This data reflects a strong desire by the current state planning agency to recognize and largely defer to local government's home rule authority and responsibility and to amicably resolve any differences with local government.¹²

Although to date some key CPA goals are being fulfilled, there remains a predictability gap in its framework which, if properly addressed, can strengthen the Act and further legislative intent and related Department goals.

Here are some observations and recommendations for going forward.

Define Fundamental Terms

DEO's oversight role in the plan review process focuses on protecting important state resources and facilities against adverse impacts.¹³ This is the appropriate priority and focal point for the state and provides the policy driver, foundation and, justification for retaining a state role in the planning program. However, these fundamental terms are not statutorily defined.¹⁴ Moreover, DEO is not specifically authorized to develop substantive administrative rules to refine this expansive statutory language and provide meaningful guidance.¹⁵ Instead, for every proposed plan amendment, up to ten state and regional government agencies may review the amendment and, in the context of their statutory jurisdiction, determine what is an important state resource and facility and whether the amendment would adversely impact them.¹⁶

This open ended, "I know it when I see it", subjective identification and assessment policy and process favors no one. Plan amendment applicants cannot determine up front the standards for complying with state standards. Regulatory uncertainty will fuel additional risk and discourage lenders interested in underwriting new projects and economic development opportunities. Engaged citizens and affected governments are left to divine the intention and situation biases of the reviewers. State executive officers and legislators desiring to oversee CPA performance lack substantive benchmarks and metrics

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to appraise results and determine if the Act's seminal policy to protect important state resources and facilities is being achieved. Further, this ad hoc identification process is fraught with legal tripwires and vulnerable to constitutional and administrative law challenges.¹⁷

The state requires local governments to provide "meaningful, predictable planning standards for the use and development of land."¹⁸ It should apply this same standard to its central oversight role in the planning program and amend the CPA accordingly.

To be relevant, any statutory revision should be realistic and feasible. It's not practical for the Legislature to develop and enact what could be an extensive list of important state resources and facilities. However, the Legislature can and should statutorily define these fundamental terms,¹⁹ and direct DEO to develop a rule for adoption by the Governor and Cabinet that implements the statutory definition.²⁰ It's time to do this. The Department has administered the CPA for several years. During the period 2013–2017, it received 66,865 proposed amendments from local governments.²¹ It clearly "has had sufficient time to acquire the knowledge and experience reasonably necessary to address the subject matter" of a rule that would refine and clarify state review policies.²² The rule should be developed by DEO and adopted by the Governor and Cabinet. It could be subject to legislative review or approval.²³ A state rule will provide more predictable standards and establish regulatory boundaries for the review process which would guide determination of adverse impacts in individual cases.

Establish Decision Time Frames

The CPA provides detailed time frames for local action on plan amendments.²⁴ Time frames for government action accomplish several positive purposes: (1) They provide useful certainty for applicants, inform business plans and can reduce development costs caused by unexpected delay; (2) They enable a regulating government to organize work load and promote efficiency; and (3) Importantly, they recognize applicants spend time and

often significant resources on applications and deserve a timely decision.

Although the CPA provides decision time frames for plan amendments, it does not address time periods for local decisions that implement plans through development orders. Some local governments still maintain open or very flexible time frames for acting on development order applications. Yes, delay is a tool available for decision makers to leverage a desirable result. However, this tactic certainly doesn't build trust for or confidence in a planning program or further legislative purpose that local government provide "meaningful, predictable planning standards for the use and development of land."²⁵ Moreover, delay feeds unpredictability that adds to project costs which may be reflected in the price of the final development product. This pass through especially impacts affordable housing programs and projects.

Open ended decision periods should be addressed by legislation that would require local governments to establish reasonable decision time frames for processing and deciding development order applications.²⁶ These action milestones should include at minimum determinations of application sufficiency, hearing dates, and final decision. A standard for good cause should be included as a basis for any extension of the time frames. This amendment will help even the decision playing field for applicants and further legislative intent to infuse predictability into local planning and development decisions.

Uniformly Apply Mandatory Exactions and Contributions

The development of regional impact program essentially provided that development conditions could not be imposed on a DRI unless the condition was adopted by local ordinance and was generally applicable to DRIs and non-DRIs.²⁷ This policy was intended to insure DRIs were not singled out for inordinate, unfair exactions and other mandated contributions. It also encouraged local government to formally adopt development exaction policies, which ideally would be informed and vetted by engaged public input.

Equitable application of development exactions and mandated contributions is another way to support program predictability. This policy

also will encourage more innovative project planning because developers will be better able to assess local approval obligations upfront for various development scenarios with less concern for being tagged with unexpected exactions during or at the end of a review process. Legislation should be considered that captures the essence of the DRI provision and applies it to local development orders.²⁸

Clarity

Too many local comprehensive plans and land development codes are loaded with vague terms and planning and legal jargon that is difficult to understand and requires time consuming and costly interpretation. Planning and code language should be as clear and specific as possible. Cross references should be made to sections that are related. Definitions should be provided when technical or uncommon terms are used. Superseded language should be revised or repealed to reflect later amendments. In sum, the same axioms that guide superior transaction document drafting should apply to government plans and codes. Clarity enhances predictability and benefits everyone engaged in the planning program. Here's a suggestion: as part of local review of plan amendment and development approval applications, staff should review applicable existing plan policies and code standards for clarity and cohesion. These checks may reveal language that could be clarified.

Conclusion

The CPA is accomplishing major legislative goals to swing the intergovernmental planning pendulum much further toward local government and focus state oversight. But an important state role remains to process and review local plan amendments to insure compliance with state standards and, more broadly, to facilitate sound planning, development decisions, and economic growth at all levels of government. State plan amendment review standards are not defined and subject to situational interpretation by a number of state and regional government agencies. These ad hoc determinations produce uncertainty that conflicts with state goals to attract new economic development that may be subject to land use regulation.

Additionally, local governments

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implementing the CPA are not required to provide timely decisions on applications for development approvals nor must they formally adopt and evenly apply development approval exactions and contributions. These factors produce uncertainty and widen the predictability gap.

Suggestions are offered for filling this gap by infusing more certainty, fairness, and clarity into state and local process that implement the CPA.

A sustainable, stable, and accountable planning and development regulation program requires clear guidelines to direct consistent administration by government and to provide performance guidance for engaged and interested persons. The CPA should be structured to continue and remain effective over the years as government leaders, priorities, and community policy interests change, as they surely will.²⁹ Predictability will enable the CPA to further achieve its goals. Filling the predictability gap is a step forward.

Bob Rhodes served as the first chair of the Environmental Law Section, now ELULS. He also chaired the Administrative Law Section. Bob held senior executive and legal positions with the St. Joe Company, Disney Development Company and Arvida Corporation and served in state government administering the state planning program and as counsel to the Speaker of the Florida House of Representatives. He welcomes comments on this article to rmmrhodes@bellsouth.net.

Endnotes

- 1 FLA. STAT. § 163.3164 *et seq.* (2018).
- 2 Act effective June 2, 2011, ch. 2011-139, § 4, 2011 Fla. Laws 4-6 (codified at FLA. STAT. § 163.3161(1)-(3) (2018)). The overarching theme of the 2011 Act “is the return of authority over comprehensive planning decisions to local governments.” Linda Loomis Shelley & Karen Brodeen, *Home Rule Redux: The Community Planning Act of 2011*, 85 FLA. B.J. 49, July/Aug. 2011. A parallel theme is a major reduction in the scope and depth of the state’s oversight role in the planning program. See Tom Pelham, *Florida’s Retreat From Planning and Growth Management*, American Planning Association, 9 Practicing Planner No.4.; Nancy Stroud, *A History and New Turns in Florida’s Growth Management Program*, 45 J. MARSHALL L. REV. 397 (2012).
- 3 Act effective July 1, 2011, ch. 2011-142, § 13, 2011 Fla. Laws 18-30 (codified at FLA. STAT. § 20.60 (2018)).
- 4 Data regarding DEO action on local plan

amendments was provided the author by DEO’s Division of Community Planning, Development and Services (DEO data). Interpretation of these data is the author’s.

