

Climate Change, Sustainable Development, and Ecosystems Committee Newsletter

Vol. 13, No. 2

A joint newsletter of the Climate Change, Sustainable Development, and
Ecosystems Committee and the Alternative Dispute Resolution Committee

May 2010

INTRODUCTION

Daniel Preston Dozier

Dan Baum

***Co-Editors, Alternative Dispute Resolution
Committee Newsletter***

This newsletter issue, the second joint effort by the Alternative Dispute Resolution Committee, chaired by Edna R. Sussman, and the Climate Change, Sustainable Development, and Ecosystems Committee, co-chaired by Mary Ellen Ternes and Frank Friedman, is devoted to how alternative dispute resolution (ADR) techniques, especially stakeholder involvement processes, can assist and have assisted renewable energy facilities to address local and stakeholder concerns. The common perception (and often the reality) of citizen reaction to any such project is defined by the acronyms that we've all come to know: NIMBY (not in my backyard), CAVE (citizens against virtually everything), BANANA (build absolutely nothing anywhere near anyone), LULU (locally undesirable land use), NOPE (not on planet earth), and NIME (not in my election year). But are citizen reactions really that simple and negative? Are there effective techniques to answer rational citizen concerns? Can ADR be used to promote the reduction of GHG emissions?

This issue of the ABA Section of Environment, Energy, and Resources (SEER) ADR newsletter is proof of how well-designed stakeholder involvement programs can facilitate the development of important projects that provide overall public benefits. A combination of

good projects, well thought out and managed public and stakeholder involvement, and effective public outreach and communication often results in little or no public opposition and frequently leads to significant public support.

This newsletter provides several examples of such well-designed stakeholder involvement programs and an interesting transcript of a discussion, "Getting Renewables Projects Built: Overcoming the Barriers, Avoiding and Resolving Opposition and Disputes."

The first paper, "Bluewater Wind Nurtures Partnerships with Delaware Citizens," by Robert Propes, project director for Bluewater Wind, describes Bluewater's project proposal to build wind turbines off the Delaware coast. As Propes writes, "We learned early on that there is no substitute for frequent community interaction when it comes to proposing large scale projects, especially ones employing cutting edge technology on publicly owned lands." This paper describes the intensive two-year process Bluewater Wind engaged in to inform, engage, and educate citizens.

The second paper, "What's in Your Toolbox? Creative Community Outreach Processes Refurbish Existing Tools," is by Mikaela Engert, city planner for Keene, New Hampshire. It describes how the leadership of the city of Keene decided to scrap the usual process it used to make land use decisions. Most residents are very familiar with—and skeptical of—the usual "public involvement" and outreach programs employed by local governments. This is the story of how Keene

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shifted from the traditional “blue ribbon” committee approach to a much more collaborative and transparent set of options to enable broad public involvement.

In brief, Keene used extensive public outreach in multiple venues, creative media, and guerilla marketing, and some traditional outreach techniques, such as a citizens’ steering committee to take the process of obtaining public opinion to the streets. This article outlines how that process worked and provides public involvement practitioners with some interesting examples—including the use of Facebook and MySpace technology—of how Keene residents’ views were solicited.

The third article, “Fixing the U.S. Transmission Grid *with* the Public’s Support,” by Christopher G. Kenny, president, STAR Group, LLC, surveys innovative ways electric utilities are demonstrating to citizens and regulators the public benefit and need for new electrical transmission projects. The STAR Group (www.stargroupconsulting.com) works with utilities on proactively engaging the public on major utility investment programs such as transmission lines and power plants. STAR Group’s Utility Search Conference® process has proven to be one effective method for proactively engaging the public.

The fourth paper is the transcript from a very interesting and educational webinar organized by the Alternative Dispute Resolution Committee of SEER entitled “Getting Renewables Projects Built: Overcoming the Barriers, Avoiding and Resolving Opposition and Disputes.” The panel was organized to inform the discussion about how the development of a public perception as to the many long-term benefits to society of renewable projects can be instrumental in facilitating the growth of renewables, and how carefully designed processes can be utilized to overcome the barriers and avoid or minimize opposition and delays that may arise from community opposition, regulatory thickets, and construction disputes. The webinar was organized by John Gullace of Manko, Gold, Katcher & Fox, LLP, and moderated by Edna Sussman of Sussman ADR LLC. Panel participants included

Commissioner Marc Spitzer of the Federal Energy Regulatory Commission; David Nash of McMahon DeGulis LLP; Bart Cassidy of Manko, Gold, Katcher & Fox, LLP and Brad Campbell of Clean Legacy, LLC.

The fifth article, “Community Planning Assistance Programs: Using Alternative Dispute Resolution to Address Climate Change,” by Kristian Kofoed and Paula Reeves discusses how the Washington (state) chapter of the American Planning Association is using ADR techniques to address climate change and sustainability by using a mediation-based approach to collaborative governance in community planning projects. The mediation model, this article suggests, is more effective than other planning approaches because it prevents the “policy paralysis” that may seem inevitable to overwhelmed small-town decision makers and planners.

The sixth and final article, “Bio-sequestration Law and Policy Conference,” by Christopher Carr, of counsel at Vinson & Elkins, LLP, is a summary of the recent conference that the Climate Change, Sustainable Development, and Ecosystems Committee cosponsored with the Columbia Law School Center for Climate Change Law. Bio-sequestration is gaining recognition as an important mechanism for addressing climate change by reducing atmospheric carbon dioxide. However, some land use changes such as deforestation *reduce* bio-sequestration, harming impacted ecosystems and undermining this promising tool to control climate change. The article discusses the excellent presentations made by the various experts who spoke at the conference.

BACK ISSUES

Back issues of this newsletter
can be found at

[www.abanet.org/environ/committees/
climatechange/newsletter/archiveslist.html](http://www.abanet.org/environ/committees/climatechange/newsletter/archiveslist.html)

BLUEWATER WIND NURTURES PARTNERSHIPS WITH DELAWARE CITIZENS

Robert Propes

In August 2006, Bluewater Wind was invited to Legislative Hall in Dover, Delaware, to learn about a solicitation for a long-term power purchase agreement that had been drafted by Delmarva Power & Light in response to legislation passed by the Delaware General Assembly that summer. At the meeting, Bluewater Wind, a New Jersey-based wind energy company, announced that it was interested in participating in the solicitation and proposed to supply Delmarva Power with energy from a wind park located off the Delaware coast. It wasn't known then, but it was about to embark on a two-year odyssey and one of the most publicly debated energy projects the state had ever seen.

The solicitation called for energy to be supplied to Delmarva Power for its residential and small commercial customers from an in-state facility powered by conventional (coal, oil, natural gas) or renewable (solar, wind, methane) fuel. Seated in Legislative Hall that August day were several potential bidders, including Conectiv Energy, Delmarva Power's sister company, and NRG, which owned an existing coal-fired plant in Sussex County, Delaware. Bluewater Wind quickly realized that the path to victory was not going to be an easy one, especially as an outsider proposing what could be the nation's first offshore wind energy facility.

At the time, the Cape Wind project in Massachusetts was going into its fifth year of intense public debate and permitting, battling a strong and well-funded group of local citizens who had attempted to block the project at every step of the way. With this experience in mind, Bluewater Wind knew it had to work hard to earn the trust and respect of Delaware's citizens through a broad and deep community outreach effort that was rooted in transparency and honesty. This was not a new philosophy for the company; in fact, it had taken a similar approach when Arcadia Wind Power, a predecessor company founded by the president of

Bluewater Wind, developed the 181 megawatt Judith Gap wind farm project in Montana, and subsequently in New York where Bluewater Wind proposed its first offshore project. Bluewater Wind's philosophy is to encourage public involvement at the earliest stages of development to ensure that the project reflects the interests and values of the community. Its goal is to inform people about any actions related to its wind park and respond to any expressed concerns to the greatest extent possible.

Bluewater Wind learned early on that there is no substitute for frequent community interaction when it comes to proposing large-scale projects, especially ones employing cutting edge technology on publicly owned lands. Over the next several months, Bluewater Wind's outreach efforts would provide thousands of Delawareans with information on site selection, construction, operation and maintenance, environmental protection, and decommissioning.

At the outset of the bid process, Bluewater Wind learned that the primary contenders for the long-term energy supply contract would be Conectiv Energy, which had bid a combined cycle gas turbine plant, and NRG, which had bid an integrated gasification combined cycle coal plant. These two companies had been operating generation facilities in Delaware for several years, and would have the capital and political clout to defend their business interests from outsiders like Bluewater Wind. Fortuitously, just weeks prior to the first bid meeting, the University of Delaware had conducted a survey to investigate the receptivity of Delawareans to offshore wind energy, and found a high level of support, particularly in the beach community. The strong citizen support would be Bluewater Wind's strength and, ultimately, one of the primary factors that enabled the company to secure the first power purchase agreement for an offshore wind park in the United States.

Recognizing the importance of having a local individual represent the interests of the company, Bluewater Wind hired someone who was familiar with the state's environmental organizations, regulatory officials, and politicians to work full-time on community outreach efforts. This person identified numerous community,

environmental, business, and political groups who might be interested in the project, and offered to arrange meetings with them to answer any questions they had. As is the case with many of these groups, they were generally eager to identify speakers for their regular meetings, and typically welcomed Bluewater Wind's request to provide their members with a presentation.

Through these meetings Bluewater Wind introduced hundreds of community members to detailed information about offshore wind parks. At each meeting, questions about offshore wind parks were answered immediately or, when necessary, researched and responded to quickly.

Given the high level of public interest in the bid process, the sheer magnitude of building a new generation facility, and the complexity of comparing the bid prices for multiple technologies with very different performance outputs over a 20- to 25-year contract, Bluewater Wind also met with every state and local politician responsible for communities in proximity to the project, often more than once, to answer questions they and their constituents had throughout the bid process.

Bluewater Wind also sponsored and participated in several local community festivals as a way to reach hundreds and sometimes thousands of individuals during the course of a day. The company developed a booth, equipped with informational materials, and technically accurate visualizations of what the wind park would look like if viewed from different vantage points along the Delaware coast. These visualizations became one of the most powerful tools used to respond to people's interest in what the wind park would look like situated 13 miles from shore. The typical response to this visualization of the wind park as depicted on a perfectly clear day was, "You can hardly see them," or, "I don't know why people are worried about this view." Surprisingly, this last statement proved to be inaccurate; the vast majority of people were not concerned with the appearance of the wind park, and were only expressing what they and Bluewater Wind had initially thought would be the biggest issue. Many people commented that they

thought the wind turbines were elegant and majestic, and asked why the company didn't consider placing them closer to shore.

Another important outreach tool was a 12-minute video developed and used for presentations, and as a handout to the general public. Bluewater Wind contracted a professional filmmaking studio to develop the video to introduce the general public to offshore wind and to the plans for bringing an offshore wind park to Delaware. The video discussed the environmental and economic benefits associated with offshore wind as a renewable, emission-free energy resource. Danish officials and leading Danish environmentalists appear in the video and shared their experiences with offshore wind. This video is posted on the company Web site at www.bluewaterwind.com.

The initial round of the bid process lasted six months, with Bluewater Wind selected as one of three bidders invited to enter into a formal negotiation with Delmarva Power for a long-term energy supply contract. The second phase of the process spanned a period of 10 months with on-and-off, and often intense, negotiations between the two companies, facilitated by a state-appointed mediator. Over the course of 16 months, starting when the RFP was formally issued on November 1, 2006, thousands of citizen letters were submitted to the Delaware Public Service Commission in favor of Bluewater Wind. Hundreds of citizen witnesses testified on Bluewater Wind's behalf and hundreds more sat in the audience of many public hearings that were held throughout the decision-making process. Virtually no opposition to the wind project was expressed, other than several comments by those with more direct interests in one of the other bidders. Ninety-five percent (95%) of the letters submitted to the Delaware PSC were in support of the Delaware offshore wind park.

On November 20, 2007, during a hearing convened by the four state agencies, Delaware PSC Chairwoman Arnetta McRae had this to say about the public participation process:

With that said, let me just get into a few preliminary matters. I note that there has been very keen interest in this docket. And frankly, I

really appreciate the public engagement around our path forward. *I have served on the Commission for many years, and I, frankly, can't recall a time when I have seen this much public response to the activities we are involved in.* (Emphasis added.) So, that is very encouraging. I do know that since our last proceeding in this matter, we received something in the neighborhood of 2,000 comments from various members of the public, as well as organizations. I must say, that's quite a lot to digest.

