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## When Red Clay Meets Black Asphalt, 19th Annual Red Clay Conference

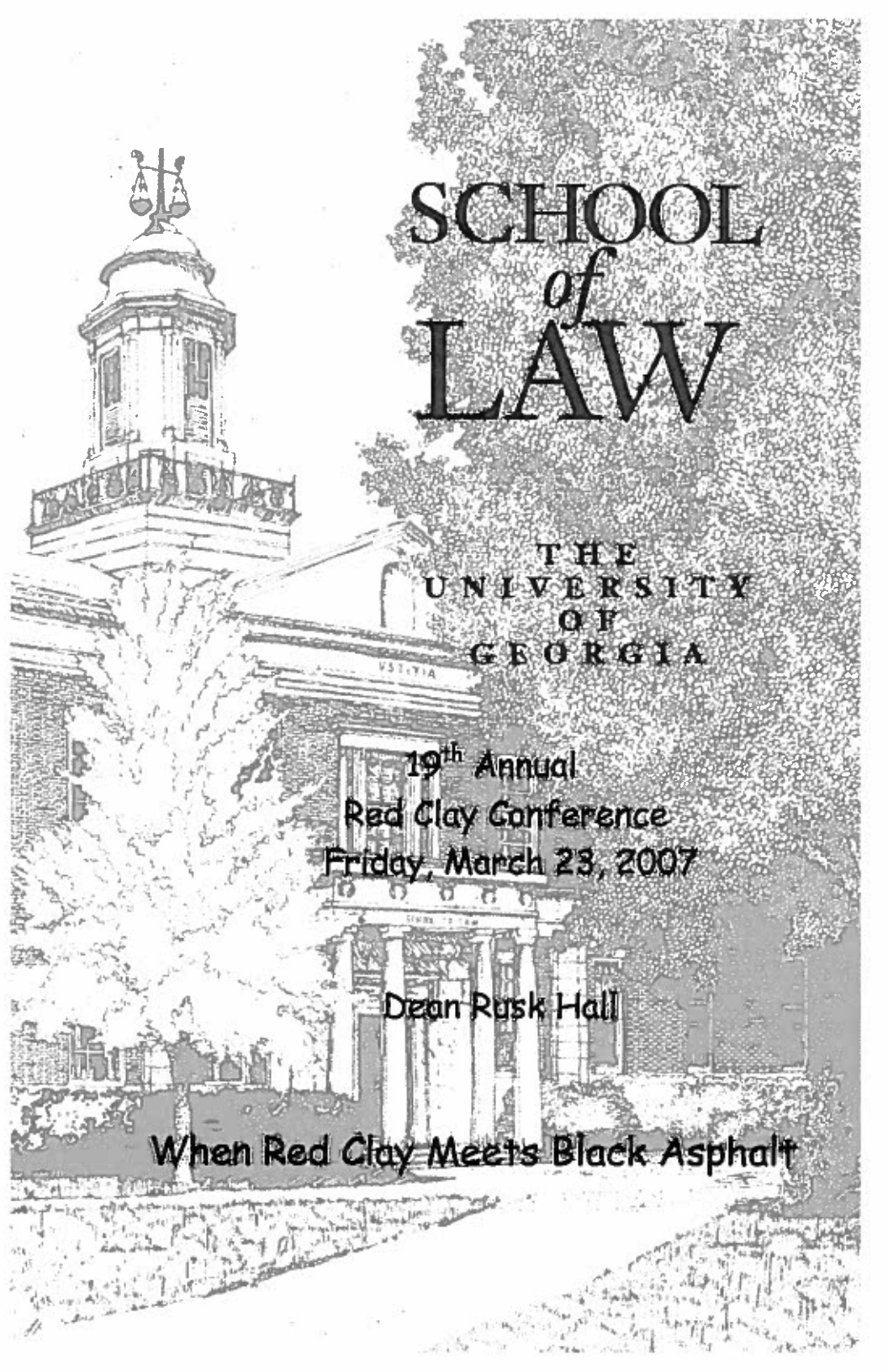
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*University of Arizona Rogers College of Law*