- 5 *Id.*
- 6 FLA. STAT. § 163.3184(3).
- 7 *Id.* § 163.3184(2)(c).
- 8 *Id.* § 163.3184(5).
- 9 *Supra* note 4.
- 10 *Id.*
- 11 *Id.* For context, from 2013-2017, the DEO found three amendment packages not in compliance.
- 12 A practical disincentive for the DEO to initiate a challenge is the daunting burden of persuasion, a clear and convincing evidence test, which the state bears when it challenges local decisions. FLA. STAT. § 163.3184(5)(c). See Robert M. Rhodes, *The 2011 Community Planning Act: Certain Change, Uncertain Reform*, 34 ELULS Reporter 1, June 2013.
- 13 FLA. STAT. § 163.3184(3), (4).
- 14 Interpretation assistance is not available from former FLA. ADMIN. CODE ch. 9J-5, which implemented the 1985 Local Government Comprehensive Planning and Land Development Regulation Act and was repealed by chapter 2011-139, § 72, Florida Laws, or from the state comprehensive plan, section 187.201, *Florida Statutes*, which is no longer applicable to state review of local plan amendments. See the definition of “in compliance” which does not include consistency with the state comprehensive plan. FLA. STAT. § 163.3184(1)(b). Parts of former FLA. ADMIN. CODE ch. 9J-5 were incorporated into the CPA.
- 15 See FLA. STAT. § 120.536 (addressing requisite statutory foundation for agency rulemaking authority). Regarding rulemaking, the DEO is statutorily authorized to adopt procedural rules for review of local evaluation and assessment reports, FLA. STAT. § 163.3191. Also, the Department is directed to provide on its website guidance for local submittal and adoption of comprehensive plans, plan amendments and development regulations, but is expressly prohibited from adopting this process guidance as a rule. FLA. STAT. § 163.3168.
- 16 FLA. STAT. § 163.3184(1)(c).
- 17 Rhodes, *supra* note 12, at 18. In 2011, the Town of Yankeetown sued to invalidate the CPA. Among other allegations, the Town contended the Act was an unlawful delegation of legislative authority that failed to provide adequate standards or criteria for DEO and other agencies to apply key terms such as important state resources and facilities. Town of Yankeetown, FL v. Dep’t of Econ. Opportunity, et. al., No. 37-2011-CA-002036 (Fla. 2d Cir. Ct. 2011). The case was settled out of court. Thanks to Ralf Brookes, counsel for the Town, for providing information on this case.

18 FLA. STAT. § 163.3177(1)(g)(10).

19 A reference point for a statutory definition is the definition of a development of regional impact, section 380.06(1), *Florida Statutes*, and the adoption of rules implementing this definition. The first DRI guidelines and standards were developed by the former Division of State Planning, adopted as a rule by the Governor and Cabinet, and were subject to legislative approval. See Thomas G. Pelham, *State Land Use Planning and Regulation* 29, 31 (D.C. Heath & Co., Lexington Books, 1979); Richard G. Rubino & Earl M. Starnes, *Lessons Learned? The History of Planning in Florida* 1, 237 (Sentry Press, Inc., 2008). Later legislation required revisions to the DRI standards and guidelines be approved by the Legislature. FLA. STAT. § 380.10(2) (1977); See *id.* § 380.06(2). Also, the effectiveness of Chapter 9J-5 of the Florida Administrative Code, which provided minimum criteria for review of local comprehensive plans and determinations of state compliance, was conditioned on prior legislative review, modification, rejection or no action, FLA. STAT. § 163.3177(9) (2010). Legislative modifications to the rule were provided in section 163.3177(10), *Florida Statutes* (2016). The CPA repealed Chapter 9J-5 of the Florida Administrative Code. See *supra* note 14.

20 A starting point for the rule could be a review of ORCs issued by DEO and comments submitted by the review agencies since 2011. Other useful resources are strategic regional policy plans adopted by the regional planning councils which identify important regional resources and facilities. FLA. STAT. § 186.507 (2018).

21 DEO data, *supra* note 4.

22 FLA. STAT. § 120.536. See also section 120.54(1), which provides that each agency statement that meets the statutory definition of a rule must be adopted as a rule “as soon as feasible and practicable.”

23 The rule will require a statement of regulatory costs. If these costs exceed certain impact and cost criteria, the rule will be subject to legislative ratification. *Id.* § 120.541(3).

24 FLA. STAT. § 163.3184(3).

25 *Id.* § 163.3177(1)(g)(10).

26 Development order is defined by section 163.3164(15).

27 FLA. STAT. § 380.06(4)(b)(1).

28 For example, a current subject that will likely demand more planning attention is sea level rise. See David L. Markell, *Emerging Legal and Institutional Responses to Sea Level Rise in Florida and Beyond*, 41 COLUM. J. ENV’T L. 1 (2017); Erin L. Deady & Thomas Ruppert, *The Link Between Future Flood Risk and Comprehensive Planning*, 2 ELULS Reporter 7-8, Sept. 2015.

29 Deady, *supra* note 28, at 7-8.



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Priorities for Resilience in Florida

By: Julie Dick

Florida communities have had to confront the realities of increased flooding, living with more water in general, and more intense hurricanes. Restoring the Everglades, and improving water quality are defenses against the impacts of climate change that Florida can no longer wait to implement. Solutions to address high levels of nutrient pollution and implement badly needed projects for Everglades restoration have existed for years. Politically driven legal maneuvers and political delays have gotten in the way of addressing these issues with the urgency they require. The State of Florida has required minimal sea level rise planning for coastal communities. Some of the highest risk sites in Florida, including multiple low lying hazardous waste sites, are not prepared for increasing sea level rise and other climate impacts. Priorities for climate action are readily identifiable through consideration of the comparative environmental and public health threats facing Florida communities. Two basic principles must guide our efforts:

- Climate change will negatively impact quality of life, public health, and our economy, which is directly connected to environmental health. Adaptation and resilience measures need to protect water quality, the environment, and public health.
- Climate planning is relevant almost universally across local government planning and operations. Climate planning will be most effective if it is taken into consideration across the board and conflicts among governing laws and programs are identified and removed.

Additional legal risks connected to infrastructure level of service, coordination among stakeholders, and the Takings Clause of the 5th Amendment of the U.S. Constitution and the Bert Harris, Jr. Private Property Rights Protection Act present an entire additional focus area and are critical considerations in climate, adaptation, and resiliency planning. These topics

are beyond the scope of this article but have recently been addressed in the ELULS Reporter and by at least one Florida municipality and will certainly continue to be an important piece of resiliency planning.¹ In the long run, South Florida's ability to withstand the impacts of climate change depends upon its own actions and significant global reductions in climate pollution. Policy and legal leadership from communities and businesses can lead to significant deployment of renewable energy sources and climate pollution reductions. Florida communities, businesses, and elected officials are becoming some of the leaders in climate mitigation, as South Florida Republican Representatives Carlos Curbelo, Ileana Ros-Lehtinen, and Francis Rooney have some of the best Republican voting records on climate in the U.S. Congress.²

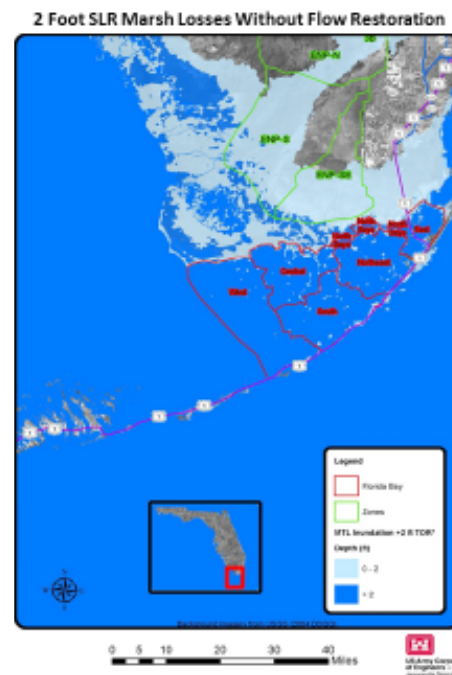
Local governments and businesses play an important role in moving Florida to become a model in addressing climate pollution. Multiple cities and some companies in Florida have taken the "We Are Still In Pledge" to comply with the goals of the Paris Accord or committed to 100% renewable energy. Far fewer cities have negotiated contracts and utility agreements that put them on track to achieve those goals. However, some leaders in the state, like the City of Orlando, are showing significant progress. Incorporation of climate mitigation into broader climate planning occurring in Florida is a topic that deserves additional attention. Climate pollution mitigation, insurance risk, bond ratings, and financing of mitigation and resilience activities are other critical aspects of climate planning that are beyond the scope of this article.

The measures that will conserve and protect water quality, quality of life, and the economy in Florida will help extend the viability and staying power of communities in Florida.

Resilience depends on environmental health. Resilience in Florida depends on good water quality, Everglades restoration, and appropriate management of contaminated

properties. Climate change has and will continue to exacerbate existing ecological stresses. Adaptation and resilience measures need to protect water quality, public health, and the environment in order to sustain Florida's ecological health. The algal blooms plaguing the Everglades ecosystem "thrive in warm, calm water. [...] As the climate warms, toxic algae blooms are proliferating worldwide."³ As climate change contributes to algal blooms and poor water quality, measures to restore and protect the Everglades and water quality become more critical.