Bluewater Wind learned that the project was favored by so many citizens as compared with the competing bidders for several reasons: it was offering clean, renewable, domestically produced energy; good paying union jobs during the construction and operation of the wind park; and long-term price stability in a highly volatile energy market. These were the core attributes of the offshore wind park that resonated with Delawareans, and moved dozens of them to emerge as leaders of larger formal and informal citizen groups who would come to aggressively support Bluewater Wind's bid.

One of the more unique ideas that Bluewater Wind employed during the public bid process was to establish "Another Business for Wind" program to help coastal businesses demonstrate their support for offshore wind. Many offered to put "Another Business for Wind" stickers on their storefront windows; businesses also offered to place Bluewater Wind handouts in their stores for their customers, another way to get the message to the general public. In addition, the company provided participating businesses with updates at in-person meetings to reinforce the idea that they were an integral part of the siting and development process. Bluewater Wind also held periodic special educational events for businesses participating in the "Another Business for Wind" program, like hotels, whose in-state and out-of-state guests wanted to know more about the proposed offshore wind park.

Bluewater Wind recognizes that securing a preliminary project agreement was only the first step, among many that will need to be taken over the multiyear effort to

develop, permit, and construct Delaware's offshore wind park. The company will continue to meet regularly with citizen groups, participate in community events, and find novel ways to engage the public as partners in the development process.

Bluewater Wind remains committed to communicating its message to all segments of the public, including future leaders. It believes that sharing information about offshore wind with students and teachers and its close relationship with the environment and social sciences is a fundamental aspect of the public participation process. In addition to Delaware's institutions of higher education, Bluewater Wind has developed an educational outreach program to bring information about the technology of wind power to K-12 students. Its educational outreach program brings grade-level appropriate information to local school children with interactive sessions that feature hands-on activities, video presentations, and pencil-and-paper activities.

In an effort to keep interested members of the public and stakeholders abreast of the latest developments regarding its offshore wind park projects, Bluewater Wind has developed an electronic newsletter. As Bluewater Wind acquires contact information, it is put into a private database that is never shared with outside organizations. The periodic newsletters are an important tool to keep constituents informed of emerging issues and project developments. One advantage of an electronic newsletter is that it can be developed, and distribute information very quickly, often the same day that information about the wind park is released.

While Bluewater Wind still has a long road ahead during the permitting phase of the project, it will continue to engage the public regularly to build upon the relationships already established with business, community, and environmental leaders. Throughout the bidding process the general public demonstrated their ardent support for the offshore wind park time and time again, and Bluewater Wind is committed to honoring their loyalty by continuing to engage them through the completion of this project.

Robert Propes is *the Delaware project director, Bluewater Wind. He can be reached at rob@bluewaterwind.com.*

CALL FOR NOMINATIONS



The Section invites nominations for three new awards:

The Environment, Energy, and Resources Government Attorney of the Year Award will recognize exceptional achievement by federal, state, tribal, or local government attorneys who have worked or are working in the field of environment, energy, or natural resources and are esteemed by their peers and viewed as having consistently achieved distinction in an exemplary way. The award will be for sustained career achievement, not simply individual projects or recent accomplishments. Nominees are likely to be currently serving, or recently retired, career attorneys for federal, state, tribal, or local governmental entities.

The Law Student Environment, Energy, and Resources Program of the Year Award will recognize the best student-organized educational program or public service project of the year addressing issues in the field of environmental, energy, or natural resources law. Nominees are likely to be law student societies, groups, or committees focused on these three areas of law.

The State or Local Bar Environment, Energy, and Resources Program of the Year Award will recognize the best CLE program or public service project of the year focused on issues in the field of environmental, energy, or natural resources law. Nominees are likely to be state or local bar sections or committees focused on these practice areas.

Nominations for all three awards are due at the ABA Section office by May 25, 2010. The awards will be presented at the ABA Annual Meeting in San Francisco in August 2010. Award recipients should plan to be present at the award presentation.

**For more information, visit
www.abanet.org/environ/sectaward/**

WHAT'S IN YOUR TOOLBOX? CREATIVE COMMUNITY OUTREACH PROCESSES REFURBISH EXISTING TOOLS

Mikaela Engert

Designing, planning, and implementing a community outreach process has encompassed the same elements and utilized the same tools for decades. Large meetings, small group discussions, presentations, maps, appointed “blue ribbon” committees, discussion panels, and different types of analysis, the Internet, and written word are some common outreach mechanisms and tools applied to public outreach processes. The core elements of these processes have also remained the same: identifying community issues and stakeholders, devising guiding questions, and creating clear communication campaigns. However, as new ways of communicating have evolved, the tools and elements are adapting, taking on a different form applied in new contexts. The city of Keene, New Hampshire, engaging not only city residents but also those within the greater Monadnock region, has shifted from the traditional blue ribbon committee approach to a process that is collaborative and transparent, and provides multiple paths for community input through various means and public venues.

In 2008, city leadership made a decision to alter the way decision-making processes are designed and administered in Keene. The decision to identify and test a new public participation process was the result of a council and planning board commitment to update the community master plan, a long-term guidance document. This decision would result in a paradigm shift in civic-community relationships.

The previous *modus operandi* was to conduct community planning and policy decisions through an appointed committee—the blue ribbon committee—with public input provided at a public hearing to adopt the final document. Over the years, this process resulted in solid planning and policy formulation work with actionable recommendations for implementation. However, it also resulted in stagnation via leadership by a select few—the same people tended to be appointed to these committees. While this is not an uncommon scenario, and can be highly effective in

communities, community perception of civic leadership in Keene was deteriorating to an “us vs. them” mindset. In order to transform that perception, the public process to start the first phase of the plan update (creation of a community vision) included extensive public outreach opportunities, creative use of media, and guerilla marketing techniques, along with some traditional elements, such as the creation of a steering committee. The steering committee’s role in this process was not to do the work via many committee meetings in a room in city hall, as was past practice. Rather, its role would be to take the process to the community, communicate, and serve as a “spark plug” to encourage participation and to act as a sounding board for city staff as the process unfolded. The end goal: get as many people as possible from as many diverse backgrounds as possible to participate and inform the final outcome.

During the spring and early summer of 2008, participants gathered in a series of small group discussions, called “visioning conversations,” comprised generally of eight to ten people. The visioning conversations were the main component of the entire public process. Two rounds of visioning conversations were held. The first round focused participants on identifying the community characteristics that they appreciate. The second round asked participants to apply creativity and “out of the box” thinking to consider their vision for the future and what they wanted to see happen in Keene. Role playing, creation of future news headlines, and visual mapping exercises helped to guide participants and stimulate creativity, regardless of the feasibility of ideas. The small group discussion format was informal, often taking place in community gathering places, such as coffee shops, the library, or in citizens’ homes. This allowed participants to feel at ease and openly share their views and ideas.

In order to get people to attend a visioning conversation, each member of the steering committee actively recruited twelve people and secured their commitment to participate. The initial 150 participants became the best form of advertisement for the process. They told their friends, family, co-workers, and others what the process was, how much fun it was, and how valuable the conversations were to them. In effect, this

became a form of viral marketing applied to the community process. Participation in the visioning conversations grew to include over 500 people from Keene and surrounding towns, as well as from adjacent towns in Vermont and Massachusetts. The socioeconomic profile of the visioning conversations ranged from farmers, young professionals, and working parents to elementary, middle, and high school students, college students, mentally and physically disabled, senior citizens, and the homeless. Businesses, nonprofits, and special interest groups locally and within the region were also represented.

Each visioning conversation was led by a community member who was provided facilitation training by planning department staff. The time commitment was low for each round: two hours apiece. As a result, participants in the visioning conversations spent a total of four hours over a period of three months discussing Keene's future. The minimal time commitment and provision of child care made it possible for people to take time out of their busy lives to actively participate in shaping the community's future.

In addition, a number of open houses were held throughout the process at the city's transportation center located in the heart of downtown and spanned three days so that community members could drop in between specified blocks of time. Steering committee members, city councilors, the mayor, and city manager, as well as planning department staff, were available during the open houses to answer questions and talk with citizens about Keene's future. This one-on-one dialogue proved invaluable for both elected officials and citizens as people listened to one another and created relationships. Suddenly, elected officials and city employees weren't being viewed as "those folks in the big brick building." Rather, citizens saw that elected officials and city employees were citizens with concerns, hopes, and dreams, just like themselves.

Citizens could also participate in a public art exercise by writing on an erasable marker board their own answers to one of two incomplete statements: "Keene is . . ." or "Keene can be . . .". Participants then had a digital "Polaroid" photo taken of themselves with the board. These photos were hung up in the transportation center and were later used in the actual

document. Suggestion boxes were provided in the transportation center where people could anonymously submit their comments. Boxes were also located in key gathering areas throughout the community, such as the library, city hall, and in local coffee shops. People were able to create a word "mural" by writing down words to describe what makes Keene a special place. This illustrated visually the words citizens use to describe the community and became the basis of a piece of public art representative of the community. Patterns also emerged; similar concerns were identified as well as community characteristics that define Keene's heart and soul. As the process moved toward adoption of the vision, similar exercises were utilized to review and comment on the vision document and to check back in with the public to ensure that what was written meshed with what they said.

Businesses were also encouraged to hold conversations with their employees about the future of Keene in the workplace or to allow them to attend a visioning conversation on company time. Targeting businesses provided a regional perspective by default through a captive audience. Many businesses supported this effort and sent their employees to participate in the visioning conversations, open houses, or to write and submit their comments online, via regular mail, or through the suggestion boxes.

The local newspaper covered events and provided articles about the process and how to participate. The use of a Web site provided another avenue for interested citizens to learn about the process and submit questions or comments. Radio and TV interviews with citizens and members of the steering committee were also conducted. Flyers were distributed and posted in downtown businesses and on public bulletin boards directing people to the Web site, e-mail, and phone contacts. Facebook and MySpace, two of the most popular social utility sites, were utilized as a way to reach out, disseminate, and gather information. Throughout the process, the message was clear: "This is *your* community and *your* process. Get involved."

The result: over 1,200 people in total, representing Keene and more than a dozen other communities, participated in the six-month process. Over 1000

pages of notes were reviewed and distilled into a document consisting of a general community-wide statement for the future of the city of Keene, as well the identification of six vision focus areas. The focus areas further identified core community issues, such as transportation, community health, sustainability, and the natural environment. The next step is to create the community master plan to identify goals and actions that will help community members and civic leaders work together to realize the community vision. The process was community-owned and implemented. By providing information, resources to hold meetings, and general guidelines for participants, the community steered the process and informed the final document.

Another result of the public process was increased and more effective communication between the community and civic leadership. Participation in council and planning board meetings and on city-appointed committees grew as community members began to take ownership of shaping the community and saw the value in collaboration. Likewise, city government changed processes to make them more efficient and transparent for community members, redesigned the city's Web site to make it user friendly, and designed an internal process (called V.O.I.C.E) to review city employees' role in assisting the community to achieve its vision. V.O.I.C.E stands for Valuing employees,

Obtain input, Inform the public, Continually assess infrastructure and facilities, and Establish priorities. Each department is now working on creating its own departmental "master plan" that will identify ways to achieve V.O.I.C.E, and then linking those efforts to the community vision. Overall, the process brought the community together.

The tools and elements used in the process are no different from those used in previous processes. However, they were applied and used across various venues and formats in creative ways, and were crafted to suit the overarching goal to increase participation and build community-civic partnerships. They also framed the discussion and allowed for subjects to be explored—such as climate change and community sustainability—in ways that they hadn't been before. The challenge now will be to incorporate all of these ideas, including the city's previous work on climate change, into the new community master plan in a way that makes it accessible and feasible to achieve. The lesson: don't be afraid to use tools in ways that they weren't originally intended for. The results can be spectacular.

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The premier forum on environment, energy, and resources law.

18th Section Fall Meeting:

The ABA Environment, Energy, and Resources Law Summit

September 29–October 2, 2010
Sheraton New Orleans
New Orleans, LA

The background of the flyer features a close-up, artistic photograph of a flower, possibly a lily, with its petals and stamens in soft focus, creating a textured, organic pattern.

FIXING THE U.S. TRANSMISSION GRID WITH THE PUBLIC'S SUPPORT

Christopher G. Kenny

In a *New York Times* article, Bill Richardson, former U.S. Department of Energy secretary and current New Mexico governor, referred to the electric transmission system in the United States as a “third world” grid. While many might take issue with that assessment, there is little argument that investment in U.S. transmission infrastructure has not kept up with the need for this new infrastructure.

For a time following the rolling blackout in the northeastern United States in August 2003, the need to upgrade the transmission grid took center stage. Political momentum peaked in 2005 with the adoption of the Energy Policy Act of 2005 (EPACT), which gave the Federal Energy Regulatory Commission (FERC) new “backstop” powers to move certain interstate transmission projects forward where those projects were either rejected or delayed at the state level.

