ABA Section of Environment, Energy, and Resources
AMERICAN BAR ASSOCIATION

Smart Growth and Green Buildings Committee Newsletter

Vol. 8, No. 2 **May 2015**

STATEWIDE PERMITTING MANDATES BEGIN TO TURN THE TIDE ON SOLAR'S INCREASING SOFT COSTS

Daniel Freedman

The price of solar energy has dropped dramatically over the past several years. In just two years, between 2010 and 2012, for example, manufacturers were able to cut the average price of a solar module in half. This price drop continued into 2014, as the global spot prices for solar modules hit all-time lows (63 cents per watt), making solar energy increasingly competitive with traditional fossil fuels and retail electricity prices. (*See* http://thinkprogress.org/climate/2014/07/11/3459225/solar-spot-price-record-low/.) This trend however, has been counterbalanced by a disturbing rise in "soft costs," that is, costs relating to permitting, installing, and inspecting solar photovoltaic systems. Studies have shown that since 2010, the per-kilowatt hard cost of a solar module dropped by approximately 70 percent, whereas the soft costs were reduced by only 30 percent. To describe it another way, in 2010 soft costs accounted for approximately 30 percent of the costs typically incurred to develop a utility scale solar facility, whereas today soft costs account for more than 40 percent and are now the largest single proportional cost attributed to solar. For smaller-scale solar installations, such as those installed on single-family homes, these soft costs can sometimes amount to over 60 percent of the total system's cost! (*See* Friedman et al., *Benchmarking Non-Hardware Balance-of-System (Soft) Costs for U.S. Photovoltaic Systems, Using a Bottom-Up Approach and Installer Survey*, NREL (Oct. 2013), *available at* http://www.nrel.gov/docs/fy14osti/60412.pdf.)

Although the reasons for this proportional increase in soft costs are varied, the often cumbersome local permitting and inspection process has been identified as a major contributor. As California's Office of Planning and Research explained it: "Currently, local permitting agencies maintain differing permit processes for small solar [photovoltaic] installations. These differences have created a confusing patchwork of requirements, which has made installing solar PV more expensive and slowed the expansion of this technology in California." (*See* The California Solar Permitting Guidebook, p. 4, *available at* www.opr.ca.gov/docs/California_Solar_Permitting_Guidebook.pdf.) Included in this confusing patchwork are complex and unnecessarily long permit applications, excessive inspection and review requirements, slow processing times, and disproportionate permit fees, which create significant added expenses and delays for solar installers. One study performed by the Lawrence Berkeley National Laboratory found that a solar energy system's cost can be impacted from as much as 4 to 12 percent depending on the permitting practices in place for approving the system. (*See* Wiser & Dong, *The Impact of City Level Permitting Processes on Residential Photovoltaic Installation Prices and Development Times* (Apr. 2013), *available at* http://emp.lbl.gov/reports.)

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Adam Preller and Sarah Payne-Jarboe, Editors

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Oregon's Approach to Addressing Soft Costs

In an attempt to address this problem, and to reduce these increasing soft costs, innovative statewide strategies are emerging to simplify permitting requirements and create uniform procedures. One of the first states to try this strategy was Oregon, which implemented the Oregon Solar Installation Specialty Code (OSISC) in 2010. The OSISC sought to create consistency among local agencies with respect to their requirements and permitting procedures for solar PV installations on homes, making it easier for both homeowners and solar installers to navigate permitting standards. To accomplish this, the OSISC adopted a solar code that preempted local regulations and permitting procedures, requiring (a) standardized permitting and inspection standards, while allowing for some local discretion for additional requirements as needed; (b) fast-track compliance and entitlement procedures for rooftop installations on conventional light-frame construction (known as a "prescriptive path"); (c) standardized permit fee calculation methodologies; and (d) requirements that permits be reviewed and decided upon within "reasonable" time frames. (*See* http://www.bcd.oregon.gov/programs/structural/solar_code/100110_OSISC.pdf.) Since going into effect in 2010, the OSISC has been considered by solar advocates to be a best practice for streamlining local entitlement and permitting procedures on a statewide basis. Not only did the OSISC help spur solar energy growth in Oregon, it also helped by serving as an example for other states on how to fix the growing problem of soft costs.

