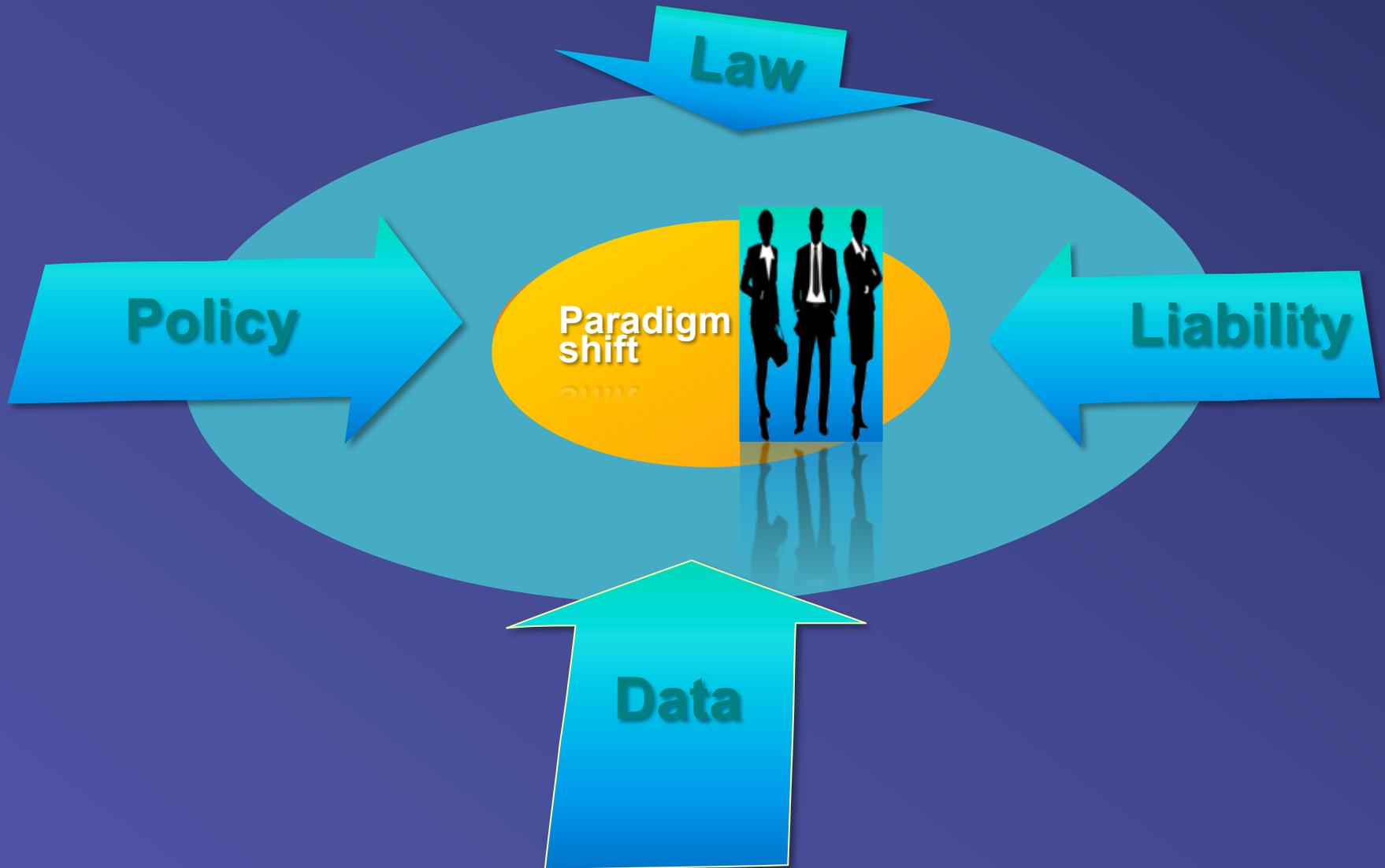


Planning for Climate, Sea Level Rise & the Law

Erin L. Deady, Esq., AICP, LEED AP



Increasing liability, new policy and better data are influencing our approach to planning