Yet fully five years after the August 2003 blackout and three years after EPACT, approvals for new transmission projects typically take years of effort. Realistically FERC’s backstop authority will apply only in a limited number of projects and has yet to be fully tested. So utilities remain challenged to convince state authorities and the public of the need for these projects. This article looks at some of the innovative ways utilities are approaching the problem.

Public Opposition: It’s More than Just “NIMBY”

Getting public and regulatory approval for large projects that stretch for miles and impact large numbers of landowners is difficult and generally results in a public relations nightmare for utilities if not properly handled. As most siting managers or transmission planners will tell you, the lexicon of terms describing the public’s reaction to new transmission projects goes beyond “NIMBY” to include “CAVE” (Citizens Against Virtually Everything), “BANANA” (Build

Absolutely Nothing Anywhere Near Anyone), “LULU” (Locally Undesirable Land Use), “NOPE” (Not On Planet Earth), and “NIMEY” (Not In My Election Year). Even utilities that attempt to bring renewable resources to the market, such as San Diego Gas & Electric with its Sunrise Powerlink project, face tough opposition from increasingly sophisticated interest groups.

In the face of potential opposition, many utilities cling to the “slash and burn” method. These utilities figure that the best approach to public opposition is to meet it head-on with a strong project need statement and a good team of lawyers.

In contrast, a growing list of companies, including American Transmission Corporation (ATC), Public Service Company of New Mexico (PNM), Progress Energy Florida (PEF), Central Vermont Public Service Corporation (CVPS), and Vermont Electric Power Company (VELCO), are pursuing a different approach. These companies are engaging the public well in advance of any regulatory filing. And while each has used a slightly different model, they have all achieved success both in terms of a more accepting regulatory environment as well as improved relationships with their respective constituents.

Proactive Community Involvement

STAR Group (www.stargroupconsulting.com) works with utilities on proactively engaging the public on major utility investment programs such as transmission lines and power plants. STAR Group’s Utility Search Conference® process has proven to be one effective method for proactively engaging the public. The underpinning of this approach is a combination of several factors. Critical among these is a genuine commitment—at the highest levels within the utility—to engage and work *with* the utility’s stakeholders on major infrastructure projects.

Significantly, engaging the public does *not* amount to ceding control over the project to the “unenlightened masses,” nor does the process require unanimity among participants. In the Utility Search Conference model, the process of engaging the public is one in

which a tremendous amount of information is shared in both directions: from the utility to its stakeholders and from the stakeholders to the utility. For example, the utility often will provide information on the project need, the legal and regulatory constraints under which the utility is required to operate—including “reasonable cost” requirements that often make underground transmission options either not feasible or not desirable for many—and the significant land use and other factors that the utility has already examined in connection with the project. Stakeholders give feedback on those things that the community values most highly as well as the participants’ desire for reliable, affordable electric power. Stakeholders also give the utility crucial information about other land use plans, where poles can be placed that are likely to prove acceptable to the public, and provide feedback on transmission structure design options.

Rather than “selling” the public on the project, the process creates a neutral forum in which information and perspectives are shared and discussed among key stakeholders. The utility has the opportunity to describe the problem(s) it is facing and its current set of possible solutions. The other stakeholders, in turn, are able to communicate their values and concerns in relation to the problem and the possible solutions being considered by the utility. Together, the utility and non-utility participants work through a series of exercises to produce a series of recommendations that address the problem and that all stakeholders are willing to accept. Participants understand that these are “recommendations” because the utility has the legal duty to build and maintain a reliable system, which means that the utility bears the ultimate decision-making authority regarding which solutions it will submit to regulators for permitting.

Because the utility is an active participant in the conference, the recommendations that are developed will include, but not necessarily be *limited to*, “traditional” infrastructure improvements. Indeed, more often than not the set of recommendations developed at a Utility Search Conference will also include nontraditional ideas such as improved energy efficiency education and alternative energy programs. At the conclusion of the Utility Search Conference, a high-

level executive from the sponsoring utility addresses the participants and declares, publicly, which of the recommendations the utility is willing to pursue and which recommendations the utility cannot support, with an explanation—in each case—as to why. This “real-time” feedback to participants is a powerful statement that their work matters and provides a means for holding the utility accountable to its commitments.

Among its many benefits, the Utility Search Conference process engenders trust and respect among all participants. Members of the public realize that the utility and its representatives are not some “evil force” that develops projects solely for its own ends, but rather people who face significant challenges in building a system that can deliver safe, reliable energy. Utility representatives no longer view members of the public as “crazy” or irrational, but rather as individuals who care about their community and who are equally invested—with the utility—in maintaining or improving their quality of life. From this (often newfound) respect for one another, trust is built between the utility and its many stakeholders. And where trust is built, tremendous opportunities arise for collaboration and positive outcomes.

Applying the Process

A structured approach for engaging the public has produced dramatic, positive results for utilities. In one case, PNM employed such a process following a previous failed attempt to construct a transmission line near Santa Fe, New Mexico, that cost the company over seven years and \$13 million. After using the Utility Search Conference method, PNM successfully sited a new transmission line for Santa Fe that received unanimous approval from each of the *seven* regulatory bodies that were required to approve it.

Of course, an extensive public involvement process is not always required and the Utility Search Conference method is not the only approach that has proven to be effective. Some projects lend themselves to more traditional forms of public outreach. In the end, the process used or the name given to the process is not what matters; what matters is that people who have a stake in their community’s quality of life—however

“quality of life” is defined locally—are provided a genuine opportunity to become well informed and provide meaningful input regarding major projects likely to impact their community.

Utilities that recognize that their projects can affect the quality of life around their operations and that are willing to provide a credible method for reaching out and listening to their stakeholders regarding major infrastructure projects will:

- exercise a far higher degree of control over the process by which their stakeholders are engaged and heard;
- improve the overall quality of their projects;
- avoid embarrassing 11th-hour surprises that could disrupt or kill a project;
- have much greater likelihood of receiving necessary regulatory approvals;
- significantly reduce the amount of time spent in costly litigation and other delays;
- improve the utility’s goodwill and willingness to speak favorably in connection with the project; and
- improve the utility’s credibility with stakeholders and regulators, making the utility’s *next* project that much more feasible.

A well-conceived and properly executed stakeholder involvement process is a proven technique for building long-lasting relationships and should be considered for any utility project that is—or is perceived to be—likely to have a significant impact on the community.

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Capturing the Power of Electric Restructuring

Joey Lee Miranda, Editor

Lawyers, as well as government officials, academics, and consultants will benefit from this comprehensive guide to electric restructuring. The editor and contributing authors are experienced practitioners involved in all facets of the industry and bring a wealth of knowledge to bear on this ever-changing topic. This book examines some of the most important legal and policy issues associated with electricity law including the following topics:

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- Energy facility siting
- Renewable portfolio standards
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**GETTING RENEWABLES PROJECTS
BUILT: OVERCOMING THE BARRIERS,
AVOIDING AND RESOLVING
OPPOSITION AND DISPUTES
JANUARY 21, 2009,
TRANSCRIPT OF THE PROGRAM**

On January 21, 2009 the Dispute Resolution Committee of SEER organized a webinar program entitled “Getting Renewables Projects Built: Overcoming the Barriers, Avoiding and Resolving Opposition and Disputes.” With the need for massive new infrastructure deployment for the development of renewable energy, actually getting projects built with the assistance of dispute resolution mechanisms was a subject that required discussion.

Large-scale projects such as wind farms, concentrated solar installations, biofuels, biomass thermal, and new electric transmission lines to serve those facilities are needed. Small-scale projects such as distributed generation on individual homes and dispersed power generation and cogeneration are required. Opposition in a nation known for its NIMBY (not in my backyard) reaction to projects in the neighborhood and for its litigious culture can significantly delay or even block viable projects. The regulatory requirements of different governmental agencies as well as zoning policies can create obstacles that are often difficult to surmount. Construction problems can slow project implementation and drive costs up dramatically.

The panel was organized to inform the discussion about how the development of a public perception toward the many long-term benefits to society of renewable projects can be instrumental in facilitating the growth of renewables, and how carefully designed processes can be utilized to overcome the barriers and avoid or minimize opposition and delays that may arise from community opposition, regulatory thickets, and construction disputes.

Program materials, including speaker power points that contain additional useful information and related articles, are available online at <http://renewableenergyinfo.org/>. Click on Archived Materials and turn to the January 2009 program.

The program was organized by John Gullace of Manko, Gold, Katcher & Fox, LLP. The panel was moderated by Edna Sussman of Sussman ADR LLC. In part she was joined by Commissioner Marc Spitzer of the Federal Energy Regulatory Commission, David Nash of McMahon DeGulis, LLP, Bart Cassidy of Manko, Gold, Katcher & Fox, LLP, and Brad Campbell of Clean Legacy, LLC.

TRANSCRIPT

Edna Sussman:

Thank you very much and thank you all for joining us all over the country. My name is Edna Sussman, and I am the chair of the Alternative Dispute Resolution Committee of the American Bar Association’s Section of Environment, Energy, and Resources. I’m very pleased to welcome you to our monthly teleconference today on renewable energy presented by the American Council on Renewable Energy (ACORE) in collaboration with the Renewable Energy Resources Committee, the Alternative Dispute Resolution Committee, the Energy and Environmental Finance Committee, and the Sustainable Development Ecosystems and Climate Change Committee of the American Bar Association’s Section of Environment, Energy, and Resources and the Renewable Energy Committee of the Energy Bar Association. Today, we’ll be covering the important subject of getting renewable projects built, overcoming the barriers, avoiding and resolving opposition and disputes. I’d like to thank John F. Gullace, of Manko, Gold, Katcher & Fox, LLP, and David Nash of McMahon DeGulis, LLP, as well as our speakers for working with me to help organize today’s program. Before we start, I would also like to thank our sponsors who make this program possible. We very much appreciate the support of our Diamond Sponsor, the law firm of Stoel Rives, our Platinum Sponsor, the law firm of Fulbright & Jaworski, and our Gold Sponsor, the law firm of Pierce Atwood.

Today, we’re fortunate to have a stellar panel for the discussion. I’d like to start the program by framing the subject for today with quotes from President Obama’s inaugural address delivered yesterday, January 20, 2009: “Each day brings further evidence that the way

we use energy strengthens our adversaries and threatens our planet.” President Obama continued: “We will build the electric grids . . . that feed our commerce. We will harness the sun and the winds and the soil to fuel our cars and run our factories.” President Obama has recognized repeatedly the need to address energy with a look to a future of energy security and with a response to global warming concerns. I would add that we need also to consider in our planning concerns about energy reliability into the future.

As we face these pressing needs with respect to energy in this country, we’re also faced with the famous acronyms that we’ve all come to know: NIMBY (not in my backyard), CAVE (citizens against virtually everything), BANANA (build absolutely nothing anywhere near anyone), LULU (locally undesirable land use), NOPE (not on planet earth), and NIME (not in my election year). And you all may know of some other similar acronyms that suggest the reaction that one sometimes gets in local communities as projects are attempted to be built. So, what is the best strategy to employ to address people that are in opposition? In the old days, project proponents just put together their best case for the regulators and hired a team of lawyers to fight the naysayers.

That is really not the best strategy. What we will be talking about today is another strategy. How do you engage the community? How do you try to minimize the opposition by responding to their concerns? How do you work to make projects move forward more expeditiously and with less expense, litigation, and delay? It can be done. For example, the Bluewater Wind project off the coast of Delaware expended significant sums to work with community members and local organizations. In the end, that project was not opposed by anybody. It sailed through the permitting and regulatory process and it is a significant offshore facility. The hydropower plant in Niagara was scheduled for relicensing and faced the prospect of years of opposition. Again an extensive stakeholder engagement process was undertaken and the licensing was achieved in record time. But they too devoted significant resources to the effort and in fact have set aside several million dollars to continue to address the question of the eels that are impacted by hydropower generation.

So, it can work. Resources, both human and financial, need to be devoted to it. Of course, as we say in the world of alternative dispute resolution, you have to “fit the forum to the fuss.” Many of these projects are large and the expenditure of funds is well justified and returned in spades with the project’s successful implementation, fewer delays, and lower litigation costs. Smaller projects of course should employ a process of a scope and expense that matches the magnitude of the project.

This kind of approach to developing the energy resources we need is critical at this time. We cannot afford to be mired in inaction when outreach, flexibility, and collaboration can circumvent obstacles. For example, there is talk of the need for a smart grid across the country, like a giant electric cord across the country. How do we get those transmission lines sited? Without transmission, major renewable facilities cannot get to market. Cape Wind, the offshore wind project in Cape Cod, is an example of a situation where opposition has really slowed the project down. It’s been in process for seven years and still has several hurdles to muddle through. While I am not saying that Cape Wind would have succeeded with better community outreach, there are many projects that have succeeded principally because such a process was employed. So, working out a plan to engage the community and gather support from as many people and organizations as possible can be crucial.