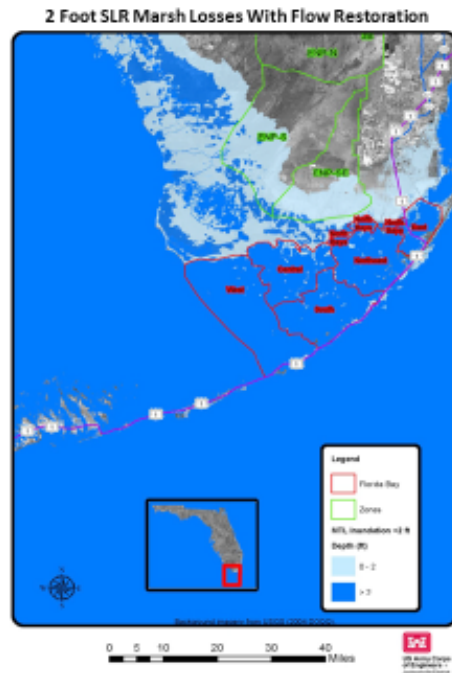
The restoration fixes that would address the algal blooms by moving water South from Lake Okeechobee into the Southern Everglades, and eliminating the need for discharges to the Caloosahatchee and St. Lucie rivers, would also greatly improve Florida's resilience to sea level rise. The LiDAR maps shown below, from the US Army Corps of Engineers (ACE), projects what South Florida will look like with 2 feet of sea level rise with and without Everglades restoration. Restoring the Everglades clearly physically protects Florida through preventing land loss in the face of sea level rise.



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Everglades restoration is key to resiliency. Florida is currently experiencing multiple ecological crises, including fish, turtle, and manatee die-offs, red tide in Southwest Florida, and algal blooms on both coasts.⁴ University of Miami Professor Larry Brand blames southwest Florida's red tide "primarily [on] the large amount of nutrient-rich water coming down the Caloosahatchee River into the coastal waters."⁵ In 2010 the Scott Administration's Department of Environmental Protection (FDEP), under Secretary Herschel Vinyard, petitioned the US EPA to withdraw its 2009 determination that numeric nutrient criteria are necessary in Florida.⁶ Ultimately, after litigation between EPA, FDEP, Earthjustice and Florida Wildlife Federation, FDEP issued its own Numeric Nutrient Criteria. The regulation of nutrients in Florida has clearly failed to sufficiently address the sources of pollutants impacting the algal blooms. Nutrient pollution will continue to be a litigation issue to watch in Florida.

Political failures to act to protect water quality in the Everglades extend beyond regulation of nutrients, and include unnecessary delays in restoring the Everglades ecosystem. Preventing the discharges of nutrient laden Lake Okeechobee water into

the Caloosahatchee and St. Lucie rivers requires freshwater storage South of Lake Okeechobee. The state failed to exercise its option to buy land South of Lake Okeechobee for a reservoir in 2015. While there has been some progress in efforts to secure land needed for a reservoir south of Lake Okeechobee⁷, the delays have left coastal communities facing yet another year of estuaries in an economic and ecological crisis. "Over the last decade, as the state fought federal efforts to protect water, shrunk its own environmental and water-management agencies, and cut funding to an algae task force, monitoring for water quality has plummeted."⁸ The South Florida Water Management District is the lead agency in the State's role in Everglades restoration projects, yet Governor Scott "ordered budget cuts to water-management agencies for five consecutive years."⁹

Fishing Guide Mike Conner from Stuart reports losing 50% of his business this year as a result of the algal blooms.¹⁰ He describes tourism that trickles up from tourists going out on the water and in turn spending money on hotels and restaurants. Captain Conner says, "[i]f they're [not on his] boat fishing, they're not [t]here."¹¹ The economic viability of the Florida communities depends on water quality. Recreational fishing in the Everglades has an economic impact of \$991 million annually.¹² In the Florida Keys alone, flats fishing generates \$34,447,000 in federal tax revenue, and \$28,298,000 in state and local tax revenue. The total economic impact from Keys Flats fishing expenditures (including multipliers) is \$465,834,000 a year.¹³ Ocean recreation and tourism account for 58% of the local economy in the Keys, 2.3 billion in annual sales and support 33,000 jobs.¹⁴ Between 2007 and 2008, over 400,000 visitors and residents engaged in over 2 million person-days of recreational sports fishing in the Florida Keys.¹⁵ Climate, water quality, the environment, and the economy are closely tied together in Florida. Measures that protect water quality enhance resilience and protect the economy.

Contaminated properties

Houston's experience with Hurricane Harvey demonstrates the enhanced environmental and public health threat contaminated

properties pose due to sea level rise and exacerbated storm risks posed by climate change. The San Jacinto River Waste Pits Superfund Site lost its protective cap during the storm, and the underlying material was exposed.¹⁶ After the damage from the storm, dioxin levels at the site were "more than 2,000 times higher than the maximum levels the [EPA] recommends for the site."¹⁷ The experience at the San Jacinto River Waste Pits demonstrates the risks contaminated properties face when stronger storms and increased flooding from climate change impact these sites.

The World Resource Institute estimates that Miami Dade County has 8 hazardous waste sites located less than 1 foot above current sea level, 23 sites less than 2 feet above current sea level, and 73 hazardous waste sites less than 3 feet above current sea level.¹⁸ The remediation programs for many of these sites were established years ago, and the impacts of sea level rise and increased flooding from storm surge were not contemplated in the development of the cleanup plans.

The most contaminated properties, which are "priorities for long-term remedial evaluation and response" are identified by the Federal EPA on the National Priorities List (NPL).¹⁹ Sites that "place sufficiently high pursuant to the Hazardous Ranking System"; are designated by the state as "its highest priority"; or where a release otherwise satisfies criteria establishing a public health threat, qualify for placement on the NPL.²⁰

In Miami-Dade County alone there are 9 NPL and former NPL sites managed by the U.S. EPA.²¹ Three of those sites have been deleted from the NPL, but continue to be monitored by the EPA, and 6 sites remain on the NPL. These 9 sites in Miami-Dade, along with dozens of other sites across Florida are managed by an agency that under the current administration has attempted to remove references to climate from its public documents and websites. The EPA has maintained the site "Superfund Climate Change Adaptation: Information Sources" with links to information and resources to assist in quantifying vulnerability of these sites to climate related impacts.²² However, the selection of remedies to clean up

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these highly contaminated properties occurs through rulemaking connected to each site's Remedial Investigation and Feasibility Study. In many cases, if not across the board, the cleanup remedies do not appropriately incorporate the impacts of sea level rise and increased flooding from storm surge.

The objective of the Feasibility Study (FS) is to ensure that appropriate remedial alternatives are developed and evaluated.²³ Clean up alternatives for NPL sites are evaluated under nine criteria.²⁴ Several aspects of those criteria should be revisited for climate change-impacted sites. Overall protection of human health and the environment depends on remedies that can withstand impacts of sea level rise and hurricanes. Long-term effectiveness and permanence of remedies will depend on how remedies are designed to withstand projected increases in sea level rise and other climate risks. For each of these sites, the toxicity and mobility of substances may be impacted by higher water tables and increased risk of storm surge. The concepts of Applicable or Relevant and Appropriate Requirements (ARARs) need to be adjusted so that climate impacts and resilience are incorporated. Community acceptance of remedies should be tied to climate considerations. As NPL sites continue to be impacted by climate change, reconsideration of selected remedies based on the impacts of climate change will likely be necessary at many of these sites across Florida, in order to ensure ongoing protection of human health and the environment.

Climate change planning should be comprehensive

The lack of action to prepare contaminated properties for climate impacts demonstrates the need for more comprehensive climate planning. An adaptation, resilience, climate or sustainability plan is effective to the extent that its goals are reflected in decisions regarding land use and zoning, major infrastructure projects, governing plans, ordinances, code, and in management and preparedness of the highest risk sites. Minimal state requirements for climate planning means that local governments

are left to take it upon themselves to effectively prepare for climate change.

Florida Statute § 163.3178 requires the Coastal Element of a local government's Comprehensive Plan to "[i]nclude development and redevelopment principles, strategies, and engineering solutions that reduce the flood risk in coastal areas which results from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea-level rise." The sea level rise component only applies to the redevelopment component of the Plan, and it is to "be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise." Additional hurricane evacuation timing and level of service requirements are also included in the statute. As the specific sea level rise planning requirement only applies to the Coastal Element and only as it relates to eliminating "inappropriate and unsafe development in the coastal areas when opportunities arise," the statute may prove limited in its application and force.

Fla. Sta. § 163.3177(3)(g)10 gives local government the additional option of developing voluntary "adaptation action area designation[(s)]". This designation provides local government with a mechanism for prioritizing adaptation and funding infrastructure needs in vulnerable locations.²⁵

Florida's DEP acknowledges the risk of failing to remove conflicts between plans in its Adaptation Planning Guide. "Communities should ensure that the goals of their adaptation plan fit well within the goals set by other planning mechanisms such as their Local Mitigation Strategy, Post-Disaster Redevelopment Plan, Comprehensive Plan, Historic Preservation Plan, and others if applicable. If the goals from different plans conflict, then the implementation phase will likely be difficult and may reach an impasse."²⁶

While Miami-Dade County has a Chief Resiliency Officer and is engaged in significant efforts to make the County more resilient, the goals of resilience do not always have sufficient influence on County decision-making. Climate-related planning and preparation needs to be at the forefront of consideration for development projects under consideration.