California's Approach to Addressing Soft Costs

Learning from Oregon's success with the OSISC, the California legislature passed Assembly Bill 2188 (AB 2188) in August of 2014 (signed by the governor in September of 2014), with the similar goal of streamlining local permitting practices for new solar projects. The bill, which builds on the various protections already afforded to property owners under the Solar Rights Act of 1978, goes much further than the OSISC in establishing an exhaustive standardized permitting procedure across the state. Specifically, the bill mandates that, no later than September 30, 2015, each and every city and county must adopt an ordinance establishing a streamlined permitting procedure. The permitting procedure must be consistent with the state's recommendations in the California Solar Permitting Guidebook developed by the governor's Office of Planning and Research. Each city must include in its ordinance a new streamlined permitting procedure that includes (a) a publicly accessible checklist clarifying which solar energy systems may be eligible for expedited review; (b) an Internet-accessible permit application that may be completed, filed, and submitted online; and (c) a requirement that any application properly filed, that is eligible for expedited review and deemed complete, must be approved with all authorizations issued. (*See* http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2188.) The bill also provides for the following:

- For submitted applications that are deemed incomplete, the city or county is required to issue a written correction notice explaining the deficiencies in the application.
- The amount of time that homeowners associations are allowed to review and deny a solar energy system is reduced from 60 days to 45 days. In the event an application is not denied in that time frame, it is deemed approved.
- Only one city or county inspection shall be required for a solar installation. Any such inspection must be conducted in a timely manner (excluding fire safety inspections).
- For those solar installations installed by an association managing a common interest development, the bill prohibits local governments from conditioning their approvals.

The bill is also explicit about further limiting what types of fees or conditions may be required

by local covenants, conditions, or restrictions (or "CC&R"). Under existing law, CC&R may not impose requirements that "significantly" increase the cost of the solar energy system or decrease its efficiency or performance. Under California Civil Code sections 714 (d)(1)(A) and 714 (d)(1)(B), "significantly" means that it increases the system cost by more than $2000, or decreases system efficiency by more than 20 percent. This new bill cuts those numbers in half, and now restricts any CC&R that increase the system's cost by more than $1000, or decrease the system efficiency by more than 10 percent. In some jurisdictions, this restriction may result in immediate cost reductions and savings for solar energy installers.

AB 2188 goes on to further restrict a local agency's ability to rely on "use" permits for solar approvals, which can often significantly delay project approvals and can sometimes include excessive exactions or unreasonable conditions of approval. Before the bill, use permits could only be required for solar projects when the building official found that the proposed solar energy system would have a "specific, adverse impact upon the public health or safety." This finding, under the old law, had to be justified by a good-faith belief—a very loose standard that was difficult to challenge. Now, as mandated by the new bill, a building official's finding of a specific, adverse impact on public health or safety must be supported by "*substantial evidence*." Under this standard, findings still do not require specific judicial precision, but must at least "expose the mode of analysis" used by the building official. (*See Craik v. County of Santa Cruz*, 81 Cal. App. 4th 880, 891 (2000).) This standard limits a building official's discretion to make generalized findings of a public health or safety impact without clear and logical evidentiary support.

A Movement to Curb Soft Costs

While AB 2188 and the OSISC will not result in an overnight fix to the problem of soft costs, the benefits of having simple and manageable local permitting standards will pay dividends in the long run for solar installers and homeowners alike. Not only do AB 2188 and other similar statewide regulations, like the OSISC, make local permitting much easier, they also result in clear and quantifiable savings for solar installers in terms of time and cost. In combination with other innovative programs and policies, such as California's requirement that all new residential and commercial buildings be constructed to be "solar ready," the process of acquiring and installing a new photovoltaic system will continue to improve and become increasingly streamlined and cost-effective. Ultimately, these innovations will take the confusion and uncertainty out of the picture and, in a few years, will help make solar one of the most affordable and reliable energy sources available.