I do want to mention that while we’ve been talking about large generation projects and large facilities to transfer power, similar issues can arise on a very small scale as well. Perhaps the most famous example is the situation in California of the battle between the solar panels and the redwood trees. A family had installed solar panels about 15 years ago, well ahead of their time. Their neighbor planted redwood trees on the property line. It turns out redwood trees are not only large but they also grow extremely quickly and within eight or nine years, the redwood trees were blocking the sun from the solar panels. Years of litigation followed. A little conversation between those neighbors, a little facilitation, might have resolved the situation with the neighbors planting something other than redwood trees. There are certainly many other lovely species that could have been planted there.

Problems with small distributed solar are repeating themselves all over the country with opposition by neighbors. In my own small suburban town, three solar panels were rejected last year because of opposition from neighbors. Small wind installations are running into similar problems. This kind of local opposition must be overcome.

We need a national conversation, both on major facilities and on small-scale renewables. Today, we'll be covering exactly that. How do we engage the community? How do we engage society at large to capture their attention so they understand the importance of these issues and the need to weigh their concerns for the general public against their own personal concerns? How do we work with specific communities with respect to a specific project? How do we coordinate the regulatory process? Many of these projects require permits from many different regulatory agencies. How do we coordinate that? And finally, we'll be talking about how to address issues that come up during the construction process, which can be facilitated and mediated so delays don't occur at that stage.

We're fortunate to have Commissioner Spitzer join us today and before he turns to those issues, he will be speaking about yet another subject that is obviously very germane to our subject today: getting renewable projects built, overcoming the barriers. With today's economic crisis, we have a new set of barriers to confront and the commissioner will also be talking about a technical conference that was held at the Federal Energy Regulatory Commission last week, which examined the credit and capital issues facing the electricity industry to understand the implications of the current financial crisis on electricity infrastructure, development, and operation of competitive wholesale power markets. So, with that, I am going to turn the program over to Commissioner Spitzer.

Marc Spitzer was confirmed by the U.S. Senate as a commissioner of the Federal Energy Regulatory Commission (FERC) for a term expiring on June 30 of 2011. So, we're fortunate to have Commissioner Spitzer with us at FERC for quite some time to come. Commissioner Spitzer has had an illustrious career.

Before coming to FERC, he was the chairman of the Arizona Corporation Commission, where he focused on policies encouraging expansion of natural gas infrastructure, specifically distribution and storage, creating demand-side management policy, and enhancing the commission's renewable standard. Prior to that, he was the majority leader in the senate in Arizona. Commissioner Spitzer believes that FERC's primary missions are to ensure that America's ratepayers have safe, economic, and reliable supplies of electricity and natural gas and transparent, robust, and competitive wholesale markets. High on his priority list are the expansion and improvement of the bulk transmission system and the nation's natural gas pipeline system. He believes these enhancements are essential to the dispatch of environmentally friendly resources as well as ensuring reliability and efficiency. Commissioner Spitzer, I'm going to turn the floor over to you.

Marc Spitzer:

Thank you very much. And, I'd like to thank the sponsors of this program, as well as Edna, as well as those who are participating in the audience. It's a very exciting time particularly in Washington. It's a peaceful transition of power, it's breathtaking and awesome, and I took my son down to the Capitol Mall yesterday. There were some Republicans there as well as history is being made and it is a time of renewal and optimism. Although we have some serious challenges to confront, I would prefer to be an optimist.

Let me speak briefly about the technical conference on credit. It was proposed in November, as markets unfolded. First, you had the freeze and then the thaw and then the TARP and then further bailouts. We were continually changing the agenda, but we proceeded last week and divided the panels into short-term and long-term impacts on the credit markets for energy, specifically electricity. The first panel on short term largely dealt with Regional Transmission Organizations (RTO) policies. We've had some defaults and of course the costs of defaults are socialized among the ratepayers and that is a problem. There was a degree of consensus on shortening the settlement periods and all of the RTOs have done that as a means of not incurring or accruing substantial receivables from

entities that are in financial distress. There was some debate over whether there should be unsecured credit offered to market participants by the RTOs. I pointed out that default risk is not the only variable, and that is often the case with government. Many competing interests need to be addressed and balanced, and default risk is certainly one issue that needs to be addressed by RTO policies. We do not want the credit policies to stifle entrepreneurship in emerging technologies. So, default is important and we want to be zealous about minimizing default but not to the exclusion of all other interests.

For the long term, I would say we are halfway between sobering and depressing: the status of the utility credit markets, downgrades to the industry, and the conditional expense to the utilities to secure financing. The disappearance of some of the players in the market and its impact on projects, particularly renewable projects, were discussed. The impact is obviously relevant in two respects. One, the most obvious is that the number of transactions has, I won't say dried up, but been reduced by virtue of the number of players being reduced in the industry. The interest costs have increased, and, as you know, a couple of hundred basis points can make or break a project. The second impact that's less obvious is in the vertically integrated markets. I found this particularly siting, attempting to site wind projects in the West. The incumbent utilities with credit markets under stress are even more resistant to losing the revenue stream that they enjoy and are more jealous of the competition of renewables where there has not been a decoupling of retail revenues—in other words, where the commodity sales have not been decoupled from the revenue stream. It is most visibly obvious where there is impact by Wall Street's potential credit watch with a threat of a downgrade.

Let me turn now to the topic of infrastructure. In all my speeches, I discuss the three-legged stool that underlies federal energy policy, which is rule of law, markets, and infrastructure. Infrastructure is obviously the largest focus this afternoon but certainly rule of law is critical and, in this context, I will speak positively of the Supreme Court decision in Morgan Stanley. There is a balancing of governmental interests in terms of

sanctity of contract and just and reasonable rates, and obviously there is no realistic expectation that the FERC or the federal courts will enforce contracts that are fraudulent ab initio, but as a general rule where you have a willing buyer and a willing seller entering into a long-term contract, those contracts ought to have the protection of the *Mobile Sierra* decision. That is case law going back to the 1950s. You cannot allow a situation where buyer's remorse or political circumstances question the sanctity of long-term contracts and their enforceability. I think that the Supreme Court to a large degree set to rest the issue of the garden variety bilateral contract as being enforceable.

Then we turn to the issue of markets. There was some turbulence in some jurisdictions where legislators adopted long-term rate caps and some pent-up fuel prices where retail rates were capped for a long period of time led some people to question whether it was wholesale competition that produced rate increases to retail customers as opposed to other circumstances beyond the control of either state or federal regulators, such as increases in commodity prices. My hope is and my expectation is that since commitment to wholesale markets goes back to the Public Utility Regulatory Policies Act (PURPA) in 1978, we will continue to have the federal government committed to competitive wholesale markets. Competitive wholesale markets in the long run give the best results to customers in terms of price, in terms of reliability, and renewable resources. As Congress understood going back to PURPA and continuing in legislation in 1992, continuing first with FERC's open access transmission and RTO orders and continuing to the present day, renewable resources best prosper in circumstances where you have competitive wholesale markets.

Now turning to the infrastructure issue, I would associate myself with all of the comments by Edna. She is absolutely on point in understanding that there are serious roadblocks and the issue in many cases boils down to one of little "p" politics. It is an unfortunate fact that there is no political constituency for energy infrastructure and that needs to be recognized, that needs to be dealt with, and there are many ways to deal with it. There is a lack of trust by the community

at-large in the energy sector and that is something that has to be recognized. The utility companies, at least the traditional utility companies, communicate with customers once a month when they send a bill and that does not often engender a great degree of love by the customers. And when the utility comes and argues that a certain project is necessary for reliability, they are often times met with skepticism by the community at-large which is why, as Edna discussed, it's important to bring other stakeholders to the table; which is why I use, I often use the phrase "work, work, work," in order to advance infrastructure projects, whether it be renewable projects, transmission lines, or other projects that are necessary for reliable energy to customers at reasonable prices.

It's not intuitive to the customers that the project will benefit them. It's rather abstract and the NIMBY discussion is extremely tangible. So, what you're doing in some respects is in the case of a transmission project, you are working to build a constituency to elect poles and wires to public office, and that's the way you have to treat it. You don't want to stop at fifty-one percent. You want to do a little bit better than that to have a margin of success and then you're going to be proposing future projects. My view is good politicians don't want to stop at fifty plus one. They're not content. They would like to have a mandate for the future and choose each successive project to build upon another. That is a way of enforcing the concept which is right now abstract.

When I go out and give speeches, I talk about the need for transmission and say I believe in renewables. I've worked as an elected official, for renewable energy, for 20 years. You cannot have renewable resources without transmission. If you're for renewables, you have to be for transmission. That again, I found not to be intuitive. The NIMBY people are resourceful. And by the way, when we discuss NIMBY, I exclude from that universe of citizens those with legitimate environmental concerns. The government always needs to be attentive to environmental concerns and there is, although it's not part of the Federal Power Act, but consistent with government generally at the state and federal level, there is an obligation to preserve the health, welfare,

and safety of the people that you represent. I feel that the energy mandate is broad enough to embrace environmental concerns. It's certainly relevant in certificate proceedings, but in other proceedings as well. State regulators and state elected officials take an oath to preserve the health, welfare, and safety of their constituents and they are extremely mindful of those concerns.

The NIMBY I would denominate is one based on aesthetic concerns. It's a fact that a pipeline transmission is underground, less visible, less irksome to those folks. There are often times economic interests at stake and the natural gas pipeline certificate process, to the degree that they're dealt with in the condemnation process, gives you a traditional determination of fair value. The environmental impact statement process deals with the environmental issues. But electric transmission is almost unique with the wide swath and large corridors and that only a minority of citizens that find these inoffensive in their backyard requires extra effort. It requires some innovation and there have been a wide array of ways to deal with these challenges, but Edna hit it right on when she mentioned the need for greater community participation. The idea that you can just sort of roll over the folks and treat the project as a given is often a mistake, and the projects that have been most successful have broad arrays of constituencies; work is done well in advance; there are stakeholder meetings that take place; there is a coalition of utilities that finance the project, including both public and private.

I know when I discuss joint ownership some of my friends in the East shudder a bit, but the fact is that in the West no major electric transmission project was constructed without participation from public power. The public power added value and made the project possible. I recognize the economic slump doesn't always permit such to be the case, but the major power lines did get built in the West. Often times, there are difficult circumstances because you've got quite a distance between even traditional fossil resources and load pockets. But I think that that's been an extremely positive development in the West, and I would like to see it introduced into the East although it may be more difficult there for reasons both historic and financial.

Finally, what I observe in the community. I understand that we have a lot of economic stress right now. Nevertheless, during my years of campaigning for office, my position is in favor of renewable resources. I found great political support—Republican, Democrat, liberal, and conservative. I think the voters of this country are maybe a little bit ahead of the political folks in terms of seeing climate change as a threat. I think that now folks acknowledge that action needs to be taken. The action you take may be in different forms. It doesn't need to be a one-size-fits-all, but there needs to be some action.

Secondly, in terms of the siting process, I had a member of the Democratic caucus come to me when I was in the state senate to deal with the issue of environmental racism, and this is back in 1993. And I read some literature and was convinced as to the correctness of this senator's approach. We conducted task forces and we actually drafted and enacted legislation in Arizona dealing with the siting process. I came to the conclusion that infrastructure, not just energy infrastructure, but infrastructure of various kinds was sited where there was an absence of a veto by the rich and powerful. To me, it was very unfair and where there are public works, there needs to be a public commitment. You know, these are not like amenities where the rich people can just opt out of the social compact. It's tough to do. Well, with the rise of the Internet and the ability of folks from all walks of life to communicate with their elected officials, the NIMBY issue has grown more universal, I think, over the last twenty years. Twenty years ago, you could not site infrastructure where rich, powerful, politically connected people could veto the project. Now, NIMBYism is almost universal, and I will choose to take lemons and turn them into lemonade and say, instead of infrastructure being based upon political determinations, let's place the infrastructure where it needs to go based on science and law and the facts, the equities of the particular case. So maybe we have a chance to rewrite the political laws of siting infrastructure and put them where they need to go instead of being based upon relative political power of competing neighborhoods raising various objections.