For example, the proposed extension of SR 836 into the Everglades is antithetical to the concepts of preparing for SLR on the basis that the project would extend additional infrastructure into a low lying, vulnerable, and undeveloped part of the County. It would encroach upon wetlands in the Everglades ecosystem, the restoration of which is imperative for the region to withstand the impacts of SLR. The project analysis also fails to include consideration of transit-oriented alternatives that would be more sustainable. While final approval of the project is not complete, the County Commission recently approved an amendment to the Comprehensive Development Master Plan Land Use Element to pave the way for the project.²⁷ While the South Florida Regional Planning Council found the project is generally inconsistent with the Regional Policy Plan, MDX and Miami-Dade County failed to sufficiently evaluate the project through the lens of resiliency.

The Florida Keys, which is designated an Area of Critical State Concern by the State of Florida, is subject to additional state oversight in its growth and planning, which has forced the County government to adopt and enforce relatively strong development and pollution policies, increasing their climate resilience.

Monroe County has made concerted efforts to resolve conflicts in its land use schemes, infrastructure investment, and planning, which has better prepared it for climate impacts. The additional requirements imposed upon Monroe County as a designated Area of Critical State Concern have been effective in leading to the County policies, rules and planning that have made it more resilient. The Area of Critical State Concern designation for the Florida Keys establishes the legislative intent to establish land use systems to protect the environment, balance growth, address affordable housing needs, protect water quality and property rights, and reduce risks by requiring that permanent residents be able to evacuate in 24 hours in the face of a hurricane.

The Area of Critical State Concern designation, while not originally intended to address climate planning, provides a framework for effectively

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addressing many of the ecological, development and growth constraints climate change places on communities. The development constraints Monroe County has adopted, like prohibiting transfer of development rights to offshore islands, the Tier system to assist with allocating and awarding permits for development, transition to central sewage, a Rate of Growth Ordinance, which limits development, limitations on clearing habitat, and incentives for cisterns and rain water capture all better prepare Monroe County for climate change. The water quality, land use, and hurricane evacuation considerations the Keys are required to incorporate into their planning, have broader application for resiliency in communities that are not designated Areas of Critical State Concern.

These measures are not all part of the Coastal Element of the Comprehensive Plan and would not necessarily evolve out of the statutory requirements Florida has imposed on coastal communities for sea level rise planning. The implementation of these measures came as a result of extensive analysis and problem solving on the part of staff, elected officials, and stakeholders. This planning and work to ensure that land use, infrastructure projects and planning decisions are consistent with the goals of the Area of Critical State Concern status was a result of state oversight forcing the process.

Even with that oversight, the issue of affordable housing has not been completely resolved in a manner consistent with 24-hour hurricane evacuation. A lack of work force housing continues to plague the Keys and challenge the limits of evacuation concerns.²⁸ However, the Keys have been successful in achieving many of the goals connected to its Area of Critical State Concern designation. Approximately 675 homes were completely destroyed by Hurricane Irma in Monroe County and unfortunately some lives were lost. However, the Hurricane Irma evacuation worked and saved lives.²⁹ The planning and oversight that went into ensuring growth and development in the Keys does not impede safe hurricane evacuation was extensive, comprehensive, and took time.

Local governments are forced to take it upon themselves in a form of self-help to set and implement effective goals towards planning for sea level rise, flooding, and storms exacerbated by climate change. Regionally, shared resources through the South Florida Regional Planning Council, the South Florida Regional Climate Change Compact, 100 Resilient Cities, and model ordinances and policies from Florida Sea Grant and University of Florida provide a framework to assist cities in the climate planning process. It takes investments in staff, attorneys, consultants, and ultimately in capital and natural infrastructure for municipalities to implement resilience. It is up to local governments to identify the critical climate risks for their community, and put the mechanisms in place to assure that decisions are made through the lens of resiliency.

Conclusion

Current legislative mechanisms for sea level rise planning in Florida do not require the breadth of climate

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planning necessary to create resilient communities. Local governments must take it upon themselves to ensure that climate change is adequately considered in investments, activities, and decisions. Climate impacts will exacerbate quality of life, public health and economic threats connected to environmental stress. Adaptation and resilience measures need to protect water quality, the environment and public health to be viable in Florida.

About the Author: Julie Dick focuses her practice on climate, environmental and sustainability law, regulations and policy. She has worked on various climate, Clean Water Act, Everglades restoration and contaminated property matters in Illinois and Florida. Opinions expressed herein are hers alone and do not reflect that of her current or former clients.

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2017–2018 Update from Stetson’s Institute for Biodiversity Law and Policy: Making a Difference Locally, Nationally, and Internationally

Stetson University College of Law provides environmental education, service, and scholarship at the local, national, and international level. The Institute for Biodiversity Law and Policy coordinates Stetson Law’s environmental programs and initiatives and was the 2016 recipient of the Distinguished Achievement in Environmental Law and Policy Award from the American Bar Association’s Section of Environment, Energy, and Resources. Below are highlights of the Institute’s 2017–2018 activities. For more information about the Institute and to support our initiatives, please visit www.stetson.edu/law/biodiversity.



Professor Long, Professor Gardner, and students on a swamp walk [Photo credit: Maria White]

Supporting international and national conservation efforts:

For years, Stetson Law has provided support to the Ramsar Convention on Wetlands, an intergovernmental treaty that promotes the wise use and conservation of wetlands. Professor Royal Gardner, Director of Stetson’s Institute for Biodiversity Law and Policy, has served as the chair of the Ramsar Scientific and Technical Review Panel (the Convention’s scientific advisory body) for the 2016–2018 triennium. Professor Gardner is a lead coordinating author for the Global Wetland Outlook: State of the World’s Wetlands and their Services to People. This will be the Ramsar Convention’s flagship publication and will be launched at

the 13th Conference of the Parties in the United Arab Emirates in October 2018.

Professor Gardner and Erin Okuno (the Institute’s Foreman Biodiversity Fellow), along with a team of attorneys, filed amicus curiae briefs in the U.S. District Court for the Southern District of New York in May 2018 and in the U.S. District Court for the District of North Dakota in July 2018. They filed the briefs on behalf of the Society of Wetland Scientists (SWS) in support of the Clean Water Rule, which defines the geographic coverage of the Clean Water Act. The briefs are available online at <http://stetso.nu/qpl0m> and <http://stetso.nu/HbWZQ>. In June 2018, Professor Gardner received the SWS President’s Service Award in recognition of his work on Clean Water Act policy issues and Clean Water Rule litigation on behalf of SWS.

Professor Paul Boudreaux did volunteer work on a number of environmental matters, including giving advice on defending claims by landowners against local governments under Florida’s Bert J. Harris Act. Professor Lance Long (with student volunteers) provided research and drafted pleadings and FOIA requests in connection with climate change litigation brought by Our Children’s Trust.

Teaching environmental law through innovative methods:

In spring 2017, Professor Gardner organized Topics in Biodiversity Law: Illegal Wildlife Trafficking. Students met with Vivek Menon (Wildlife Trust of India) and had a videoconference with Carolina Caceres, Chair of the Standing Committee for the Convention on International Trade of Endangered Species. A Customs official and Fish and Wildlife Service agent also joined the class with examples of confiscated animal products. Professor Boudreaux, Professor Ellen Podgor, and Stetson alumna Elise Bennett with the Center for Biological Diversity lectured as well. Students learned

about regulation of wildlife trade.

Professor Long taught Environmental Advocacy in spring 2018. Students chose a particular environmental issue and designed a project that includes a FOIA request, media advocacy, and either a collaborative project with a public or private entity, a draft of a citizen’s suit, or legislative advocacy. This year’s class included projects by students Jennifer Winn, who spearheaded the City of Gulfport’s proposed plastic straw ban, Leah Johnson, who is establishing a campus garden at the law school, and Dane Peterson, who installed and will maintain for the first year, two monofilament recycling tubes in Medard Park.

In spring 2018, Professor Gardner and Professor Long again taught Research and Writing II—Environmental Law, a special section of Research and Writing II that covers the same fundamental skills as other sections but in an environmental context, with an emphasis on real-world issues. The students researched and submitted public comments on proposed offshore oil and gas activities. The memorandum of law assignment and appellate brief problem addressed Article III standing issues and a hypothetical challenge to the U.S. Fish and Wildlife Service’s final rule downlisting the West Indian manatee from endangered to threatened under the Endangered Species Act.



Students with the Ranger after a swamp walk at Big Cypress National Preserve

This past year, Stetson Law students participated in environmental law externships across the country,

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where the students had opportunities to practice hands-on legal skills. Placements included a variety of private and governmental organizations: the Ocean Conservancy, the Center for Biological Diversity, the National Oceanic and Atmospheric Administration, the Environmental Protection Commission of Hillsborough County, and Tampa's Lowry Park Zoo.

Creating a dialogue about environmental challenges:

Stetson Law helped organize the 18th International Wildlife Law Conference, which was hosted by Tilburg University's Department of European and International Public Law in Tilburg, the Netherlands in April 2018. The conference featured sessions on transboundary challenges to wildlife management, wildlife conservation mechanisms and treaties, wildlife crime, and international and national issues in wildlife protection, among others. Dr. David Macdonald, Director of Oxford's Wildlife Conservation Research Unit, presented the keynote address, and Professor Gardner was the closing plenary speaker.