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WISCONSIN'S PROFITABLE SUSTAINABILITY INITIATIVE

Ray Tierney, PG, CEEP

Manufacturing is a prominent element of Wisconsin's economy, accounting for fully one-fifth of the state's gross domestic product (GDP) and placing Wisconsin as the top "per capita" manufacturing state in the country. A number of large manufacturers are headquartered in Wisconsin, such as Harley Davidson, Oscar Mayer, Mercury Marine, Oshkosh Truck, and Johnson Controls, but the vast majority of the state's 8800 manufacturers are small to mid-sized companies with 500 or fewer employees.

A 2008 Next Generation Manufacturing Study commissioned by the Wisconsin Manufacturing Extension Partnership (WMEP) identified that approximately 33 percent of Wisconsin's manufacturing companies recognized the value of sustainability and deemed it as critical to their strategic direction. However, the study also found that fewer than 20 percent of responding manufacturers had made any progress on implementing sustainability processes in the workplace.

The study cited the following challenges faced by manufacturers:

- No visible link between sustainable practices and profits;
- A lack of time and resources to identify and institute sustainable practices; and
- Very little to no knowledge about sustainable practices and processes.

To address this "gap" and promote best sustainable practices among Wisconsin manufacturers, the state developed a program for its manufacturers called the Wisconsin Profitable Sustainability Initiative (PSI). In 2010, an initial PSI pilot program (phase I) was launched involving 50 manufacturers. It was funded by the Wisconsin Department of Commerce and the American Recovery and Reinvestment Act. Based on the success of phase I, phase II of PSI was launched in 2012 with additional manufacturers, and phase III was launched in 2014 and is currently ongoing. Phases II and III are funded by a grant from the Wisconsin Economic Development Corporation and cost sharing by the manufacturers involved. Over 130 Wisconsin manufacturers have now participated in PSI.

The Profitable Sustainability Model

The PSI sustainability model is a program that was developed to demonstrate the wide range of economic, social, and environmental benefits that can be realized by Wisconsin's small and mid-sized manufacturers through the implementation of sustainable business practices. PSI utilizes a triple bottom line approach (sometimes referred to as "people, planet, and profits") and a cost-benefit analysis to assess current sustainability efforts and identify opportunities for improvement. The program includes three distinct steps:

- **Diagnostic** (30 days): This initial step identifies and prioritizes opportunities for the manufacturer for sustainable improvements over a broad range of environmental, energy, process optimization, health and safety, and logistics project alternatives.
- **Assessment** (60 days): This step is a deeper evaluation of the opportunities revealed by the diagnostic to identify current conditions and costs and determine the feasibility of specific improvement opportunities. The output of the assessment process includes a cost-benefit analysis used to prioritize improvements based on sustainable impact, payback period, and return on investment (ROI).
- **Implementation** (6–24 months): The PSI implementation plan uses findings from the assessment step to drive business execution. Projects range from replacing low-efficiency light fixtures, to reducing the use of toxic substances and the resulting wastes, to reducing raw material use and scrap production, to replacing old machinery with energy-efficient models, to optimizing freight routes and shipping schedules.

A team of organizations with various sustainability experiences contributed to phases I and II of the PSI program. These phases were administered by WMEP, which also used its manufacturing specialists who are well versed in lean manufacturing, and Six Sigma principals to assess opportunities for process optimization improvements in manufacturing. SCS, an environmental engineering firm, developed a sustainability diagnostic tool and managed the first two phases of PSI's environmental and energy efficiency evaluations. Baker Tilly, an accounting firm, developed the ROI and financial analysis tools; LogiServe, a logistics consulting firm, evaluated opportunities for potential transportation and shipping improvements; and the University of Wisconsin-Stout Manufacturing Outreach Center (MOC) performed process optimization reviews in northwest Wisconsin. Phase III of PSI is currently conducted by WMEP and MOC.

Project Examples

Ninety-eight sustainability projects were identified in the first phase of the program. Approximately 60 percent of the projects related to energy efficiency, 20 percent to process optimization, 10 percent involved environmental improvements, and 10 percent logistics. The following are examples of the types of projects performed.

An electrical equipment manufacturer produced approximately 1500 gallons per year of waste solvents that required expensive management and disposal as a hazardous waste. The use of a solvent recovery distillation still was identified as a way of recycling the waste solvents for reuse at the plant, and to reduce the amount of hazardous waste generated to less than one gallon per year.