Flooding, SLR and Storms

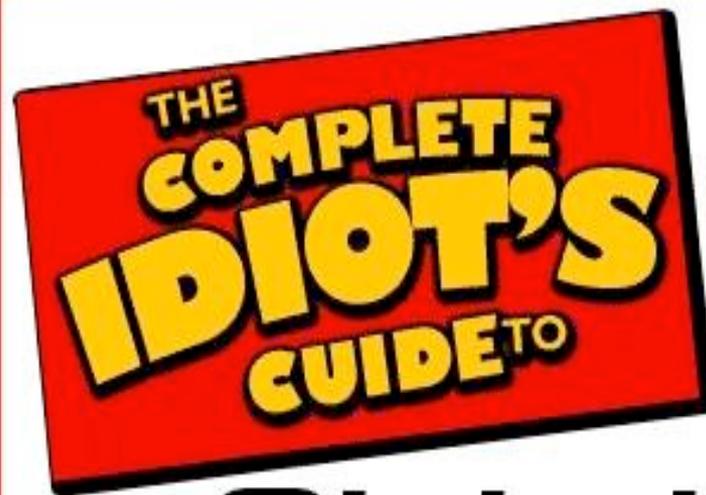


Overflowing Sewer

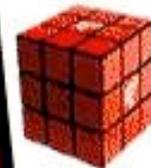
Pensacola 4/30/14



**WHY BOTHER?
THE LAW JUST
MAY REQUIRE
IT SOONER
THAN YOU
THINK !!**



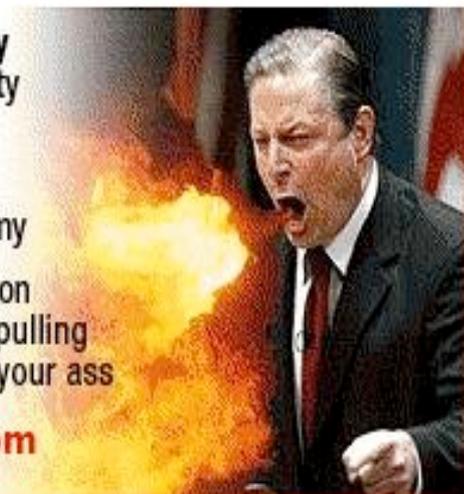
US\$ 18.95



Global Warming

- ★ The quick and easy way to make anyone feel guilty simply for being alive
- ★ Idiot-proof steps for destroying world's economy
- ★ Down-to-earth advice on suppressing dissent by pulling "scientific facts" out of your ass

ThePeoplesCube.com





Global/Federal Framework



- United Nations Framework Convention on Climate Change (UNFCCC) (1992) voluntary goal of reducing GHGs from developed countries to 1990 levels by 2000
- Kyoto Protocol (1997) binding targets to reduce GHGs 5.2% below 1990 levels by 2012
- Copenhagen Accord
- U.S. Response
 - Attempts @ legislation
 - Supreme Court EPA has authority to regulate CO₂, reporting for sources emitting over 25,000 MTCO_{2e}
 - No legally-binding cap on GHGs
- Updated Corps Guidance (2011, 2013) for Civil Works projects
- 12/14/2014- CEQ released revised draft guidance for public comment (until March 25, 2015) that describes how Federal departments and agencies should consider the effects of greenhouse gas emissions and climate change in their NEPA reviews (supersedes 2010 guidance). Applies to all proposed Federal agency actions, including land and resource management actions.
- United Nations Climate Change Conference, COP21 or CMP11 will be held in Paris in 2015.
 - 21st yearly session of the Conference of the Parties (COP 21) to the 1992 United Nations Framework Convention on Climate Change (UNFCCC) and the 11th session of the Meeting of the Parties (CMP 11) to the 1997 Kyoto Protocol.