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# SCHOOL *of* LAW

THE  
UNIVERSITY  
OF  
GEORGIA

19<sup>th</sup> Annual  
Red Clay Conference  
Friday, March 23, 2007

Dean Rusk Hall

When Red Clay Meets Black Asphalt

# 19<sup>th</sup> Annual Red Clay Conference

*When Red Clay Meets Black Asphalt*

Friday 23 March, 2007 ~ Dean Rusk Hall

Presented by:

The Environmental Law Association  
University of Georgia School of Law



Sponsored by:

Professor Bertis Downs

&

REM

## **AGENDA**

**8:30-9:00 Registration and Coffee**

**9:00-9:15 Welcome - Rebecca H. White, Dean & J. Alton Hosch Professor of Law University of Georgia School of Law**

**9:15-10:15 Sign Ordinances**

- Arthur Dombay, Attorney, Troutman Sanders, LLP

**10:30-11:30 The Relationship Between Environmental Regulation and Inverse Condemnation: What is the Individual Cost for Environmental Protection?**

- Professor Matthew Festa, Visiting Assistant Professor of Law
- Milbree Lankford, General Counsel, Douglas County Water Authority
- Beth Blalock, Attorney, Mahaffey Pickens Tucker, LLP

**11:30-11:45 Break**

**11:45-12:45 Lunch/Keynote Speaker**

- Professor Robert Glennon, University of Arizona School of Law, Morris K. Udall Professor of Law and Public Policy

**1:00-2:00 New Urbanism: The Solution to the Urban Sprawl Problem?**

- Deborah Miness, Vice President of Land Programs and Education, Georgia Conservancy
- Professor Alfred Vick, Associate Professor of Environmental Design, University of Georgia
- Jamie Roskie, Managing Attorney, Land Use Clinic, University of Georgia

**2:15-3:15 Drops in a Big Bucket: Developing Georgia's State-wide Water Management Plan**

- Moderator - Laurie Fowler, Lawyer and Co-director, River Basin Center
- Jack Dozier, Executive Director, Georgia Association of Water Professionals
- Gil Rogers, Attorney, Southern Environmental Law Center
- Dr. James E. Kundell, Senior Associate Carl Vinson Institute of Government, University of Georgia

**3:30-4:30 Land Use and Coastal Marshes**

- Emily Franzen, Lawyer, River Basin Center, Univ. of Georgia
- Chris DeScherer, Lawyer, Southern Environmental Law Center
- Professor Peter Appel, Associate Professor of Law, University of Georgia School of Law

## SCOPE AND PURPOSE OF THE CONFERENCE

The Red Clay Conference is hosted by the Environmental Law Association at the University of Georgia School of Law. The goal of the conference is to increase public awareness of environmental issues of regional and national significance through a series of educational presentations and open forum discussions. A full spectrum of views from the private legal sector, the corporate/business sector, the government, and public interest groups are represented. Panel discussions are followed by informal question and answer periods. The 19<sup>th</sup> Annual Red Clay Conference focuses on issues surrounding land use and urban sprawl. The following topics will be addressed during the conference: sign ordinances, takings & inverse condemnation, the impact of groundwater pumping on the environment, a Georgia statewide water management plan, new urbanism, and Wetlands.

Since the Supreme Court decided *Kelo v. City of New London* in 2005, the issues of eminent domain and takings law have become much more familiar to mainstream America. While many legal scholars did not find the decision particularly surprising, it was disconcerting to many who were not fully aware of the government's powers of eminent domain. This caused a backlash of "anti-*Kelo*" state legislation, and advocacy groups who support a pro-property rights platform became more outspoken. However, this movement may endanger many methods of environmental regulation that local governments use to protect natural resources such as wildlife habitat and water quality.

The excessive pumping of our aquifers has created an environmental catastrophe known to only a few scientists, a handful of water management experts, and those unfortunate enough to have suffered the direct consequences. As our groundwater use has increased, pumping has caused rivers, springs, lakes, and wetlands to dry up, ground beneath us to collapse, and fish, birds, wildlife, trees, and shrubs to die.

New Urbanism is a reaction to sprawl. It calls for a more "human scale" of living, including walkable streets, the mixing of shops and residences in an urban center designed to generate city life, and a higher density population with less of a reliance on automobiles. It is a movement towards compact development, focusing on the community, and smart architectural design. In order to effect change in this area of development, old ideas need to be shed and the necessity of working with local governments cannot be overlooked. Further, as critics of New Urbanism have noted potential disadvantages to such plans, one must consider whether New Urbanism is the best "solution" to urban sprawl.