An aluminum components manufacturer replaced its older die ovens with energy-efficient models with a payback of 1.15 years, and implemented a second scrap reduction project, saving $600,000 per year.

A printer facility had a large air compressor system that powered numerous operations. Leaks within the piping, connections, hoses, and nozzles required the large electric air compressors to run more often, and at high air pressure, which used excess amounts of electricity. An ultrasonic leak survey was conducted on the system that identified over 350 separate leaks. The leaks were repaired, and a preventative maintenance program was developed that includes periodically surveying and repairing new leaks.

A cheese processor conducted a "lean and clean" review, looking at both production and environmental improvement opportunities in its operations. It recognized that bringing currently outsourced cut-and-wrap packing operations back in-house would eliminate a bottleneck in the production process, cut delivery time, reduce fuel for shipping, reduce waste, and lower costs.

Two metal foundries used sand to create molds for molten metal when casting their products. Sand that could no longer be reused was being transported to the solid waste landfills for disposal. An evaluation of their sand was performed along with analytical testing, and a "beneficial reuse" determination was obtained for the sand from the state regulators. This allowed the sand to be reused as base fill at road construction projects, saving the landfill disposal costs.

A resin manufacturer was required to calculate and report its greenhouse gas (GHG) emissions by a European customer as part of a supply-chain evaluation. The GHGs were calculated for a baseline year, an "energy dashboard" was developed to help the company track pertinent energy metrics over time, and a plan was established for continuous improvements.

A packaging manufacturer developed a sustainable packaging alternative to the PVC "clamshell" packaging that is commonly used for many consumer items. The new packaging combines recyclable chipboard or corrugated cardboard (60 percent recycled material) and 90 percent recycled PET plastic. Assistance was also provided in evaluating whether having in-house capabilities for the design and manufacture of product prototypes would speed up the production and sales cycle time.

Conclusion

WMEP compiled the environmental benefits from 146 projects with 73 manufacturers who participated in phases I and II of PSI. The annual projected environmental benefits included significant reductions in greenhouse gas (7719 metric tons of CO_2 equivalent), solid waste (7719 tons), diesel fuel (53,713 gallons), natural gas (397,637 therms), electricity (7.57 million kWh), and air emissions (17 tons). The financial benefits have resulted in a strong ROI for the manufacturers, increased sales, 58 new jobs, and additional investment.

An increased focus on sustainability resulted in numerous benefits for manufacturers including increased profits, creating jobs, improving employee recruiting (especially among Millennials), becoming a market differentiator, and minimizing a company's environmental footprint. The emphasis on ROI differentiates PSI from other sustainability initiatives. The process is designed to adapt to variations in business strategies and tactics and identifies a range of product and process improvements for significant financial and environmental gains.

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THE CITY OF WEST PALM BEACH, FLORIDA: MANAGING A SUSTAINABLE PARADISE

Julia L. Jennison, Esq.

Incorporated in November 1894, West Palm Beach is the oldest municipality in the south Florida metropolitan area. Known for its sunshine and warm weather, somewhat incongruously West Palm Beach is also the fourth wettest city in the country. West Palm Beach's otherwise enviable location—approximately 60 miles north of Miami, less than one mile from the Atlantic Ocean and situated between Lake Worth (otherwise known as the intra-coastal waterway) and Clear Lake—may in fact be one of the biggest challenges to the city's sustainability.

It seems the facts are irrefutable. Sea level rise is inevitable. While no one is quite sure of the cause or whether it will be 3 feet, 9 feet, or 24 feet in the coming years, sea level rise is already having impacts on coastal communities like West Palm Beach. In the words of Mayor Jeri Muoio, "[g]lobal evidence is mounting that climate change is a reality and may represent the greatest challenge to West Palm Beach's well-being in the coming years. Scientific and government communities recognize that sea level rise and other climate change impacts will be formidable opponents to our way of life in South Florida with potential threats to our energy and water availability and infrastructure." (*See Rethink Paradise: West Palm Beach Sustainability Action Plan, Mayor's Message*, http://wpb.org/sustainability/).