Where does Climate Change Show Up?

- ESA
- NEPA
- CAA
- CWA
- MMPA
- FOIA
- Energy
- Global
Research
- Corpora
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- FTC

**Columbia Database
includes 789 pages of
case descriptions:
environmental,
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- Protestors and scientists



Florida Laws

- Reduction of emissions to 2000 levels by 2017, to 1990 levels by 2025, and by 80% of 1990 levels by 2050.
- Florida adopted California vehicle emission standards reductions (22% by 2012 and 30% by 2016).
- Building Efficiencies/Code, Chapter 553, F.S. increasing standards
- HB 7123: Model Green Building Code (2007)
- HB 697 (GHG reduction strategies in local government's Comprehensive Plan). Some requirements recently eliminated.
- HB 7135 (State and Local Government Buildings "greener")
- HB 7179 (PACE)- wind resistance/energy efficiency initiatives for financing (future use for flood mitigation?)
- HB 7117 (Energy Bill- 2012)
- Virtually nothing 2013/2014
- 2015- 5 Bills Passing Related to flood insurance, wind insurance, construction standards/building codes, Citizen's insurance



Florida's Law: How Far Does it Go?

- **Comp Planning standards on data:** “Appropriate” and “professionally accepted” data (science on GHG emissions and climate change?)
- **Types of principles in planning:** “Use ecological planning principles and assumptions in the determination of the suitability of permitted development.”
- **Its “sprawl” if:** (VIII) plan or plan amendment allows for land use patterns or timing which disproportionately increase cost in time, money or energy of providing & maintaining facilities / services, including roads, potable water.
- **“Discourage the proliferation” of sprawl if:** project incorporates a development pattern or urban form that achieves four (4) or more of the following.... (IV) promotes conservation of water and energy.
- **Conservation element:** must contain principles, guidelines and standards for conservation that provide long term goals to protect air quality ...
- **Use of mapping tools:** CHHAs and AAAs? Define and provide permissive designations of areas.



SB 1094

- 163.3178 Coastal management.—
- (2) Each coastal management element required by s. 163.3177(6)(g) shall... contain:
- (f) A redevelopment component that outlines the principles that must be used to eliminate inappropriate and unsafe development in the coastal areas when opportunities arise. The element must.....



SB 1094

1. Include development and redevelopment principles, strategies, and engineering solutions that reduce the flood risk in coastal areas which results **from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea-level rise.**
2. Encourage the use of best practices development and redevelopment principles, strategies, and engineering solutions that will result in the removal of coastal real property from flood zone designations established by FEMA.
3. Identify site development techniques and best practices that **may reduce losses due to flooding** and claims made under flood insurance policies issued in this state.



SB 1094

4. Be consistent with, or more stringent than, **the flood-resistant construction requirements** in the Florida Building Code and applicable flood plain management regulations set forth in 44 C.F.R. part 60.
5. Require that any construction activities seaward of the coastal construction control lines established pursuant to s. 161.053 be consistent with chapter 161.
6. Encourage local governments **to participate in the National Flood Insurance Program Community Rating System** administered by FEMA to achieve flood insurance premium discounts for their residents.



Other 1094 Issues

- Beginning January 1, 2017, a surveyor and mapper shall, within 30 days after completion, submit to the division a copy of each elevation certificate that he or she completes.
- Flexible flood insurance must cover losses from the peril of flood... and may also include coverage **for losses from water intrusion originating from outside the structure** which is not otherwise covered by the definition of flood.



Kivalina & Steadfast- Who is Going to Move the Alaskan Tribe?