The Southeastern United States has witnessed tremendous population growth in the past few decades. Georgia's population alone grew twice as fast as the national average between 2000 and 2005. Accompanying this rapid growth is an increasing demand for water. Georgia now faces pressure from parties, both within its borders and from neighboring Southeastern states, who are interested in a more equitable distribution of water. In response to this complicated problem, the State has mandated the development of a comprehensive plan to better manage its water resources.

The most significant recent development in wetlands law is last year's Supreme Court decision of *Rapanos v. United States*. In that case, the Court signaled what could be a major shift in the federal government's ability to protect wetlands through direct environment regulation. Though certainly there is a wealth of other important information in this area of law, a snapshot of *Rapanos* may be the best introduction to the field as it stands.

It is our continuing hope that our efforts will advance sound environmental policy in Georgia and the southeast through education and discussion among interested stakeholders and attorneys.

#### CONTINUING LEGAL EDUCATION

A total of six CLE hours will be available during the conference.

#### SPECIAL ACKNOWLEDGMENTS

The Environmental Law Association gratefully acknowledges the assistance of everyone in the law school especially Marc Galvin, Elaine Mitchell, Cathy Dasher, Anne Moser, Phyllis Cooke, Lisa Mathis, Heidi Murphy and Dean Rebecca White. Special thanks to Professors Peter Appel, Laurie Fowler and Jamie Roskie for their efforts, support and guidance through the coordination of this year's Red Clay Conference. We would also like to thank Professor Bertis Downs and R.E.M., without whom this conference would not be possible. We thank them for their commitment to Georgia's environment and their continued generosity in support of the Red Clay Conference.

## BIOGRAPHICAL INFORMATION

**Peter A. Appel (J.D. Yale University)** ~ Mr. Appel is an associate professor of law at the University and teaches in the areas of property, natural resources law and environmental law. Mr. Appel developed a practical understanding of environmental issues through his six years of service as an attorney with the Environment and Natural Resources Division of the U.S. Department of Justice. Prior to holding that position, he clerked for Chief Judge Gilbert S. Merritt of the Sixth Circuit U.S. Court of Appeals.

**Beth A. Blalock (J.D. UGA)** ~ Ms. Blalock is an associate attorney with Mahaffey Pickens Tucker, LLP where her main areas of practice are zoning, land use and environmental law. Prior to joining Mahaffey Pickens Tucker, she worked as an associate attorney with the Southern Environmental Law Center (SELC) in the Healthy Air and Land & Community Programs and with King & Spalding LLP as a member of the Environmental Practice Group. Ms. Blalock received her degree in ecology and political science from the University of Georgia and her J.D. from the University of Georgia School of Law.

**Christopher K. DeScherer (J.D. Georgetown University)** ~ Mr. DeScherer is a state leader for Georgia coastal and wetlands protection. Mr. DeScherer is currently a senior attorney with the SELC and has formerly worked as a staff attorney with the Conservation Law Foundation.

**Arthur Dombay** ~ Mr. Dombay is a Partner and Practice Group Leader with Troutman Sanders LLP. His work focuses on environmental, energy and natural resource matters. He received his B.A. from Hamilton College, his M.S. from UGA and his J.D. from Albany Law School of Union University. Since 1985 Mr. Dombay has served as nuclear energy council for nuclear plants. He has conducted environmental due diligence reviews associated with the transfer of property, including real estate, and advised clients on wetlands issues related to property development. He has represented clients in federal "Superfund" proceedings and actions under the Georgia Hazardous Site Response Act. Mr. Dombay has also represented clients in DOJ, OSHA, NRC and EPA investigations and enforcement actions, including challenges to proposed civil penalties and other enforcement sanctions. In 2005 Mr. Dombay was recognized as one of America's Leading Lawyers for Environmental Law by Chambers USA.