It may seem like a proverbial drop in the bucket, but in 2007 West Palm Beach was among 76 Florida cities to sign the U.S. Conference of Mayors Climate Protection Agreement. The stated long-term goal of this agreement is to reduce the city's carbon footprint by 70 percent by 2050, with other target goals for the interim years. (*See Rethink Paradise, supra.*) Since signing the agreement, the city has embraced sustainability and taken numerous actions to meet this goal.

Sustainability Action Plan

In 2008, the city created an Office of Sustainability intended to address climate, environmental, and conservation initiatives. The Office of Sustainability bases its actions on the four "E's": environment, economics, equity, and energy. Through its Office of Sustainability, the city has developed an encompassing and far-reaching sustainability action plan (SAP). The SAP "includes 7 focus areas that address various aspects of the city's built and natural environment as well as social implications of climate change and overall sustainability" (http://wpb.org/sustainability/). The seven focus areas include (1) energy efficiency and renewable energy; (2) natural resource and water conservation; (3) land use, redevelopment, and transportation; (4) housing and green building codes; (5) waste management and recycling; (6) growing a green economy; and (7) urban agriculture and community gardens. (*See* http://wpb.org/sustainability/.)

Greenhouse gas (GHG) emissions from city governments can equal or even exceed those of large multisite corporations. Reducing GHG emissions is therefore a very important prong of the West Palm Beach's SAP. As one of the first steps in its sustainability planning, West Palm Beach and 18 other cities participated in ICLEI—Local Governments for Sustainability USA's Carbon Disclosure Project—calculating and publicizing their GHG emissions, including carbon. The project found that the total emissions from the 18 participating city government operations were nearly 6.5 million metric tons of carbon dioxide. (*See The Power of Cities to Mitigate Climate Change*, ICLEI, www.icleiusa.org.) West Palm Beach's GHG inventory was completed in October 2008, finding that 83,189 metric tons of GHG were emitted from the city's operations that year. The city has subsequently established the following GHG reduction targets: 19 percent reduction by 2018; 32 percent reduction by 2025; and 37 percent reduction by 2035. (*See Rethink Paradise*, *supra*, at 19–31.)

In its SAP, the city has also set forth goals, targets, indicators, and actions for achieving success in the seven focus areas identified above. The city believes the component of the SAP that matters the most now is implementation. "Implementing the SAP and ensuring that it results in real, additional GHG emissions reductions necessitates new and sustained resources, increased coordination across sectors, and a system for evaluating and reporting progress. In short, it requires institutionalizing sustainability efforts throughout the community." *See Rethink Paradise*, at 105.

Accordingly, one of the most important concepts in the SAP is the need for ingraining sustainability as a concept throughout the community. To achieve this, the city's multipronged SAP is directed toward its individual citizens and businesses, as well as its internal operations. In the fight against sea level rise and climate change, no action or project is too small. Since 2009, the city has held an annual e4 Sustainability Summit intended to provide outreach and education to its residents and businesses, and to evaluate what/where additional efforts are needed. Some other initiatives the city has undertaken include creation of a sustainability newsletter (providing information relative to all sustainability activities within the city); ongoing sustainability events for the public; rain barrel programs; tree planting/tree programs; climate leadership training; coordination of Florida Power and Light's solar rebate program; Grassy Waters Preserve programs; the West Palm Beach Green Business Challenge (a friendly competition with resources and recognition to help the city's businesses go green); participation in the President's State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience; implementation of a Property Assessed Clean Energy financing (PACE) program; and modifications to the city's comprehensive plan. Additionally, the city is beginning the process of participating in the Sustainability Tools for Assessing and Rating (STAR) communities program, a self-assessment ranking system for communities. The program is being used nationally as a standardized way to compare communities on their sustainability and is recognized by ICLEI, the U.S. Green Building Council, and the National League of Cities.

Downtown Development Authority

In addition to the city's sustainability actions, the West Palm Beach Downtown Development Authority ("DDA"), an independent taxing district, is also committed to sustainability and a partner in the city's SAP. The DDA's stated mission is to promote and enhance a safe, vibrant downtown for city residents, businesses, and visitors through the strategic development of economic, social, and cultural opportunities. (*See* http://wpb.org/sustainability/.) As part of this mission, the DDA has tied several of its projects to sustainability. For example, the DDA supports infill development, which helps to concentrate development in the urbanized area. It also promotes "trip capture" by creating an urban district that provides goods, services, jobs, and high quality residential properties. In furtherance of these goals, one of the significant efforts supported by the DDA is its "park once" concept for visitors to the downtown who arrive by automobile (this concept aims to have visitors park in one place and then be able to proceed to their subsequent destinations by foot, rather than having to drive from one spot to the next).