In November 2017, Stetson Law hosted the Fifth Annual ELI-Stetson Wetlands Workshop. Panelists and speakers discussed the status and conservation of reefs, mangroves, and seagrasses, and the use of compensatory mitigation to offset coastal wetland impacts. The workshop also featured a field trip led by Tampa Bay Watch to nearby aquatic restoration sites. The Institute is grateful to Mechanik Nuccio Hearne & Wester, P. A. for sponsoring the poolside networking reception and to the Law School Liaison Committee of The Florida Bar's Environmental and Land Use Law Section (ELULS) for providing a special grant to support the 2017 workshop. The Sixth Annual ELI-Stetson Wetlands Workshop will be hosted at Stetson Law's Gulfport campus on Thursday, November 8, 2018. The theme of this year's workshop will be "The Role of NGOs and the Public Sector in Implementing Wetland Restoration Projects: Trends, Lessons Learned, and Best Practices." To register and for more information, please visit www.stetson.edu/law/biodiversity/wetlands-workshop.php.



Students and attendees on the field trip during the 2017 ELI-Stetson Wetlands Workshop

Thanks to the continued, generous support of Bonnie Foreman, the Biodiversity Institute offered the Edward and Bonnie Foreman Biodiversity Lecture Series again this past year. Numerous scientists, attorneys, judges, policymakers, and other experts have presented at the lecture series, which fosters a dialogue about important environmental issues and has created meaningful connections and opportunities for students and other attendees over the years. The speakers this last year included Dr. Dwight T. Pitcaithley (National Park Service), Tonya Long (Florida Fish and Wildlife Conservation Commission), Dr. Max Finlayson (Institute for Land, Water and Society, Charles Sturt University, Australia), Vivek Menon (Wildlife Trust of India), Anne Harvey Holbrook (Save the Manatee Club), and Dr. Ruth Cromie (Wildfowl & Wetlands Trust, UK).

In spring 2018, we hosted the 22nd Annual International Finals of the Stetson International Environmental Moot Court Competition. Founded by Stetson Law in 1996, it is now the world's largest moot court competition devoted exclusively to global environmental issues. This year's problem focused on responses to highly pathogenic avian influenza and transboundary wetlands. Student teams submitted written memorials and presented oral arguments at regional and national rounds throughout the world, and the top teams advanced to compete in the International Finals in March 2018. Twenty-one teams from Africa, Asia, Europe, Latin America, and North America participated in the International Finals. The final round judges were Dr. Wil Burns (American University), Dr. Ruth Cromie (Wildfowl & Wetlands Trust, UK), and Professor Jason Palmer (Stetson Law). This year's champion was the University

of the Philippines College of Law. We appreciate everyone's support of the competition and would especially like to thank the Joy McCann Foundation and the Law School Liaison Committee of the ELULS for their financial support of the International Finals.



Participants, coaches, and competition judges with Professor Gardner after the championship round at the International Finals of the Stetson International Environmental Moot Court Competition in 2018

Stetson's Environmental Law Society, Student Animal Legal Defense Fund, and other student organizations hosted the annual Earth Day Celebration on campus in April 2018. Attendees enjoyed fresh, local food and had the opportunity to speak with various environmental groups. Professor Gardner, Professor Long, and several Stetson students provided musical entertainment during the event.

Recognizing the accomplishments of students and recent graduates:

Travis Hearne, Vanessa Moore, and Jessica Baik were quarterfinalists in the Jeffrey G. Miller National Environmental Law Moot Court Competition in February 2018. The competition was held at the Elisabeth Haub School of Law at Pace University in White Plains, New York. Professor Gardner and Erin Okuno coached the team.

Congratulations to Stetson's environmental students who received awards at the spring 2018 graduation: Vanessa Denk received the Hearne Environmental Law Award, Vanessa Moore was the recipient of the Walter Mann Award, John Pilz received The Florida Bar City, County and Local Government Law Section Law Student Award, and Breanne Whited was the recipient of the Nader/Zrake Memorial Award. Jennifer Winn received the Distinguished Achievement Award from the Florida Bar Animal Law Section in June 2018.

We are proud of our graduates who were recently hired for environmental

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law and policy positions. Rachael Curran joined the Center for Biological Diversity as a Florida Staff Attorney, and Vanessa Moore was selected for the Attorney General's Honors Program, working in the Environment and Natural Resources Division of the U.S. Department of Justice. Emily Carter worked as a fellow for the Virgin Islands Bar Association doing research on the U.S. Virgin Islands' position on environmental and economic policies.

And special notes of gratitude:

The Institute would like to thank Dick and Joan Jacobs for endowing the "Dick and Joan Jacobs' Environmental Law Externship Fund" at Stetson Law. Because of their generous support, this fund has enabled students at Stetson Law to participate in meaningful environmental law externships and activities. In fall 2017, the fund covered

the travel expenses for Kai Su to travel to Tallahassee to testify before the Florida Constitution Revision Commission in favor of a proposed amendment to guarantee the right to a healthy environment. This summer, the fund helped defray travel expenses for Katherine Welch to participate in an externship with the Wildlife Trust of India.



Katherine Welch in India

Thank you to Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. for sponsoring a special networking event in January 2018 at Stetson's Gulfport campus for students who are interested in pursuing careers in environmental, land use, and real estate law. Attorneys from the firm's multiple offices shared their experiences and advice with Stetson Law students. The Institute also would like to thank Hopping Green & Sams, P.A. for sponsoring a book award at Stetson Law that is given each year to the student in Research & Writing II—Environmental Law who receives the highest grade in the course. Brian Remler received the book award in spring 2018.

For more information about Stetson's Institute for Biodiversity Law and Policy or how to support its programs, please contact Erin Okuno at okuno@law.stetson.edu.

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Once new FEECA goals are approved, the regulated IOUs will present new or modified energy efficiency programs to the FPSC for review and approval in the next Energy Conservation Cost Recovery ("ECCR") clause proceeding.⁸ The efficiency programs will consist of various cost-effective energy efficiency measures⁹ designed to achieve those goals and approved costs are passed on to IOU customers through the ECCR clause.

Purpose of FEECA

Section 366.81, F.S., sets forth the legislative intent for FEECA, stating in part: "it is critical to utilize the most efficient and cost-effective demand-side renewable energy systems and conservation systems in order to protect the health, prosperity, and general welfare of the state and its citizens." Reducing or controlling the growth rates of electric use as well those of weather-sensitive peak demand times is particularly important.¹⁰ The FPSC is directed to develop and adopt overall conservation goals for each utility for the purpose of promoting demand reductions and energy savings.¹¹ The

adoption of these demand reduction (megawatt or MW) and energy savings (megawatt hours or MWh) goals will be the subject of the 2019 FEECA goal setting proceedings. Once goals are adopted, the FPSC can require IOUs to develop plans and programs designed to achieve these goals while promoting energy efficiency, conservation, and demand-side (customer-side) renewable energy systems. These demand side management ("DSM") plans are reviewed and approved in and through the FPSC's annual ECCR clause proceeding. Section 366.81, F.S., also contains additional legislative findings related to achieving the intent of FEECA, noting that solutions to energy problems are complex. There have been tremendous advancements made in demand-side (customer-side) and supply-side (utility-side) energy efficiency since FEECA's 1980 adoption and the subsequent amendments to FEECA. Some increases in energy efficiency were driven by technological improvement, and others by changes to building codes and energy efficiency regulations. For example, a modern natural gas plant has a lower heat rate today (i.e., is more fuel efficient) than one built

in 1980, thereby allowing utilities to produce more electricity with less fuel. Modern building codes and energy efficiency regulations require attic insulation, insulated windows, energy efficient heating and cooling systems, and other efficiencies which were not available in 1980.

FEECA benefits customers by setting demand-side (customer-side) energy efficiency goals and requiring utilities to achieve those goals through FPSC approved energy efficiency programs. Many demand-side customer load control systems were first pioneered in the 1980s, allowing utilities with load control programs to reduce peak demand as needed. These load control devices often were affixed to customer-owned pool pumps, water heaters, or air conditioning systems, and could be remotely shut-off for a short period of time to enable the utility to shed load at peak times during the day. Participating customers would receive a credit whether or not the utility activated the load control device. Additionally, utilities have crafted energy efficiency programs which benefit residential and commercial customers. For example, residential customers can request

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an in-person or a remote energy audit.¹² Pursuant to Section 366.82(11), F.S., the FPSC shall require utilities to offer energy audits to residential customers.¹³ Unlike energy efficiency measures, energy audits do not have to pass a cost-effectiveness screen because they are mandated by statute. During the audit, the utility will describe ways in which the customer can reduce his or her energy usage. Some energy audit programs will provide energy efficiency measures, such as LED light bulbs, low flow shower heads, rebates on attic insulation, etc. Load control and energy audits are but two examples of many energy efficiency programs that have been implemented by Florida utilities since the inception of FEECA. The costs of the IOUs' programs are recovered from their general body of ratepayers through the ECCR clause. However, customers of municipals and rural electric cooperatives, not subject to FEECA, who are interested in energy efficiency should contact their utility provider directly about what programs are offered.