Finally, one of the good aspects of an economic crisis we found politically in the Great Depression was the

rise of public works projects. And the great dams of the West were constructed as part of the WPA during the period of 20 percent unemployment. Now I certainly do not hope for another crisis of that magnitude, but our government has an opportunity to build the dams, the bridges, the roads as needed for this country with some degree of political consensus, and hopefully the spirit summoned by President Obama in his campaign and delivered in his inaugural will be a message to those that there is some degree of sacrifice necessary. And one element, perhaps, of sacrifice is the dropping of this mindless NIMBY issue.

One final comment: I was traveling to the Navajo Nation when I was chairman of the Arizona Commission, to a conference to actually discuss telecommunications. And I met with the tribal elders in the Navajo Nation and I mentioned that I passed by the big power line from Joseph City, Arizona, down into the Phoenix area and it was built in the 1930s as part of the New Deal public works projects. And the Indians at that point had no power whatsoever anywhere in the vicinity of their Navajo Nation. And as a consequence of the construction of that facility, for the first time they had light and power for a major portion of the Navajo Nation. And the tribal elders described those power lines as beautiful. And this is 50 to 60 years after the fact. And I have mentioned that the people in North Scottsdale, the rich people, don't see power lines as beautiful. What I suggest to you is that perhaps it's a matter of perspective, perhaps it's a matter of history, and with the dawn of a new administration, perhaps we can change people's perspectives and we can change the history of this country and site the infrastructure that we need for renewable energy, affordable energy, and reliable energy for the people of this country. And I thank you very much and I think it might be appropriate to take questions.

Edna Sussman:

Commissioner Spitzer, we have a new administration that is certainly focusing on energy. Could you give us some insights as to what you see now in terms of our energy future and the talk about the 21st century smart grid that so many people are talking about as part of what needs to be done. We would appreciate some general remarks about where you think we're headed.

Marc Spitzer:

Well, based on discussions, the public, available materials in the campaign and, interestingly, the McCain and Obama campaigns had very similar positions on energy. So, hopefully we'll have a consensus on climate. And if we are going to address climate change and we're going to reduce our carbon footprint, it's essential that we achieve more distributed generation as well as a central station in an environmentally friendly way. We can't do that; you can't get from there to here, without substantial investment in the grid and without substantial infrastructure. And the Obama administration understands that.

What form this takes, I do not know. I, as a former state legislator, am solicitous of the interests of the states. I do not believe all the wisdom of the world resides in Washington, D.C., and I'm not one who automatically concludes that the grid needs to be federalized. I would prefer to work with the states. We have a statute, section 216 of the Federal Power Act. It was an act that would deal with the so-called backstop line siting ability. There was a big uproar and ruckus and FERC has actually sited zero power lines. You wouldn't necessarily discern that from some of the turmoil, but I would advocate at least letting that process work and standing back and see what we need to do.

Also the president has the bully pulpit. And sometimes you can accomplish more through the bully pulpit than you can through legislation. But I am absolutely convinced that this administration is committed to renewable resources. I don't think they're doing it just to say we support renewable resources. The president wants to change the fuel mix in this country. And there is no way to get from here to there without greater transmission investment.

Edna Sussman:

You mentioned that you thought that what we really need to do going forward is to site energy infrastructure and energy projects based on the science, the equities, and the facts of the particular case. How do you think one goes about doing that in a specific project?

Marc Spitzer:

Well, you do have to listen. We did vote down a couple of power plants in Arizona based upon environmental considerations. And it was based on a full record. And there are some places where for historic or ecological reasons, infrastructure should not go. But just because it's in a very wealthy person's backyard who opposes the project, that alone is not a reason not to site there. Siting requires a greater degree of public education. I spoke with someone that I knew from college back East. I asked, "Why do you oppose this particular project?" It was a purely aesthetic complaint. And I said, "From your vantage point, it's not even visible." And she said, "Well, it disturbs my chi." That was the answer I received. Well, if you consider the consequences of doing nothing first of all to the rate payers in terms of affordability, and to reliability and to the environment, that ought to disturb people's chi a lot more than infrastructure that is actually not invasive to the environment.

So the NIMBY people, you need to talk to them. There are always going to be some people who will oppose a project regardless. They're not interested in any issue other than their own backyard. I have determined in six years of fighting cases in Arizona, now two years at FERC, where the project is a good project, a majority can defeat a NIMBY minority, but the case has to be made and if we have to start arguing about chi, well, that needs to be done too.

Edna Sussman:

We appreciate your thoughtful and concrete remarks on what we need to do to move forward. Thank you so much, Commissioner, for joining us and sharing your insights with us.

Next, we're going to hear from Bart Cassidy. Bart Cassidy is a partner and leads the Air Quality Practice Team at Manko, Gold, Katcher & Fox, LLP. Bart has represented numerous complex facilities in siting, securing necessary permits and other authorizations, and achieving operational status both for traditional and alternative energy generation facilities. In this context, he has advised clients regarding public participation and permitting and local land use approval matters, and devising strategies for effective interaction with

opposition groups, and in creating strong administrative records to support the project and address opponents' position and handle any administrative appeals. Bart is also a licensed professional engineer.

Bart Cassidy:

Thank you, Edna. Along with Brad Campbell, we will be talking a lot today about working with local stakeholders and trying to manage community opposition as it relates to potential projects. The key here is to recognize the importance of these issues and the justification for committing the significant resources necessary in the end to be able to site and build projects. The themes that we will be returning to on several occasions will relate to the importance of planning as it relates to working with stakeholders as much as in designing as building the project, and the need for consistency both in message and strategy for purposes of these issues.

Many projects have been derailed and many more substantially delayed as a result of local opposition to particular projects. The costs associated with delay more than justify the efforts in trying to take into account local interests from the outset of the project.

One of the key issues to recognize is that timing is critical. When we look at being able to successfully address local concerns, part of that is reflective of the fact that you need to get out ahead of those concerns as much as possible as opposed to trying to react to them. Much like that proverbial snowball coming down the hill, it's much more difficult to stop local opposition once it has been formed and organized than to try to anticipate and address it in advance; and so the key message in that respect is to start early relative to addressing those concerns. And in starting early, the key is to plan for and address what those questions and issues might be. And in order to do that, we start by trying to identify the nature, extent, and character of what the potential local opposition and, more generally, the local stakeholder interests may be relative to the project.

There is a lot we can do in that regard in advance of initiating the efforts. Part of it is the research effort. We can research local community issues. Start to find out

what is important to that particular locality relative to these issues. Local governance is critical: recognizing which particular representatives at municipal levels, state levels, will have a meaningful role; what interests those particular government officials have at the community level; and especially in that regard, what issues in that locale have proven controversial in the past. We can really learn a lot about the types of issues that a local group might be concerned about by looking at where those concerns have arisen, what types of issues have been raised, even for projects that have nothing to do with the project that we're proposing in this context; merely the nature of the types of issues in that given community that have proven significant or controversial.

In order to try to work with the community and identify the key issues and then effectively address them, one of the things that we can do is to establish points of contact within the community. We've been involved in these studies and identified different ways of making these contacts. It is sometimes very effective to retain folks who are locally engaged, either on a community-relations basis or relative to government relations, who already have a good feel for the community and the issues that tend to arise. But there is also the opportunity to establish a specific base of operations in a community to provide direct opportunity for further action on a routine basis. I've been involved in a few projects, for example, where the proponents set up shop within a strip mall right in the center of the town and created a storefront operator to be able to establish a base of operations for the project, the primary point of which was to serve as an interface with the local community, to receive folks and understand what their concerns were, present information about the project and attempt to address concerns as much as possible from the outset.

In doing that, and considering these issues from the outset, it was also possible to take into account some of those concerns in the design of the project itself. And those design considerations can relate to different aspects of the technical aspects of the project, but also can relate to completely unrelated issues. We've been involved with some projects, for example, where open land in certain areas has been very important to the

local community. And we've been able to both design the project and its physical landscaping but also look into securing additional lands that provide buffers and perhaps community resources that we knew were of concern to that locale. By being able to do so from the outset, it was a lot easier to propose those approaches instead of being reactive to the ideas that were being raised after the fact.

It's very important in this context to recognize that compliance with regulatory standards typically is not enough. Relative to local concerns, as much as you may be able to, and of course will need to be able to, assert that we will meet every regulatory standard; that's not going to assuage the concerns of the local group. Nor typically will the global benefits of things like alternative energy projects. The localities will not wish to bear the burden of the project—if they perceive it as a burden—to allow the more broad scope benefits of alternative energy projects to be built and operated if they feel that the burdens that they're bearing are disproportionate. By identifying local benefits that can be realized, especially those that are specific to that locality, it starts to offset many of those concerns from the local groups.

We also want to be very mindful about defining what the message will be, in terms of the issues of concern. The primary point here is that once we relay any messages that are inconsistent, especially relative to information associated with the project, you substantially damage your credibility and it becomes very difficult to restore that. It really, thereby, undermines the effectiveness of all of your communications. So in that regard, you really want to spend a lot of time, from the planning stage, in designing the range of issues that are really up for discussion for the local input and considerations. For example, a willingness to consider implementing certain changes based on concerns from the local community at the outset reduces opposition, but then, on the other hand, and this happens because of inconsistency in the message, creating some false hopes as to what the project may or may not be able to address can really backfire.

And in that regard, in terms of conveying what the message needs to be, it's also important to identify who the spokesperson for that message should be.

Although the message needs to be consistent, the spokesperson need not be, and in many instances, the appropriate spokesperson for a specific forum may not be the same spokesperson as is appropriate for another forum. It may be someone that is able to address specific local community concerns on one hand, while someone completely different addresses technical or regulatory concerns with a different body. And in that regard, thinking about who the audience is in deciding how the message is conveyed can prove to be beneficial, while as we have already mentioned, ensuring that the message itself is consistent from one forum to the next is also important.

Many individuals or entities that you're interacting with, on the local level, may have specific questions or issues. As I discussed before, where we have set up a storefront to be able to interact with the local community, that storefront environment had a lot of traffic. A lot of folks came in to visit and raised specific questions or issues. The vast majority of those individuals did not have any interest or commitment to maintaining involvement in the project. They participated and they specifically raised a question or two, might have shown up at a meeting, but their level of interest was not going to be sustained throughout. By putting some effort into trying to identify those individuals or entities that will have sustained involvement, will continue to participate in the process, it makes it much easier to try to address those constituencies and ensure that the message that needs to be conveyed is being conveyed to the right people. And the issues that are being raised from those stakeholders are the ones that we are trying to address. When doing so, we really want to make an effort to understand what the issues are.

Commissioner Spitzer talked about listening earlier. So many of the concerns that are arising in the context of local opposition really arise from a lack of real listening. I've been involved in many projects in which the proponents have recognized the need to try to interact with the community, but they put so much time into planning the message that there was no receptivity to the feedback and understanding of what the concerns were to be able to respond to those concerns. And by being open to understanding and hearing what those issues are, makes it much easier to address them.

It is equally important to demonstrate the interest in understanding. As with almost any communication format, it is important that those that are trying to express their concerns feel as if their concerns are being meaningfully considered and that they are being addressed. And in that regard, it ends up becoming important to demonstrate to those folks in a manner in which you are receiving and interacting with them, that you do regard those issues as important. It doesn't mean in all instances you'll be able to address the issues to their satisfaction. But it does mean that you at least regard them as important issues to be considered.

We talked before about having a consistent message and identifying the appropriate spokesperson, but we also need to think about what the message needs to be for the audience that is assembled to receive it. One of the real problems that folks run into with respect to presenting issues to stakeholders and in conveying the message is either an overreliance on scientific and technical information or lack of consideration of those issues. In some circumstances, especially where the audience is one that is not scientifically oriented, which is the more typical public citizen group, an attempt to try to present information that is very scientific may appear as an effort to try to overwhelm the local groups and does not have a positive effect. It doesn't allow the audience to understand the issues, doesn't make them feel as if their interests are being addressed. And conversely, we've had circumstances in which there are some well-informed stakeholders that are representing an interest that is keyed to those technical issues. Any attempt to try to "talk down" to those folks, and not recognize their capabilities and ability to interact in this regard, really prevents you from being able to address their real interests and concerns in an effective manner.

I talked about the importance of consistency in general. And I think that is something that we really want to relay as being a very important issue with respect to the message. But it's also important with respect to the strategic approach. When you're interacting with local community folks, it's important not only to be out in front right from the design phase, from the planning stage, but also to be consistent in maintaining that message throughout the process. It is very important, for example, that once you've established the

relationship and the point of communication that you demonstrate an interest in being able to maintain and provide updates to those folks; that they know, on an ongoing basis, that this wasn't just a one-time deal in which their issues are being addressed, within a specific forum, and then were being dismissed. By providing updates and ensuring that stakeholders maintain involvement in the process, this is a very important consideration as the project moves forward. With regard to when you are seeking to provide accommodations to those concerns, it is something that is important to be part of a project design, recognize the bounds of what those accommodations can be, and the manner in which they can be addressed whenever possible. Again, we don't need to limit those changes and accommodations to things specifically within the scope of the project itself. But we do want to make sure any changes or responses are consistent with the overall approach we're taking toward the project.