- Nuisance claim for \$ from the energy industry for flooding damage caused by climate change.
- Supreme Court passes May 20, 2013 on reconsideration of appellate dismissal.
- "...if an individual driving a car (and thus contributing to emissions) could also be a defendant, and if so, **how a court could determine who was liable**"? - CAUSATION
- Steadfast had no duty under the CGL policies issued by it to defend its insured, AES Corp., against climate change/global warming-based causes of action (Vacated, Rehearing and Reaffirmed 4/20/12)
- Steadfast: did the damage result from an "occurrence"? Answer: No (x2)
- "If an insured **knew or should have known** that certain results would follow from his acts or omissions, **there is no 'occurrence' within the meaning of a CGL policy...**"



Kivalina, Alaska



Flood Control Liability

- *In re Katrina Canal Breaches Consolidated Litigation* (Robinson), 647 F. Supp.2d 644 (E.D. La. 2009).
- 400+ plaintiffs sued to recover for Katrina-related damages and the Corps' mismanagement of the Mississippi River Gulf Outlet or MRGO.
- 7 of these plaintiffs (the "Robinson plaintiffs") went to trial. Plaintiff's win, Corps appeals to 5th Circuit and loses. No sovereign immunity, data was there & Corps was negligent (grossly).
 - No defense under Flood Control Act (no safe haven)
 - No exception under Federal Tort Claims Act (Corps did nothing to protect against storm surge effect)
 - Should have updated EIS under NEPA ** Ongoing obligation under NEPA to consider adapting to a changing climate **
 - Negligence (this could attach to privately constructed structures too)
- Scientific data "foreseeable" ie; sea level rise?
- Just under \$720,000 awarded to 5 plaintiffs BUT
- Corps dismissed from case (immunity argument being appealed), but further settlement with levee districts is forthcoming "maybe" (and appeals)-



New Life for Katrina Case

- A federal MRGO
- "Tempo
- Included in October
- MR-GO natural p
- "Certain hurricane time bo destruct

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YES.

LOOPHOLE FOUND.

DIYLOL.COM



What Level of Service?

- Jordan v. St. John's County
 - Impose moratorium and stop road maintenance
 - Inverse condemnation for failure to maintain Old A1A
 - Assertion that County has duty to maintain public roads in good order
 - A county is not obligated, nor can it be compelled, to perform or provide for any particular level of maintenance, except as it voluntarily assumes to do.
 - Settlement to maintain road in an “as-is” condition
- “Negotiated” LOS Standards?

BURNSIDE
CHICAGO INDUSTRIAL CORRIDOR
Richard M. Daley Mayor

14'-2"