The DDA's 2010–2014 Work Plan (DDA Work Plan for Downtown Development Authority Operations, Programs and Capital Activities, fiscal years 2010–2014, updated 9/2009) included components that targeted the enhancement of the downtown area. The plan recommended projects that must be pedestrian friendly to residents, consumers, and visitors. It included a focus on connectivity of the various areas downtown and a requirement for green initiatives intended to lower the city's carbon footprint. The plan required the DDA to initiate at least one green program per year, lower the carbon footprint of the downtown, replace street lighting with LED lights, establish a recycling program for businesses, and place recycle receptacles in the public right-of-way. One significant project in the DDA's plan was to enhance the "walkability" of downtown. The walkability project is one that has achieved moderate success and has continued traction.

The 2015–2019 DDA Work Plan (West Palm Beach Downtown Development Authority Work Plan, Fiscal Year 2015–2019) appears to focus more on business objectives—however green initiatives are still a factor. The 2015–2019 plan states that "2015 will be a pivotal year in the movement to build a better, more walkable West Palm Beach." During the coming year, the DDA plans to collaborate with the city to create a bicycle and pedestrian master plan for West Palm Beach, review the city's land development regulations for opportunities to create better urban design and better public space, and host a greenmarket information booth with a bike corral and parts exchange.

Conclusion

From the variety and extent of initiatives the city has begun, at least one thing is clear. The city of West Palm Beach takes the threats associated with sea level rise and other climate change seriously. While it may seem like a drop in the bucket, one city's actions can help protect the environment for future generations. Cities that place the most significance on sustainability may in the end become more economically viable and desirable. These are the places where future generations will want to live. The city of West Palm Beach has put considerable effort and economic investment into its sustainable future. There are numerous resources available for municipal efforts at combating climate change. The city of West Palm Beach is but one example, a study on what can be done. Whether coastal community or not, embracing sustainability is the future for cities.

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Environment, Energy, and Resources
Call for Nominations

Award for Distinguished Achievement in Environmental Law and Policy

The ABA Award for Distinguished Achievement in Environmental Law and Policy will be given in recognition of individuals or organizations who have distinguished themselves in environmental law and policy, contributing significant leadership in improving the substance, process or understanding of environmental protection and sustainable development. Eligible individuals must be lawyers and may include academics, policymakers, legislators, and practitioners, members of the judiciary or journalists.

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The Environment, Energy, and Resources Dedication to Diversity and Justice Award recognizes and honors the accomplishments of a person, entities, or organizations that have made significant accomplishments or demonstrated recognized leadership in the areas of environmental justice and/or a commitment to gender, racial, and ethnic diversity in the environment, energy, and natural resources legal area. Accomplishments in promoting access to environment/energy/resources rule of law and to justice can also be recognized via this award.

Environment, Energy, and Resources Government Attorney of the Year Award

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 law 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.

Law Student Environment, Energy, and Resources Program of the Year Award

The Law Student Environment, Energy, and Resources Program of the Year Award will be given in recognition of 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. The program or project must have occurred during the 2014 calendar year [consideration may be given to allowing projects that occurred in the 2013-2014 or 2014-2015 academic years]. Nominees are likely to be law student societies, groups, or committees focused on environmental, energy, and natural resources issues.

State or Local Bar Environment, Energy, and Resources Program of the Year Award

The State or Local Bar Environment, Energy, and Resources Program of the Year Award will be given in recognition of the best continuing legal education program or public service project of the year focused on issues in the field of environmental, energy, or natural resources law. The program or project must have occurred during the 2014 calendar year. Nominees are likely to be state or local bar sections or committees focused on environmental, energy, and natural resources issues.

Nomination deadline: May 8, 2015
These awards will be presented at the ABA Annual Meeting in Chicago in August 2015.

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