I also just wanted to mention briefly that stakeholders include government agencies. It's very important to recognize that government agencies, of course, have a significant role in the review, approval, and issuance of permits. But they also will have a very significant role in the interaction with community groups and stakeholders. No government official likes to be surprised by information that is being raised by the public or to be unprepared about how to respond to questions from the public. And there is a significant opportunity in working with local government officials to make sure they are receiving information from you. It is critical that the information you are conveying to government officials is completely consistent with the information being conveyed to local community groups and other stakeholders, and that, as much as possible, the issues that may be raised by local stakeholders to the government agencies have been identified and that you've prepared the government regulatory agencies to respond effectively to those questions.

Unfortunately, even if we design a project to try to address and take care of any local concerns so that we don't have local opposition, sometimes you end up in a circumstance, unfortunately, where an administrative appeal is necessary. Now and then, you hear lawyers who raise concerns about participating in a community involvement process, for fear that interaction and

information conveyed in that forum may come back and bite them, so to speak, because it's used against them in an appeal setting. I think it's exactly the opposite. By being able to address those concerns, not only would we minimize the potential for an appeal, but it makes it much easier to establish an administrative record that's consistent, that addresses local opposition during the process and therefore can better withstand the permit appeal.

Just to try to wrap up these several issues, I think the key points we wanted to emphasize are that whatever time that you can dedicate, and we are recommending it be substantial, on effective community interaction, taking into account where the public opposition may lie, working with stakeholders, almost in every instance the benefit you receive strictly from a timing standpoint is better than one-to-one. And certainly, from the standpoint of the overall value of the project, the cost is more than justified. Realizing in crafting the communications scheme that, although the benefits of the project on a broader scale may be obvious and substantial, these benefits don't necessarily address, and in most cases will not address local concerns. And in order to do so, you need to take into account what those local concerns may be and do your best to be able to address them within the bounds of the project. And consistency is the biggest key, I think, in this regard. Maintaining a consistent approach toward the communication with stakeholders, making sure you're consistent in both your strategy and in your message, ensuring the government agencies are informed and are able to be in a position to respond to concerns as they arise. That, in total, I think is the best method to try to address these local concerns at the beginning and throughout the project, and increase the probability that they won't derail or ultimately substantially delay the project, because they often otherwise can.

Edna Sussman:

Wonderful. Thank you very much, Bart, for giving us a real perspective as to how to actually work with communities on the ground. We're going to turn it over to Brad now. Brad Campbell has an independent national law practice, Bradley M. Campbell, LLC, focused on energy and environmental projects and litigation and is president of an energy development

firm, Swan Creek Energy, LLC, which focuses on innovative and alternative energy projects. He brings to his firm's broad experience in government, including service as the commissioner of New Jersey's Department of Environmental Protection and as regional administrator of the U.S. Environmental Protection Agency. And he served before that, on the White House Council on Environmental Quality.

Brad Campbell:

Thanks very much. I'm going to take a few moments really to track some of the major issues set forth in Bart's framework and identify some of the tracks and tools that can be useful to have in mind as you plan a project. First and foremost, and I think Edna set the stage on this as well as anyone, I think it is important to bear in mind and ensure your client or the project developer bear in mind, that renewables projects, alternative energy projects, despite their cache, are not exempt from NIMBYism. You will not, to take the word of the former vice president, be treated as liberators when you come to the community just because it's an alternative energy project. And in some sense, the newness of these types of projects creates additional challenges, both with communities and regulators. And the many incentives that have been created for these projects, it should be kept in mind, are incentives that really are intended to attract investors and project developers. Typically the incentives do not create any direct benefits for communities. And in some cases, because of the way local property taxes are structured and the way states have structured the taxing of energy facilities, a renewable energy project could actually be less desirable from the community's perspective than some other possible uses. The positive elements of this are that the larger policy context does create a number of allies and resources for you to bring to bear on your project. And history has shown in the context of these projects that the public is educable and has been educated to the merits of these projects even to the point of strong public support.

First and foremost in Bart's presentation, the emphasis on researching local community issues I think is critical. There are few details that I think are important to recognize from some of the projects that have

happened to date. The first is one of fully understanding the scope of the project. Many developers and attorneys focus on whatever the scope of the permitting process is. In some cases the project is going to extend well beyond that. Bear in mind, for example, if it's a new energy facility of significant scale, there is going to be transmission infrastructure to tie it into the grid. If it's a wind project, there may be lay-down areas necessary for that, off-site, for the erection of turbines. If it's a bio-diesel facility, there may be piping, there might be truck impacts. Fully work out the scope of the project from the outset so that it's built into the work you're doing to understand local issues and also so that both the cost and the schedule impacts of dealing with the local community can be fully factored into the project at the front end. For example, if there isn't significant provision in the project schedule for outreach, for public meetings, for responses to the public, then you don't have a realistic schedule from the get-go. If there isn't in the pro forma a budget line allocated to what the anticipated local benefits are going to be, you may not have a realistic pro forma for the project and you have to factor into that the entire scope of the project, not only that part of the project immediately within the permitting process.

In understanding those local issues, I think it is important to recognize the virtue of conducting an actual poll specific to the project. There is some up-front cost, but for between \$70,000 and \$100,000, in most cases, you could have a very credible poll. It will help you understand not just what the local issues are, but how they are likely to be framed, and how they may differ from community to community, and that can be a significant asset to you as you decide how you are going to present this project, what concerns you need to respond to, and what the likely vulnerabilities are going to be. Often that may be combined with a desktop study of local resource issues that are going to be raised in a phase I study, maybe look at other issues but it is important to do that homework, and I think that in some sense the investment will pay for itself if you do it.

Edna referred earlier to the Bluewater Wind project off the coast of Delaware, and that was an example in which there was extensive polling done in local

communities in which the issues that were raised varied community by community. Not surprisingly, their relative distance from old coal-fired power plants pretty much defined what the likely concerns in the respective communities would be. There was a lot of engagement of local nongovernment organizations, state and local environmental organizations, and together those pieces of research and proactive work with the community created a context in which, as Edna said, there was really no public opposition and there was broad public support. But that support didn't just happen to come about, it was really created through affirmative efforts to engage local organizations to engage state organizations, and, to that end, a fairly rigorous and scientific polling effort was undertaken to understand how concerns would be framed at the local level and also what positive messages resonated at the local level. Now in engaging those communities, I think there is a series of mechanisms and resources that can help you with the nuts and bolts, whether or not you undertake extensive polling. Maybe communities already have community advisory panels or an environmental commission that can be used as resources. There may already be a local web portal for you to link into. I have found that schools are wonderful allies in terms of both carrying the message and also their predisposition to having the sort of living classroom of a renewable energy project available to them. That can also be one of the local benefits.

Second, in terms of creating your own portal, I think it is important in addition to having public meetings to have a web resource for people to go to and in some sense reinforcing Bart's point about consistency of the message. The very framing of your Web site, the process of formulating what the recently asked questions and responses should be, that entire process is an enormous source of discipline among the many players in the project to make sure there is consistency about responses, about how the project is identified, how it is referred to and so forth. Another tool that I think is very frequently overlooked is show-and-tell. There is enormous persuasive power in finding a comparable project that is located at a reasonable distance away and taking local officials and opinion leaders to see it.

Both on the New Jersey's Offshore Wind Energy Panel on which I sat and, in the context of other specific projects, taking a mayor and council people and some local leaders to see a project, to talk to the mayor in the town affected by that project, to understand how it worked out, what went well, what went wrong, it can be enormously important and effective in getting allies for the project and allaying concerns that folks may have. It also helps I think to frame the discussion ultimately for what Bart referred to as negotiating local benefits. Depending on the jurisdiction, you may be faced with council people, local community groups, and others, all sort of wanting some affirmative local benefit as part of the project.

As I mentioned, in many cases, the actual revenues provided by law under local property taxation cannot be particularly satisfying to the community compared to other uses. But do recognize the nonmonetary, in-kind benefits that alternative energy projects can also bring. For example, there is a wonderful curriculum for alternative energy available through the National Renewable Energy Lab. Local schools just want the telemetry, they want the real-time data from the facility so that they can combine that with the curriculum and use it as a teaching tool. In other cases, enviro-diesel facilities, municipal fleets want access to the bio-diesel and in some states you can actually get grant funds from the state to cover the difference between the cost of bio-diesel and the cost of the fuel that the municipality would otherwise have to buy. I think in each of these cases, and I'm running out of time, but in each of these cases I think it is important to recognize that there are going to be expectations that some local benefit will be conferred, but there are, I think, a wider range of benefits available if you look toward some of the teaching opportunities there are, alliances with local schools, and also direct in-kind benefits from the provision of services, whether it's electricity, whether it's taking grease traps from the local sewage authority or other in-kind benefits that may help reduce the amount of payments in lieu of taxes or other benefits you'll need to negotiate at the local level.

Edna Sussman:

Thank you very much, Brad, for your very helpful presentation to bring us to the next level as to what

needs to be done. We're now going to turn to David Nash who will be talking about coordinating the permitting process. David's practice emphasizes traditional areas of environmental legal expertise plus corporate sustainability, climate change, renewable energy, and emerging environmental technologies. He has been recognized repeatedly by Best Lawyers, by Super Lawyers, by Chambers, as tops in his field and he is a partner with McMahan DeGulis.

David Nash:

Thanks so much, Edna, and thanks to all of our prior speakers. All of your presentations play into the very brief presentation that I'm going to give basically on a case study. As Edna said, we're here in Cleveland, Ohio, with offices in Columbus too, with an environmental and energy law boutique. And, by definition, we not only have to collaborate with project stakeholders, but some of our other brethren with other expertise in the legal field too. One of the things that I want to talk about first is many of the renewable projects that our firm is working on not only involve you as companies, developers, or manufacturers to put together a renewable energy project but often involve European or international companies as well.

In trying to coordinate the permitting process as efficiently as possible, one of the things we note is that many of our European friends come to us with a mindset and a culture that is used to regulatory processes that are already centralized. And, of course, that is very different from our experience in the U.S. where we have what could be viewed as a hodgepodge of federal, state, and local authorities from whom regulatory approvals are necessary. And, what we have developed at our firm and it's no secret, and there's no patent and there's no copyright, it's basically a collaborative process that even though we can't try to re-create Mr. Rogers' neighborhood with project stakeholders or regulators, what we have is a process that will really, I think, accelerate success for both dealing with communities and with regulators. I also want to emphasize that the community engagement process that Brad and Bart have talked about and trying to deal with potential opposition of projects is intricately related to the permitting and regulatory

process. You cannot achieve success on one side without having success on the other.

What I'd like to do is talk briefly about a case study that our firm is working on here in Ohio on behalf of Cuyahoga County, the county in which Cleveland sits. We are working on a project called the Great Lakes Wind Energy Center, which is really an effort to install the first offshore wind turbines in the Great Lakes in Lake Erie, along with an accompanying research-and-development center for wind power and other renewable energy technology. One of our goals is also to do a pilot project, which again is integral to coordinating a regulatory strategy in the sense that there are two goals to this project that is being sponsored by the county and other stakeholders associated with the county, including local foundations, universities, and corporations to reduce institutional and knowledge barriers, accelerate the time during which commercial development of wind power in the Great Lakes can be contemplated and designed, and reduce costs.

Finally, we hear very much, through our public stakeholders and our private stakeholders, a focus on attracting companies to our region to create jobs. As everyone knows, the Great Lakes area has suffered some really devastating hits over the years from declining manufacturing jobs. So, economic development is really the goal of Cuyahoga County in sponsoring this project. In terms of regulating the project and getting the permits and approvals needed to install even a few number of turbines in the lake, and we're focusing on anywhere from two to 10 turbines as a demonstration project up to 20 megawatts, there are a lot of regulatory cats to herd and some of them are listed here in this slide. Even if we deal successfully with, for example, the Ohio Department of Natural Resources, I want to point out that many of these entities have different divisions with these agencies with whom one also has to deal. So even there are intra-agency stakeholder issues to deal with.