Legislative History

FEECA was enacted in 1980¹⁴ and subsequently amended numerous times for a variety of reasons. The last major amendment was enacted in 2008,¹⁵ prior to the 2009 FEECA goal setting proceeding, and was amended a few more times since 2008.¹⁶ FEECA originally applied to all electric utilities in the state, including all municipals and rural electric cooperatives.¹⁷ In 2010, there were 53 IOUs, municipals, and rural electric cooperatives.¹⁸ One could imagine how unwieldy a goal setting proceeding involving at least 53 Florida electric utilities would be. In 1989, the Legislature added a size limitation, making FEECA only applicable to 12 utilities with more than 500 gigawatt-hours (GWh) of annual retail sales, comprising 94 percent of all retail electricity sales in Florida.¹⁹ In 1996, the Legislature increased the GWh retail sales threshold for municipals and rural electric cooperatives to 2,000 GWh as of July 1, 1993.²⁰ As a result, FEECA is now applicable to five regulated investor owned utilities (IOUs): Florida Power & Light Company (FPL), Duke

Energy Florida (Duke), Tampa Electric Company (Tampa Electric), Gulf Power Company (Gulf Power), and Florida Public Utilities Company (FPUC), as well as two municipal electrics: JEA (formerly known as Jacksonville Electric Authority) and Orlando Utilities Commission (OUC). According to the most recent FEECA report published by the FPSC, the seven FEECA utilities represent approximately 83.9% of all energy sales to Florida's electric consumers, totaling 198,214 of the 236,152 GWh sold in 2016.²¹ Therefore, the goals established by the FPSC at each goal setting proceeding impact the majority of Floridians.

In 2008, House Bill 7135 was enacted.²² In addition to amending FEECA, it was an omnibus energy policy bill that created the short-lived Florida Energy and Climate Commission ("FECC") within the Executive Office of the Governor.²³ The legislature amended Florida's renewable energy policy, Section 366.92(3), F.S., to require the FPSC to draft a Renewable Portfolio Standard ("RPS") rule for Florida, subject to ratification by the Legislature.²⁴ It created "net-metering" by amending Sections 366.91(5) and (6), F.S., to require IOUs, municipals, and rural electric cooperatives to offer standardized interconnection agreements for customer-owned renewable generation. Net-metering allows a customer to offset customer electric consumption by sending customer-generated renewable energy back to the grid. The amount of the net-metering credit is determined by tariff.

In addition, House Bill 7135 amended FEECA to emphasize customer owned "demand-side renewable energy systems";²⁵ it defined and encouraged the development of "demand-side renewable energy" by requiring the FPSC to adopt appropriate goals;²⁶ it amended the criteria to be considered in the goal setting process (discussed below); and it authorized financial rewards and penalties to IOUs regulated by the FPSC related to achieving their goals.²⁷ Section 366.92(3), F.S., was amended to provide the FPSC with some guidance about which energy efficiency test to use when setting goals, requiring the FPSC to evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures

and customer side renewable energy systems. Specifically, the FPSC must consider:

(a) The costs and benefits to customers participating in the measure;

(b) The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions;

(c) The need for incentives to promote both customer-owned and utility

owned energy efficiency and demand-side renewable energy systems; and

(d) The costs imposed by state and federal regulations on the emission of greenhouse gases.²⁸

Cost-Effectiveness Tests

Rule 25-17.0021, F.A.C., requires the FPSC to establish numerical goals for each of the utility stakeholders as defined by Section 366.82(1), F.S., at least once every five years. The burden is on the utility to propose goals for the 10-year period as well as 10-year projections of the total, cost-effective, winter and summer peak demand ("MW") and annual energy ("MWh") savings reasonably achievable through DSM for residential and commercial/industrial classes.²⁹ Section 366.82(3), F.S., and Rule 25-17.008, F.A.C., which incorporates the FPSC's Cost Effectiveness Manual, broadly outline the types of cost-effectiveness tests used in Florida for evaluating DSM measures. Section 366.82(3), F.S., does not specify or require a single cost-effectiveness test and the FPSC's Cost Effectiveness Manual requires the Participants Test (defined below) be used to measure the impact of a conservation measure or program on participating customers.³⁰

The five most common DSM cost-effectiveness tests are as follows: (1) the Ratepayer Impact Measure test or RIM test; (2) the Total Resource Cost test or TRC test; (3) the Participant Cost Test or PCT test; (4) the Program Administrator Cost Test or PACT test;³¹ and (5) the Societal View Test or SCT test. Not all cost-effectiveness tests are required to be evaluated in Florida.

The point of this article is not to go in-depth into these five principle cost-effectiveness tests, opine which test is better for setting DSM goals, or discuss which test or combination

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thereof should be used in Florida. There are many online resources that will give the reader an overview of the pros and cons of the various cost-effectiveness tests as well as the peak demand (MW) and annual energy (MWh) savings projected to result from those tests. In addition to online resources, the pre-filed testimonies of the utility and intervenor stakeholders filed in the 2009 and 2014 DSM proceedings and in the upcoming 2018 DSM proceedings will provide the reader with ample information on the merits of the various DSM cost-effectiveness tests available.

In the 1990s, the PCT, RIM, and TRC tests were evaluated in Florida, but goals were established using the PCT and RIM tests.³³ The FPSC stated in part: “We find that goals based on measures that pass TRC but not RIM would result in increased rates and would cause customers who do not participate in a utility DSM measure to subsidize customers who do participate. Since the record reflects that the benefits of adopting a TRC goal are minimal, we do not believe that increasing rates, even slightly, is justified.”³⁴

After the 2008 amendment of FEE-CA, the utilities have continued to evaluate DSM measures using the PCT (or Participants), RIM, and TRC tests.³⁵ In the 2009 proceeding, the FPSC concluded that it was required to evaluate the cost-effectiveness of DSM conservation measures and programs using (1) the PCT, (2) the TRC, and (3) the RIM tests,³⁶ but that parties were allowed to provide additional data for cost-effectiveness reporting.³⁷ In 2014, the FPSC reaffirmed its position that the RIM and TRC tests fulfill the requirements of Section 366.82(3)(b), F.S.,³⁸ but stakeholders can use other tests to evaluate the cost-effectiveness of efficiency measures.

Going forward, in the 2019 goal setting proceeding, one can reasonably expect the utility stakeholders to evaluate efficiency measures using the PCT, TRC, and RIM tests, but to advocate for conservation goals similar to the ones established in 2014. The intervenor stakeholders will likely propose conservation goals based upon TRC and perhaps the

Test	Acronym	Key Question Answered	Summary Approach	Evaluated in Florida?
Ratepayer Impact Measure Test (aka - Rate Impact Measure Test)	RIM	Will utility rates increase?	Comparison of administrator costs and utility bill reductions to supply-side resource costs	Yes
Total Resource Cost Test	TRC	Will the total costs of energy in the utility service territory decrease?	Comparison of program administrator and customer costs to utility resource savings	Yes
Participant Cost Test (aka - Participant Test)	PCT	Will the participants benefit over the measure life?	Comparison of costs and benefits of the customer installing the measure	Yes
Program Administrator Cost Test (aka – the Utility Cost Test)	PACT	Will utility bills increase?	Comparison of program administrator costs to supply-side resource costs	No
Societal Cost Test	SCT	Is the utility, state, or nation better off as a whole?	Comparison of society’s costs of energy efficiency to resource savings and non-cash costs and benefits	No

Source: U.S. EPA’s Understanding Cost-Effectiveness of Energy Efficiency Programs, citing California’s Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects.³²

PACT and SCT tests, and will propose goals that are higher than those proposed by the utilities.

Three stages of energy efficiency measure analysis

Energy efficiency measures are analyzed in three stages: (1) technical potential; (2) economic potential; and (3) achievable potential. Broadly described, the technical potential study estimates what is the theoretical maximum for each energy efficiency measure.³⁹ The technical potential therefore is a theoretical construct which represents an upper limit of obtainable energy savings from a measure. Technical potential is what is technically feasible, regardless of cost, normal replacement schedules, or whether customers will accept or adopt the measure.⁴⁰ Section 366.82(3), F.S., requires the FPSC to consider the full technical potential of all demand and supply side energy efficiency measures.⁴¹

The economic potential is developed using the technical potential as a starting point and then applies multiple economic tests and screenings. “While technical potential represents the state of all possible improvements being made, economic

potential reflects only those improvements that make economic sense using a cost-effectiveness test.”⁴² The economic potential also considers what is cost effective for a supply-side energy resource alternative (i.e., energy generation).⁴³

Achievable potential describes the potential energy savings that could be achieved, given real-world constraints which includes market and programmatic barriers. To develop the achievable potential goal, the FPSC uses three steps: (1) initial cost-effectiveness screening, (2) determination of incentive levels, and (3) development of achievable potential for six separate scenarios.⁴⁴

At the initial cost-effectiveness screening stage, the various cost-effectiveness tests are applied to the energy efficiency measures, and none of the tests include any incentives that could be provided to participating customers. In order to be considered, a measure must pass both the PCT and either the RIM or TRC tests. The PCT (or Participants Test) takes into consideration incentives offered to customers.⁴⁵ At the incentive level stage, incentive levels are adjusted so

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that a measure passes the PCT even though it did not pass at the initial screening.⁴⁶ However, adding incentives to a measure so it passes the PCT can cause it to fail one or both of the RIM or TRC tests.