SPEED LIMIT
30





Photo credit:
Lobsterboatblockage.org

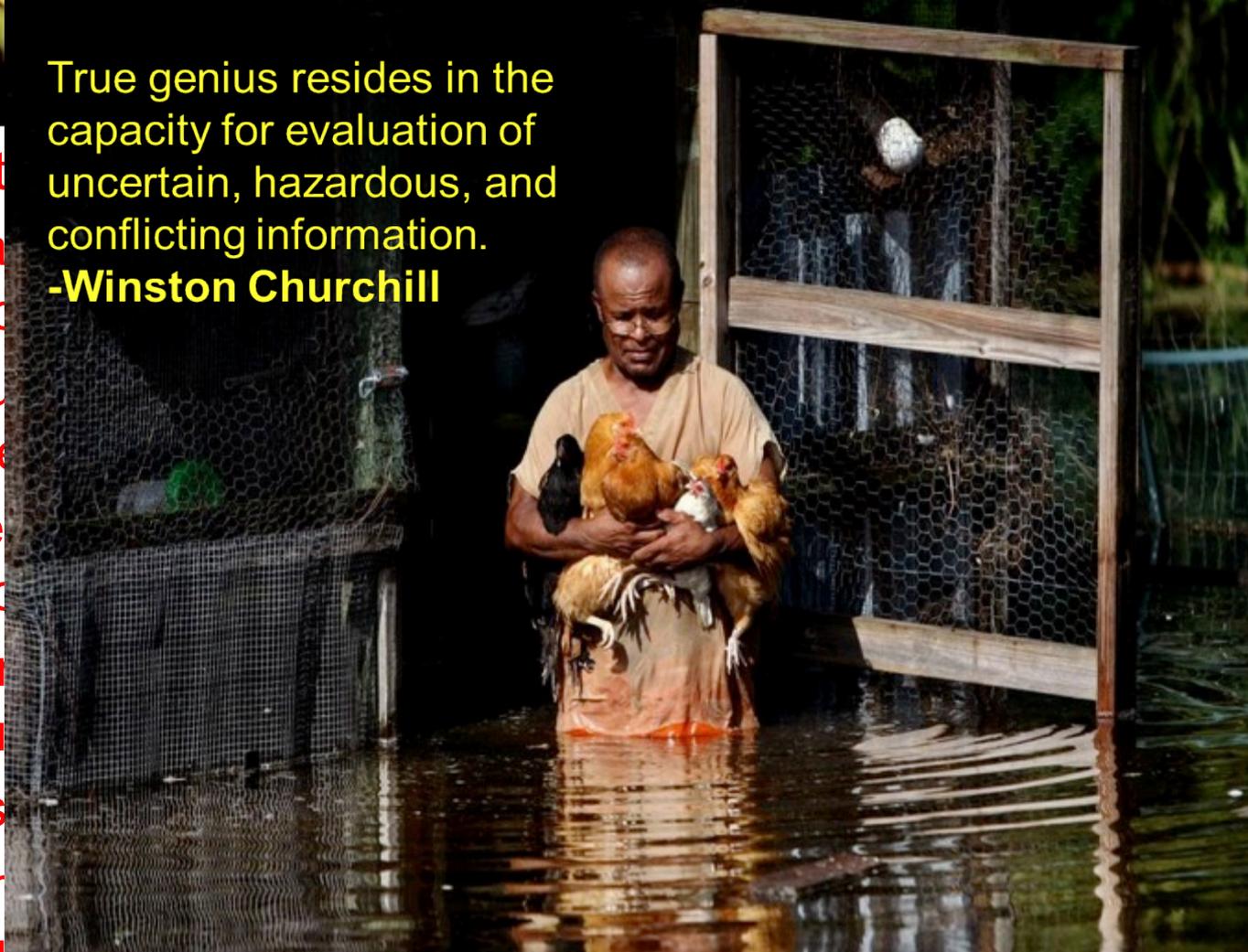


Issues on the Rise

- Water
- Sea level rise
- Insurance coverage
- The environment
- Retirement issues
- Resilience
- Immigration issues

True genius resides in the capacity for evaluation of uncertain, hazardous, and conflicting information.

-Winston Churchill



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On the Horizon

AND THEN OUR REPORT SAID



**"SUSTAINABILITY IS AT
THE HEART OF OUR CULTURE"**

imgflip.com

ERIN L. DEADY, P.A.



What are FL Governments Doing?

- GHG Management Strategies (largely from Stimulus funds)
- Sustainability and Climate Plans
- NEPs- Charlotte Harbor National Estuary
- Vulnerability Analyses-Punta Gorda (“combat”), Compact, Satellite Beach, Monroe County
- Comprehensive Plan Elements- Monroe and Broward counties and others (Space Coast area)
- Code provisions- Freeboard initiatives-
- Adaptation Action Areas in Comp Plans
- Capital Improvements Planning- Miami Beach Stormwater Master Plan
- Property Assessed Clean Energy- Wind resistance improvements (look for flood mitigation?)



Other Planning Considerations

- Insurance will be a limiting factor in terms of where we live or “retreat” to-
- Insurance companies will start to “consider” prospective factors in rates such as sea level rise-
- Communities may be “forced” to implement mitigation and adaptation strategies in response-
- Tying planning process to FEMA’s Community Rating System so strategies result in tangible benefits to people-

Bottom Line: There are multiple benefits of planning as an approach to address sea level rise-