Now what have we done in this project? Rather than going to each agency separately and saying What do you need in terms of permitting the project? what we have done is we have tried to get certainly the primary

agencies together in one room and frankly reach out to all of these agencies at the same time and provide the same information to these agencies at the same time to initiate a dialogue so that the decision can really be made among different agencies in real time so by the time it comes to, for example, applying for a certificate of authority from the Ohio Power Siting Board, all of these various federal and state agencies will be on-board, and essentially there will be an approvable project. We need to recognize the importance of designing in the project to really be a pilot. That has several advantages, and I don't want to dampen any developer's enthusiasm for going straight to a commercial project, whether it be 100 megawatts, 500 megawatts, or 1,000 megawatts, but we are finding that as a public body with both government and nongovernment and corporate stakeholders, the regulators are very receptive to the concept of promoting commercial development through pilot projects.

For example, we are in the middle of a feasibility study that anticipates preconstruction regulatory requirements. By the time this feasibility study is issued in April, we hope to have the majority of regulatory requirements satisfied in terms of data gathering. We intend to have technical questions and financial model questions answered through this feasibility study. Doing a pilot also enables us to work through the National Environmental Policy Act, through the environmental assessment and environment impact statement process with, in this case, the U.S. Army Corps of Engineers so that we can not only have a preconstruction environmental impact strategy, but an integrated approach, where once we get these pilot turbines in the water, the project owners will have agreed to post-construction studies that will flesh out environmental impact statement requirements. This also allows for parallel processing for both the pilot project and future commercial development as data are gathered. We have so far been very pleased with the reaction we've gotten, not only from community stakeholders, potential NIMBYs, but regulators with whom we are dialoguing about this project.

In conclusion, there are a few lessons to be learned from our experience so far up here in Cuyahoga

County. One is to communicate early and often. Two, follow the-more-the-merrier philosophy; in other words, be inclusive. Don't hold your cards close to the vest. Communicate honestly and forthrightly and in detail so the various dilemmas that go with complex projects of this nature can be explored, vetted, and resolved. Truly partner with the regulators and again, key words, openness, inclusiveness, collaboration, and transparency are the keys to success. I know this has been very short; if anyone would like to contact me separately, I would be glad to chat about our experience.

Edna Sussman:

A few questions before we close. These are fairly extensive community outreach efforts that we've been talking about. How does one do that? Is it done in-house? Do people hire consultants? What is the usual process?

David Nash:

Because we have a governmental agency as a client, we do have community engagement experts in-house, but there are also outside folks that are special experts at community relations and communications and media relations that are advising about how we can not only dialogue effectively with the community but, again, integrate the process with all of our stakeholders, regulatory as well as community.

Edna Sussman:

You were saying there were polls that were conducted in many communities. What kinds of questions go in the polls and who conducts those polls?

Brad Campbell:

Typically, they're done by outside consultants and outside polling firms. And the process of shaping the question is one that really occurs through the project developers and often goes through more than one iteration after you know that a certain type of response comes back. There's often a second order of questions that are raised in order to respond to that. Those are typically done by outside consultants. The one cautionary note I would raise is in terms of dealing with the communities themselves. There's obviously a range of professionals who do that as well as in-house expertise. I think some care needs to be taken to

ensure that with a renewable energy project which has different public policy virtues than more conventional projects you don't bring in a consultant who either locally or nationally is very strongly identified with a less desirable energy option. You know if the same PR firm that helped the coal plant or the LNG terminal is suddenly showing up on your project, that may not be optimal. You have to be careful that they're not bringing baggage with them, an association or identity with the press that that other project has that is not beneficial for the renewable project.

Edna Sussman:

Let's talk for a minute about the not-for-profit organizations. How we can utilize their expertise and outreach avenues? On the other hand, are there times we don't want them at the table at all? Or do we always want them there? Or do situations differ? How would you advise people on that question?

Brad Campbell:

I think it's in some sense a shopping effort. Among the groups, there are those that are more or less moderate, and there are those that are more or less committed to renewable and alternative energy projects. I really think you have to focus on those that have made renewable energy their core issue. I think you always want to involve them early, understand what their limitations are. Sometimes they won't want to endorse a specific project or sometimes they'll want to applaud you at the filing of an application but not be willing to say something should be approved. They have constraints from their membership and otherwise. I think in most cases, they're very candid about what they'll be willing to do or willing to support, and they'll also be very helpful, I think, in identifying who the potentially opposing groups will be and what their bottom line will be in terms of what they'll need to see in project performance or local benefits.

Edna Sussman:

We have a question here that asks what to do when the NIMBYs turn into a lynch mob. This question has to do with distributed generation which we haven't focused on as much but is clearly part of our energy future. The questioner has a small wind facility, a 2 kilowatt wind system, installed and is encountering

enormous problems even though she has obtained all of the appropriate permits. And, as I said, in my hometown, solar panels are being defeated the same way. What would you suggest to boost the ability of people to install small renewable electricity generation systems for their properties in the face of neighbors' opposition?

Bart Cassidy:

I think two things, quickly. The first is recognizing that at some point, despite your best efforts you will run into some local opposition that you simply can't turn, and I think the most important thing to remember then is don't allow that local opposition group—that vocal minority—to control the message. In that circumstance, you are not going to potentially convince that 10 percent. You want to maintain the focus of ensuring that your message is getting out to the 90 percent. The key is to prevent that 10 percent of the population from controlling the message or your project can be killed.

Second, as I discussed earlier, even if you're not going to ultimately successfully address that group because of the nature of their opposition, don't ignore the issues that they raise. It may be very important for purposes of your permit record or for purposes of continuing to maintain a good reputation and good message to the remaining folks that are stakeholders by taking into account those issues that the opponents raise. Where possible, seeking to address them, even if that's not going to turn them in terms of what their position is, can establish a good record and demonstrate that you're taking those issues into account in the design of your project and permitting.

Edna Sussman:

So in terms of the person who has neighbors in opposition, count the neighbors as the 10 percent and go find the 90 percent of the other people in the community who may be a little bit farther away but believe in the future and what needs to be done and can rally behind you. So, the idea is to go beyond the opposition and find the others that would be in your favor?

Bart Cassidy:

As you suggest . . . then sometimes it's trying to get some of those folks to be a little more vocal so that the government officials realize there is a 90 percent that supports you.

Edna Sussman:

It is indeed time for the 90 per cent to be vocal to help move this country forward. The voices of all those who recognize the need to develop the necessary energy infrastructure and policies to meet the challenges of the 21st century must be heard at every level of government, from the national stage to the local community. Moving into the future we must assure energy security and energy reliability for all nations and find solutions to the threat of global warming. To accomplish these goals, political will is necessary and that political will depends on the people who drive politicians in their decision making as they respond to their own constituents' concerns. So it is time to move beyond NIMBY and lead into the future.

Our time is up and I would like to extend a really special thank-you to all of our speakers. I want to also thank all of you for joining us today, and we do hope you will join us again.

ABA SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES
Calendar of Section Events ♦ www.abanet.org/environ/calendar/

**Modernizing Our Largest Renewable Resource:
A Conversation with Andrew Munro, National
Hydropower Association**
May 12, 2010
Quick Teleconference

2010 Eastern Water Resources Conference
May 20–21, 2010
Orlando

**Environmental Issues in Region 6:
Recent Developments and Hot Topics**
June 14-15, 2010
Dallas

ABA Annual Meeting
August 5-10, 2010
San Francisco

18th Section Fall Meeting
September 29–October 2, 2010
New Orleans

COMMUNITY PLANNING ASSISTANCE PROGRAMS: USING ALTERNATIVE DISPUTE RESOLUTION TO ADDRESS CLIMATE CHANGE

Kristian Kofoed and Paula Reeves

The Washington chapter of the American Planning Association (APA Washington) is using alternative dispute resolution (ADR) in a new and exciting way: addressing climate change and sustainability through community planning. APA Washington's effort could inform a national model.

How Does the Community Planning Assistance Team (CPAT) Model Work?

APA Washington organizes teams of volunteer professionals—the “Community Planning Assistance Team” (CPAT)—to work for one to two days with small cities that have limited planning resources. The product of these planning charrettes is a short-term action plan for the city, addressing needs ranging from economic development to affordable housing to transportation. A key goal for the teams is to advance sustainability in cities' thinking and planning.

In practice, a city that needs planning assistance responds to APA Washington's web-based program description with a request for assistance. Paula Reeves and Kristian Kofoed, co-chairs of the CPAT program, review the request for assistance and facilitate a preliminary discussion with elected officials, planning commissioners, local business leaders, and community residents. This preliminary meeting helps to identify the goals that will be addressed in the ultimate action plan. A key strategy for Paula and Kristian is to make the decision makers aware of how their issues are internally linked. For example, they commonly discuss the basics of the triple bottom line, the connection between the environment, equity, and economy, in the context of a specific community issue like declining school enrollment or industrial job loss in an area. With the decision makers as part of the facilitated discussion, they begin “interest bargaining” around their respective positions on those issues. The CPAT emphasizes the importance of involving the decision makers at an early stage so that no one can veto a

mediated settlement later. These parties are also well positioned to understand the real-world trade-offs between climate change and other community priorities like economic development and transportation. By using a mediation-based approach to collaborative governance, the participants in community planning assistance work sessions come away with a strong sense of ownership in both process and outcomes.

CPATs face real-world planning problems that are particularly acute in small cities and towns. These cities have extremely limited resources with which they must face everyday maintenance issues. State and federal agencies have shrinking budgets for local assistance. A mediation model is more effective than others because it prevents the “policy paralysis” that may seem inevitable to overwhelmed small-town decision makers and planners. Often, CPAT work sessions result in some creative solution that, in true mediation fashion, has eluded the parties because of the positions they have staked out.

CPATs have a great diversity of expertise. Team members typically include planners with expertise in land use, transportation, economic development, urban design, natural resources, parks and recreation, historic preservation, and other areas. The CPAT has been selected by the national APA as a model community-planning program and will be highlighted at the 2010 APA conference. Community-based models such as the CPAT are gaining popularity as an effective way of leveraging limited resources, especially in the context of challenging issues such as climate change adaptation.

CPAT is also strengthened by its affiliation with the accredited planning schools at the University of Washington and Eastern Washington University. CPATs often include graduate students who help provide background research and assist with planning the charrettes, which provides the graduate students with real-world experience and exposure to this community-based combination of mediation and planning. Students can also be an additional community planning resource after the charrette concludes.

How is Mediation Used in the CPAT Process?

CPAT planning sessions are a novel form of collaborative governance but are firmly based on

standard mediation consensus-building practices. All parties voluntarily consent to participate. The work sessions follow the basic mediation process: opening statements, story development, identification of interests, and generation of options or proposals. As in all mediations, the decision makers are expected to own and be responsible for their action plans. The key difference, and a potential new direction for ADR lawyers, is that the CPAT context brings to the “settlement document”—in this case called an “action plan”—an innovative approach to urban governance. The urban planning context is both an opportunity and a challenge for the CPAT. Perhaps more than most mediation sessions, the decision makers who request the CPAT’s services often expect that the CPAT members will develop and enact the recommendations in the action plan. CPAT co-chairs make a special point of explaining that the responsibility of the team is to help identify creative solutions that are “win-win” for the participants, but implementation is up to the community. However, responsibility for implementation of the community action plan is a continuing factor about which planning mediators must be cautious and clear about roles.

In the pre-negotiation stage of a CPAT, the advance team explains the rules in the same way that a mediator explains the process and often reads an agreement to mediate. The community and the CPAT collaborate on developing the agenda, as mediation “screeners” also do.

Another similarity to a mediation session is that in the “negotiations” stage, there is often a lengthy brainstorming discussion of proposals, options, and ideas. These are good raw materials that the CPAT can use to formulate an action plan or agreement.

The CPAT commits to delivering a report within 30 days after the charrette concludes, which can help the community keep the momentum going. There are some similarities to a continuing mediation session, in that the CPAT co-chairs continue to check back, often lending additional assistance through connection with internship programs and state and regional government resources.

How Does the CPAT Approach Help Address Climate Change?

The CPAT provides a unique opportunity for decision makers to consider sustainability in the larger “decision matrix” of their related urban governance issues. Whether the immediate issues are transportation, urban design, or stormwater management, the CPAT can point out the savings and advantages of looking at the interrelationship of these issues within a sustainability context. For example, in one recent workshop, the CPAT helped to reframe the community’s interest in job creation and economic development. The team discussed green jobs and opportunities for expansion of renewable energy business and residential efforts through incentives, development of a municipal energy fund, support for and showcasing of experimental energy-efficient housing, and encouraging the city to set an example by decentralizing the fuel budgets of each department within the city to create a friendly fuel-use competition. The CPAT members provide examples and resources for funding and technical assistance, as well as offering post-charrette support and follow-up on specific issues if needed.

Like politics, many climate change solutions are local. By offering local decision makers a safe forum for discussion, negotiation, and resolution, the CPATs encourage them to try new solutions and search for new opportunities in a challenging political—and global—climate. The action plan that results can help keep the town on task.