During the scenario analysis stage after the incentive level stage, utilities can develop a low, mid, and high incentive scenario for the RIM and TRC cost effectiveness test. In 2009, these six scenarios formed the basis of the achievable potential energy savings reflected in goals proposed by the utilities.⁴⁷ In the end, the results of the energy efficiency scenario analyses are considered by the FPSC when establishing goals for the FEECA utilities.

Free Riders

One interesting issue to be decided by the FPSC in the 2019 goal setting proceeding will be the issue of free riders, and whether and how they should be considered.⁴⁸ While free riders may conjure up images of *Easy Rider* (1969)⁴⁹ or hobos hitching lifts on freight trains, it is a simple economic concept. A free rider is "... a customer who receives an incentive for a measure he/she would have installed even without receiving a financial incentive from a utility-sponsored program."⁵⁰ It is assumed that individual customers will act in an economically reasonable manner and will invest in energy efficiency measures that will pay for themselves in less than two years.⁵¹ However, screening out these measures based on the concept of avoiding free ridership assumes the following: (1) customers are aware of the energy efficiency measures with quick paybacks, (2) customers will act rationally and in their economic best interest, and (3) customers have the upfront capital to invest in these measures.⁵² Regardless of one's opinion on free riders, Rule 25-17.0021(3), F.A.C., requires that free riders be considered. Whether free riders are screened-out at a two-year payback or over a different payback period is for the FPSC to determine.

Since 1994,⁵³ the FPSC has consistently approved a two-year payback screening criterion in its goal-setting proceedings to address free riders.⁵⁴ Apart from the 2009 goal

setting proceedings, energy efficiency measures with a payback period of two years or less were screened out at the Technical Potential stage and not considered in the goal setting process.⁵⁵

The issue of free riders is an important philosophical policy decision because of the substantial amount of energy savings (MWh) associated with measures screened out as free riders. In 2009, the FPSC found that technical potential energy savings for all the utility stakeholders associated with two-year payback measures was approximately 17,064.2 GWh.⁵⁶ The residential two-year payback measures included in the 2009 goals were not evaluated for their economic potential or achievable potential. Further, achievable potential savings associated with the two-year payback measures included in 2009 would be significantly different in 2019 because of changes in building codes, advances in energy efficiency, and other such advances that have occurred since then. In order to recognize some of the potential energy savings associated with two-year payback measures in the 2009 DSM goals, the FPSC included the projected energy savings associated with the top-ten residential energy savings measures screened out by the two-year payback criterion at the technical potential stage, and added that energy savings to the maximum achievable E-TRC (GWh) goals it approved for the utilities.⁵⁷

In the 2019 proceeding, utility stakeholders will likely seek to continue utilizing a two-year payback screen to address free riders. Environmental intervenor stakeholders will likely advocate for a reduction to a one-year payback or the elimination of this screen as a means to increase energy efficiency goals. It is unknown what positions other intervenor stakeholders would take, but the intervenor stakeholders' positions would likely be similar to the positions taken in the 2014 goals proceeding.

Conclusion

In concluding the first part of this two-part A Brief History of FEECA, one can readily understand the important role the FPSC plays in establishing energy efficiency goals to promote the reduction in both electric demand (MW) and energy savings

(MWh) for the next ten years. Part two of this series will focus on FEECA goals established by the FPSC, starting with 1980 but focusing primarily on the conservation goals established during the 2009 and 2014 goal setting proceedings.

About the author: Erik L. Sayler actively participated in the 2009 and 2014 goal setting proceedings while serving with the Florida Public Service Commission and Florida Office of Public Counsel. Currently, he is a senior attorney with the Florida Department of Agriculture and Consumer Services. The information in this article was obtained from publicly available documents, and any opinions expressed herein are his alone and not that of his current or former employers.

Endnotes

1 <http://www.psc.state.fl.us/Files/PDF/About/Decisions/FEECAprimer2014.pdf>

2 FEECA goals are set for a 10-year period but are revised after 5 years.

3 In 1996, FEECA was amended so that a majority of the municipal and all the rural electric cooperatives became exempt from the FPSC's FEECA goal setting proceeding. Municipal and rural electric cooperatives implement energy efficiency programs to reduce energy consumption in order to reduce peak load or avoid building or buying additional generation.

4 FPUC is a non-generating, investor owned utility with customers in Marianna and Fernandina Beach, FL.

5 In the 2014 FEECA goals proceeding, the non-utility stakeholders included Environmental Defense Fund (EDF), FIPUG, National Association for the Advancement of Colored People (NAACP), PCS Phosphate-White Springs, SACE, Sierra Club, Wal-Mart Stores and Sam's Club East, OPC, and FDACS. See Order No. PSC-14-0696-FOF-EU, issued December 16, 2014.

6 Open electric dockets are available at <http://www.psc.state.fl.us/ClerkOffice/DocketList?docketType=E>

7 Section 3(b)(2), Florida Constitution.

8 The ECCR clause is an annual proceeding before the FPSC whereby these costs are reviewed and recovered. Public filings and program information in the 2018 ECCR clause are available at <http://www.psc.state.fl.us/ClerkOffice/DocketDetail?docket=20180002> (last checked June 19, 2018)

9 Energy efficiency programs consist of a bundle of energy efficiency measures that pass one or more cost-effectiveness tests. As long as the overall program is cost-effective, one or more of the individual measures may be non-cost-effective.

10 Id.

11 Demand reduction (MW) and energy savings (MWh) are two different concepts but for purpose of this article, goals to be established have been lumped under the broad umbrella setting energy efficiency goals.

12 Information on scheduling an energy audit can be obtained from your electric provider's

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website. In addition, FDACS Office of Energy offers this online program “My Florida Home Energy” available at <http://www.myfloridahomeenergy.com/>.

13 Section 366.82(11), F.S., also states that the FPSC may extend energy audits to some or all commercial customers.

14 Chapter 80-65, section 5, Laws of Florida.

15 Chapter 2008-227, section 39, Laws of Florida.

16 Note: Section 366.8260, F.S., Storm-recovery financing, was enacted in 2005 (Chapter 2005-107, section 1, Laws of Florida). While located within FEECA, it does not relate to the setting energy efficiency conservation goals.

17 See FPSC Annual Report entitled: “Activities Pursuant to the Florida Energy Efficiency and Conservation Act”, February 2009 at 8, available at

<http://www.psc.state.fl.us/Files/PDF/Publications/Reports/Electricgas/AnnualReport/2009.pdf>. Annual FEECA Reports from 2006 to 2017 are available at <http://www.psc.state.fl.us/Publications/Reports#>, but requires some navigation to locate.

18 See <http://www.publicpower.com/stats/Florida%20Electric%20Utilities%2010%20Ownership.xls> available at <http://publicpower.com/florida-electric-utility-statistics/>

19 Id.

20 Id., see also Section 366.82(1), F.S.

21 FPSC FEECA “Activities Pursuant to the Florida Energy Efficiency and Conservation Act”, December 2017 at 5, available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/Electricgas/AnnualReport/2017.pdf>

22 See Chapter 2008-227, Laws of Florida. House Bill 7135 touched on many other policy areas not directly related to FEECA.

23 Section 377.6015, F.S. This office was subsequently renamed Office of Energy and transferred to the Florida Department of Agriculture and Consumer Services in 2011. See <https://www.freshfromflorida.com/Divisions-Offices/Energy>. Pursuant to Section 377.6015(2)(g), DACS is a party to the FPSC FEECA goals proceeding.

24 The FPSC submitted a draft RPS rule, but it was not ratified. Section 366.92, was subsequently amended to delete the RPS language.

25 Section 366.81, F.S. added “demand-side renewable energy systems” to the Legislative findings and intent.

26 Section 366.82(1)(a) and (2), F.S., but limited customer renewable energy systems to 2 megawatts or less.

27 Section 366.82(8) and (9), F.S. To date, no IOU has received a financial reward or penalty pursuant to these subsections.

28 Section 366.82(3), F.S.

29 Rule 25-17.0021(3), F.A.C.

30 Order No. PSC-09-0855-FOF-EG, at 11-13, issued December 30, 2009, in Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, 080413-EG.

31 PACT is also the Utility Cost Test (UTC) in some literature since the program administrator is the utility.

32 Understanding Cost-Effectiveness of Energy Efficiency Programs: Best Practices, Technical Methods, and Emerging Issues for Policy-Makers, published by the U.S. Environmental

Protection Agency (November 2008), available at <https://www.epa.gov/sites/production/files/2017-06/documents/understanding-cost-effectiveness-of-energy-efficiency-programs-best-practices-technical-methods-and-emerging-issues-for-policy-makers.pdf>

33 See e.g., Order No. PSC-94-1313-FOF-EG, issued October 25, 1994, in Docket No. 930548-EG.

34 Order No. PSC-94-1313-FOF-EG at 22 available at <http://www.psc.state.fl.us/library/filings/1994/10830-1994/10830-1994.pdf>

35 Order No. PSC-09-0855-FOF-EG at 13-14; Order No. PSC-14-0696-FOF-EU at 12-13.

36 Order No. PSC-09-0855-FOF-EG at 13.

37 Order No. PSC-09-0855-FOF-EG at 12. In 2009, some of the utility stakeholders included a sensitivity for the price of carbon as it was anticipated the U.S. Congress would pass a carbon-tax of some sort, hence the reference to E-RIM and E-TRC throughout that 2009 Order to include the benefits from avoided carbon compliance costs.

38 Order No. PSC-14-0696-FOF-EU at 12-13.

39 Definitions of Technical, Economic, and Achievable Potential, available at <https://www.energy.gov/eere/slsc/energy-efficiency-potential-studies-catalog> (last visited July 13, 2018)

40 Order No. PSC-09-0855-FOF-EG at 6.

41 “In developing the goals, the commission shall evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including

demand-side renewable energy systems...”

42 Order No. PSC-14-0696-FOF-EU at 34.

43 Definitions of Technical, Economic, and Achievable Potential, available at <https://www.energy.gov/eere/slsc/energy-efficiency-potential-studies-catalog> (last visited July 13, 2018)

44 Order No. PSC-09-0855-FOF-EG at 8.

45 Order No. PSC-14-0696-FOF-EU at 13.

46 Order No. PSC-09-0855-FOF-EG at 10.

47 Order No. PSC-09-0855-FOF-EG at 10.

48 Rule 25-17.0021(3), F.A.C., requires consideration of free riders.

49 See <https://www.imdb.com/title/tt0064276/>

50 Order No. PSC-14-0696-FOF-EU at 23.

51 Order No. PSC-14-0696-FOF-EU at 23.

52 This might be difficult for low income and renter ratepayers.

53 Order No. PSC-94-1313-FOF-EG when the FPSC recognized the use of a two-year payback period to screen-out free riders.

54 Order No. PSC-14-0696-FOF-EU at 23-24.

55 Order No. PSC-14-0696-FOF-EU at 23-24.

56 Order No. PSC-09-0855-FOF-EG at 9, illustrative table showing the GWh associated with maximum achievable E-TRC plus GWh associated with two-year payback measures.

57 Order No. PSC-09-0855-FOF-EG at 9-10.



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Florida State University College of Law Fall 2018 Update

by Jennifer Walsh, Environmental Program Associate

This column highlights recent accomplishments of our College of Law alumni and students. It also features several of the programs the College of Law is hosting this fall semester. We hope Section members will join us for one of more of our future programs.

Recent Alumni Accomplishments



BARGER



BARNEBEY



BONIFAY



MAURER

- **Colin Adams** is now Supervisory Attorney Adviser with the Social

Security Administration's Office of Hearings Operations in New York City. In his new role he serves as the first line supervisor of a group of attorney-advisers, paralegal analysts, and technicians.

- **Erika Barger** is now serving as of Chief Compliance Officer at Holland Financial, Inc. In May, she was commissioned as a Kentucky Colonel by Governor Matthew Bevin and has joined the Honorable Order of Kentucky Colonels, a voluntary philanthropic organization. Additionally, she has received an appointment as the Florida State Chairman of the Elks National Foundation Certificates Committee for the Florida State Elks Association where she coordinates fundraising efforts with 14 district chairmen and 96 Elks lodges throughout the State of Florida.
- **Mark P. Barnebey**, of Blalock Walters, P.A., has been selected to the 2018 Florida Super Lawyers list. Barnebey is Florida Board Certified in City, County & Local Government law and has over three decades experience in the

areas of local government, land use and real estate law. He represents a variety of governmental bodies, including counties and municipalities, special districts, and community development districts, and land use clients.

- **Cecelia Bonifay**, chair of Akerman LLP's Land Use and Development Practice, was recognized by *The Legal 500* as among the best lawyers in the Real Estate and Construction – Land Use/Zoning category.
- **Jon Harris Maurer** was recently elected the Chair-Elect of the Environmental and Land Use Law Section of the Florida Bar Annual Meeting. He continues his legal practice while joining Equality Florida, the state's largest LGBTQ advocacy organization, as its Public Policy Director.
- **Christine Senne** is now serving as the President of the Highlands County Bar Association. She also was selected as a fellow for Class VI of the Florida Bar Leadership Academy. She continues to have

continued...

Ethics Questions?

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FSU 2018 UPDATE

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her own law firm, Senne Law Firm, P.A., and serves as Of Counsel to Manson Bolves Donaldson Varn, P.A.

Recent Student Achievements

- **Michael Melli** has multiple notes and articles that have recently been accepted for publication. *Quasi-International Climate Organizations: Cross-Border Subnational Organizations in American Law*, will be published in 28 J. TRANS-NATL. L & POL'Y __ (forthcoming 2019); and *The Successful Congressional Challenge of Executive Non-Enforcement*, will be published in 31 ST. THOMAS L. REV. __ (forthcoming 2018).
- **Joshua Pratt** has accepted a one-year federal clerkship with Judges Fitzwater and Reno of the Northern District of Texas.

Fall 2018 Events

The College of Law will be hosting a full slate of environmental and administrative law events and activities this fall semester.

The Not-So-Secret Science behind Air Pollution Regulation

Dr. Christopher Holmes, Assistant Professor, Florida State University Department of Earth, Ocean, and Atmospheric Science, presented his lecture titled, "The Not-So-Secret Science behind Air Pollution Regulation," on September 13. A recording of his lecture is available [here](#).



Dr. Christopher Holmes

Environmental Law Externships Luncheon

Every year the Externships office hosts the Environmental Law Externship Luncheon for students interested in externship and volunteer opportunities in environmental and land use law. This year's luncheon was held on September 20.

Individuals who participated, and their organizations, include: **Janet Bowman**, The Nature Conservancy; **Peter Cocotos**, NextEra Energy/Florida Power & Light; **Jason Hand**, Florida DEP Office of General Counsel; **Anne Harvey Holbrook**, Save the Manatee Club; **Bonnie Malloy**, Earthjustice; **Louis Norvell**, City of Tallahassee Attorney's Office; **Tyler Parks**, Florida Fish and Wildlife Conservation Commission; **Robert Summers**, Florida Department of Agriculture; **Herbert Thiele**, Leon County Attorney's Office; and **Jessica Varn**, DOAH.



Hog Farming: Past, Present, and Future

This panel discussion, organized by Professor Shi-Ling Hsu, will explore some of the intertwined economic, environmental and ethical issues surrounding hog farming. Participants include **Andy Curliss**, CEO, North Carolina Pork Council; **Kelsey Eberly**, Staff Attorney, Animal Legal Defense Fund; **Laurie Ristino**, Visiting Scholar, George Washington University Law School; and **Kelly Zering**, Professor and Extension Specialist, North Carolina State University College of Agriculture



CURLISS



EBERLY



RISTINO



ZERING

and Life Sciences. This panel will be held on Wednesday, October 3 at 3:15 P.M. in Room 310.

Fall 2018 Environmental Distinguished Lecture

Nina Mendelson, Joseph L. Sax Collegiate Professor of Law, The University of Michigan Law School, will present our Fall 2018 Environmental Distinguished Lecture. Professor Mendelson's lecture will begin at 3:30 P.M. on Wednesday, October 24 in Room 310 and will be followed by a reception in the College of Law Rotunda.



MENDELSON

Environmental Law Certificate Lecture

Christine Klein, Chesterfield Smith Professor and University of Florida Research Foundation Professor, University of Florida Levin College of Law, will present an environmental law certificate lecture this fall. Professor Klein's lecture will begin at 12:30 P.M. on Wednesday, November 7 in Room 331.



KLEIN

Information on upcoming events is available at <http://law.fsu.edu/academics/jd-program/environmental-energy-land-use-law/environmental-program-events>. We hope Section members will join us for one or more of these events.

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MEMBERSHIP OPTIONS / DUES

The Florida Bar dues structure does not provide for prorated dues; your Section dues cover the period from July 1 to June 30. Your application and check should be mailed to The Environmental and Land use Law Section, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300.

I AM... (check one)	MEMBERSHIP OPTION	ANNUAL DUES
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	AFFILIATE – Professionals and Faculty	\$50
	AFFILIATE – Students	\$20

I understand that all privileges accorded to members of the section are accorded affiliates and law students, except that affiliates may not advertise their status in any way, and neither affiliates nor law students may vote, or hold office in the Section or participate in the selection of Executive Council members or officers.

CERTIFICATION: I hereby certify that I have never been denied admission to any bar, or been the subject of any proceeding questioning my moral character, disbarred from any legal bar, convicted of a felony, expelled from any University or Law School, or investigated for fraud, misappropriation or mismanagement of funds.

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