How Does APA Washington Ensure a Consistent Approach to Sustainability by CPAT Volunteers?

In team planning efforts, consensus building among team members can be as much of a challenge as building consensus among decision makers. The CPAT model helps to build consensus early among volunteers by ensuring each potential team member has at least a general understanding of APA Washington’s policy framework called *Sustainable Washington: Planning for Climate Change*.

Sustainable Washington: Planning for Climate Change is intended as a resource for Washington planners to use as they work to better understand the possible and likely environmental consequences of climate change, identify potential measures to help Washington communities adapt to the change, and reshape the built environment in ways that can mitigate the emissions of greenhouse gases.

APA Washington endorses a systematic, integrated planning approach to addressing climate change and promotes the following objectives through the CPAT and other programs:

- Reduce greenhouse gas emissions (GHG) primarily through the reduction of fossil fuel use, which is critical to slowing the pace of climate change.
- Coordinate the actions of units of government. Because it is both a global and local issue, climate change policy must be coordinated among all levels of government. In 2009, the Washington State Legislature took an important step in this area by adopting statewide goals for reducing the miles we drive or vehicle miles traveled.
- Promote interdisciplinary action among professional areas of expertise and among the public, private, and nonprofit sectors.
- Choose strategies that are economical, as determined through a comprehensive assessment of community energy resources and use.
- Establish a balanced approach. Recognize that action on climate change must include a mix of education (providing more complete information so decision makers make better choices), incentives (whether through funding or other means), and regulation (at federal, state, and local levels).
- Assist people and places that need it. Recognize that special assistance may be needed for the people and places that are most impacted by the effects of climate change, but least able to change on their own. Consider issues of social justice, environmental equity, or special attention to critical sites.


APA Washington's CPATs have a proven track record of successful, consensus-based action plans with over a dozen planning sessions in Washington cities in just three years. Kristian Kofoed and Paula Reeves have over 20 years of ADR training and experience between them. Kofoed is a licensed attorney specializing in comprehensive planning and land use/environmental issues. Paula Reeves serves as a member of the newly formed Community Planning Committee for National APA.

Kristian Kofoed is a senior urban planner with the city of Seattle's Department of Planning & Development and has served on the board of directors for the Washington chapter of the American Planning Association since 2006. The focus of his practice is developing and implementing sub-area plans, with particular expertise in identifying appropriate regulations, guidelines, and community agreements that help shape new development. He may be reached at Kristian.Kofoed@seattle.gov.

Paula Reeves is the local planning manager for the Washington State Department of Transportation and has served on the board of directors for the Washington chapter of the American Planning Association since 2006. She provides a range of transportation planning and engineering services to cities, counties, and transit agencies including expert advice on transportation design for livable communities, pedestrian and bicycle facility design expertise, and transportation planning support relative to the state's Growth Management Act. She may be reached at Reevesp@wsdot.wa.gov.

For more information about CPAT, please see <http://washington-apa.org/programs/cpat/>.

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BIO-SEQUESTRATION LAW AND POLICY CONFERENCE

Christopher Carr

On October 23, 2009, the CCSDE section and the Columbia Law School Center for Climate Change Law cosponsored a daylong conference on “Bio-Sequestration and Climate Law and Policy.” Increasing bio-sequestration has been recognized by many scientists, policymakers, and project proponents as a key mechanism for reducing carbon dioxide in the atmosphere and therefore mitigating climate change. Conversely, land use changes that *reduce* bio-sequestration (such as through deforestation) may harm not only the ecosystems directly impacted, but contribute to climate change more broadly.

Before a packed audience at Columbia Law School that attended the October 23 conference, experts in various disciplines spoke on issues related to bio-sequestration, including the science of sequestration, financing for bio-sequestration projects, related carbon market developments, bio-sequestration incentives in federal legislation, international policy developments, and lessons learned from projects both internationally and domestically.

By way of summary, over the last year bio-sequestration has been prominent in a number of climate-related forums. For instance, provisions addressing bio-sequestration have been included in climate change bills before the U.S. Congress (such as the Kerry-Boxer and Waxman-Markey bills). Moreover, international climate negotiations have focused on deforestation, and following the conference, deforestation provisions were included in the Copenhagen Accord negotiated at the United Nations climate meetings in December 2009. A market for carbon credits from bio-sequestration projects in the forestry and agricultural sectors exists today (in both the “voluntary” and “compliance” carbon markets), with wider implications for ecosystems and ecosystem services. Although significant technical, market, and legal and policy issues continue to evolve regarding bio-sequestration, and uncertainties remain, bio-sequestration is likely to continue to be a significant

focus of attention both domestically and internationally as the ramifications of addressing climate change continue to be considered.

Video and presentations from the conference can be found at <http://www.law.columbia.edu/centers/climatechange/conferences>.

The Science of Sequestration

The first panel of the October 23 conference discussed the science of bio-sequestration. Shahid Naeem, professor and chair of the Department of Ecology, Evolution and Environmental Biology of Columbia University, discussed the carbon cycle—the way that carbon moves among soils, vegetation, the oceans, and the atmosphere, and how humans have altered the cycle. He summarized the sources of carbon (such as vegetation respiration, ocean outgassing, fossil fuel emissions, and changes in land use) and carbon sinks (vegetation net production, ocean absorption, and land sinks). Daniel Hillel, senior research scientist at Columbia’s Center for Climate Systems Research, focused on carbon exchange in the terrestrial domain and the role of agriculture. He detailed how deforestation, cultivation, and reforestation alter soil carbon content and how different kinds of agricultural and forestry practices can change atmospheric levels of carbon dioxide.

Lessons Learned from On-the-Ground Projects

Robert B. McKinstry Jr. of Ballard Spahr, LLP, moderated this panel discussion of experiences that have been gained from efforts to implement terrestrial sequestration projects. John Quigley, the acting secretary of the Pennsylvania Department of Conservation and Natural Resources (PADCNR), described how his agency had convened a Carbon Management Advisory Group of stakeholders to develop a Carbon Management Plan for Pennsylvania. That plan identifies opportunities for additional sequestration of carbon in the Commonwealth’s forests and soils, possible opportunities for geologic sequestration, and opportunities for sustainable use of forest resources for energy production. PADCNR has

already certified the 2.1 million acre state forest system and is trying to identify specific projects that can be implemented in the Pennsylvania state forests and parks or private forest land. The department has followed up this effort with additional studies of geologic sequestration opportunities and barriers.

Also speaking on this panel was Paul Harrison, senior director for the Environmental Defense Fund's Mississippi River and East Coast Center for Rivers. He described the unique public-private project on the Gulf of Mexico to sequester carbon and prevent carbon dioxide emissions through the restoration and recreation of Gulf coastal wetlands. Finally, Tiffany Potter, of Streamline, Inc., described efforts to generate additional income from carbon dioxide sequestration in financing natural resource projects and the barriers to implementing these projects. Panelists agreed that income from sequestration (e.g., from carbon credits) was usually a secondary benefit of the projects and usually does not drive the projects. However, reducing uncertainty regarding carbon credits, standards for creating credits, and the value of credits would increase the value of sequestration and make some projects feasible that are now marginal.

International/Reducing Emissions from Deforestation in Developing Countries (REDD)

Jeffrey B. Gracer of Sive, Paget & Riesel moderated a panel addressing the expected legal framework for REDD projects coming out of the Copenhagen negotiations, as well as financing for such projects and lessons learned from prototype projects already under development. Donald Brown, professor of Environmental Ethics, Science and Law at Pennsylvania State University, addressed several of the issues that would likely be addressed in Copenhagen, including how to establish baseline rates of deforestation, how to define and measure additionality, how to avoid displacement of deforestation from protected areas to adjacent areas (leakage), how to finance REDD projects, and how to create enforceable mechanisms that ensure the permanence of forest protection efforts.

Also speaking on this panel was Ellysar Baroudy, fund manager of the BioCarbon Fund at the World Bank, who addressed funding sources that can be made available for pilot REDD projects, as well as capacity-building efforts to ensure that countries have the appropriate regulatory and governmental infrastructure to oversee REDD projects and ensure that commitments are observed on the ground. Finally, Julianne Baroudy, coordinator of the Rainforest Alliance's Climate Initiative, addressed efforts to preserve forest lands within Guatemala's Maya Biosphere Reserve. She indicated that areas that are subject to voluntary certification to sustainable forestry standards have been most effective at preserving forested lands within the reserve, because the communities with a stake in the forests are vigilant in protecting their interests.

Federal Legislation and Incentives for Sequestration

Joseph A. Siegel of the U.S. Environmental Protection Agency (EPA), Region 2, moderated a panel on the bio-sequestration provisions of proposed legislation and the potential economic impacts and incentives for business. Christopher Carr of Vinson & Elkins discussed provisions in the Waxman-Markey and Kerry-Boxer bills that provide significant incentives for bio-sequestration, both domestically and internationally. He also addressed how the bills treat issues such as the permanence of emission reductions achieved through bio-sequestration projects, as well as related provisions for obtaining carbon credits from these projects. Joseph Siegel then presented EPA's analysis of the Waxman-Markey bill with respect to mitigation potential from the agriculture and forestry sectors. He also discussed the economic impacts resulting from soil carbon offsets and implications for income in the agriculture sector. Robert O'Sullivan, executive director North America of Climate Focus, then discussed incentives for sequestration and the practical implications of proposed legislation. He indicated that a U.S. climate bill is likely to create significant demand for offsets and provided examples of existing on-the-ground projects involving reforestation, forest management, changes in tillage practices, wetlands, and REDD.

Forest and Agricultural Products and Co-benefits; Sustainability Criteria and Measuring, Monitoring, Verification, and Certification

Thomas P. Redick (Global Environmental Ethics counsel) organized this panel on forestry and agriculture's contributions to carbon sequestration, which was moderated by Joyce Cacho, the chief sustainability officer for Novus International. Jane Earley, of Earley & White Consulting Group, LLC, discussed "Carbon Credits from Forests and Agriculture—Sustainability, Certification and MRV," noting that regulated markets will require measuring, reporting, and verification (MRV) of offsets from bio-sequestration. Such standards for MRV and voluntary markets may include third-party certification and chain of custody/traceability for products. Standards systems exist at multiple levels, both public and private sectors, and involve many levels of complexity. Leaders in providing standards include the Climate Group, Forest Carbon Portal, and the American Carbon Registry™. She further noted that additionality and "permanence" (e.g., having the carbon benefits last 100+ years) are important in agriculture and forest projects: carbon credits cannot be granted for what you were doing already and concerns exist regarding future reversals of sequestered carbon (such as through harvesting of trees or forest fires or other natural causes). Ms. Earley also said that more transparency in standards development would be desirable, and the cost and role of third-party certification needs to be clarified.

Also on this panel, David J. Mladenoff, a professor at the University of Wisconsin-Madison, discussed his landmark study in 106 *Proceedings of the National Acad. of Sci. of the United States of America* (15) 6082–87 (2009), with Jeanine M. Rhemtulla and Murray K. Clayton, which revealed significant potential for increased carbon sequestration, given historical forest baselines. He noted that one-third of net carbon dioxide emissions to the atmosphere since 1850 are the result of land use change, primarily from the clearing of forests for timber and agriculture. Reforestation of agricultural lands, in particular the formerly high carbon-density forests in the north-central region that are now agricultural lands that are less optimal than those in the south, could sequester

150 gigatons of carbon. Restoring historical carbon stocks across the landscape would require reassessing overall land use choices, but a range of options can be ranked and considered under changing needs for ecosystem services.

Finally, Richard Krause of the American Farm Bureau Federation in Washington, D.C., summed up the policy positions of Farm Bureau members, who are concerned with the financial costs that a climate bill may impose on them and interested in selling carbon credits. There is no question, however, that the storage of carbon in large quantities will require a cooperative approach from growers and foresters.

Christopher Carr is president of C2E2 Strategies, LLC. He can be reached at ccarr@c2-e2.com. Special thanks to all the moderators and panel organizers who contributed both to the conference and the portions of this article that pertain to their panels, including CCSDE members Robert McKinstry, Jeff Gracer, Joseph Siegel and Thomas Redick, and Mike Gerrard of Columbia's Center for Law and Policy.

One Million Trees Project— Right Tree for the Right Place at the Right Time

Join Section efforts to plant one million trees by 2014. This project calls on ABA members to contribute to the goal of planting one million trees across the United States in the next five years. In addition to planting trees, the Section also intends, through public outreach and partnering efforts, to raise the nation's awareness of the multiple benefits of trees. To participate in the One Million Trees Project, please visit any of the information pages at our partners' Web sites linked from: http://www.abanet.org/environ/projects/million_trees/home.shtml.

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