**Jack C. Dozier** ~ Mr. Dozier is the Executive Director of the Georgia Association of Water Professionals (GAWP). He came to GAWP in 1990 after serving as the Chief of the Water Protection Branch for the Department of Natural Resources-Environmental Protection Division. He received both his Bachelor of Science in Civil Engineering and Master of Science in Environmental Engineering from Duke University. Mr. Dozier is a member of the Water Environment Federation, American Water Works Association, Georgia Society of Association Executives, and the American Society of Association Executives. He has served on task forces for the Georgia Department of Natural Resources, the statewide Water Study Plan Advisory Committee and on the WaterFirst Steering Committee. Mr. Dozier is registered as a Georgia professional engineer and as a certified association executive.

**Matthew J. Festa (J.D. Vanderbilt)** ~ Mr. Festa is a visiting assistant professor at the School of Law, teaching civil procedure and land use planning. He previously worked as an associate with the Houston law firm Locke Liddell & Sapp, specializing in the areas of litigation, appellate and bankruptcy law. He also served as a judicial clerk to Judge Deborah L. Cook of the U.S. Ct of Appeals for the Sixth Circuit and Judge William O. Bertelsman of the U.S. District Ct for the Eastern District of Kentucky, in addition to clerking in the Tax Division and Bankruptcy Unit of Tennessee's Office of the Attorney General. Mr. Festa's bachelor's degree was earned cum laude from the University of Notre Dame, and he has an M.P.A. from Murray State University. Additionally, he earned both a master's degree in history and his law degree from Vanderbilt University. While at Vanderbilt, Mr. Festa served as executive editor of the *Vanderbilt Law Review*.

**Laurie Fowler** ~ Ms. Fowler is the Director of Public Service and Outreach for UGA's Institute of Ecology. As an environmental and land-use attorney, she serves on the faculty of both the Institute of Ecology and the School of Law. In addition to teaching courses in environmental law, she teaches service learning courses that allow students to apply policy, design, and ecological principles in working with stakeholders to manage and protect water resources. Ms. Fowler's research interests include federal, state, and local environmental protection laws and policies; watershed protection strategies; growth management and open space preservation; land use planning; conservation easements; environmental justice; citizen participation; and service learning. In 1999, she staffed the committee to develop Georgia's Greenspace Plan under Governor Roy Barnes, and frequently advises government and civic groups on tools and techniques for protecting environmental quality.

**Emily Franzen** ~ (J.D. UGA) has a B.S. in Ecology and is the River Basin Center's staff attorney. Ms. Franzen has served as a law clerk in the Commissioner's Office at the Georgia DNR, as well as in the Office of Environmental Justice at the EPA. At the River Basin Center, Ms. Franzen's work has focused on wetlands policy analysis, providing legal support for the Etowah Habitat Conservation Plan, co-supervising students in the UGA Law School Land Use Clinic and Environmental Practicum, and acting as the director of a new study abroad course in biodiversity and land protection for law and ecology students in Costa Rica.

**Robert Glennon** ~ Robert Glennon is the Morris K. Udall Professor of Law and Public Policy in the Rogers College of Law at the University of Arizona. He has more than 30 years of professional experience and specializes in constitutional law, American legal history, and water law. Glennon's funded research activities have included two National Science Foundation grants. He had held many administrative positions, such as trustee, director, or chair for various institutional organizations. His professional activities include serving as Water Policy Advisor to Pima County, Arizona; as a member of American Rivers' Science and Technical Advisory Committee; and as a commentator and analyst for various television and radio programs. Glennon is the author of many books, articles, and other writings. His best-known work is *Water Follies: Groundwater Pumping and the Fate of America's Fresh Waters* (Island Press, 2002), the first book ever published to focus on the environmental problems caused by groundwater pumping. Glennon received numerous accolades for *Water Follies* from such publications as *Scientific American*, *The Washington Post*, and *The New York Review of Books*. He lectures widely around the United States. He holds a J.D. from Boston College Law School and an M.A. and Ph.D. in American History from Brandeis University. He is also a member of the bars of Arizona and Massachusetts.

**Dr. James E. Kundell** ~ Dr. Kundell is the Director of the Environmental Policy Program at UGA's Carl Vinson Institute of Government. He received his PhD from Syracuse University and his research interests include water policy and management and natural resources policy and management. Dr. Kundell has served on the advisory council to Governor Purdue for the Georgia Land Conservation Partnership. He has also served on the Joint Comprehensive Water Plan Committee. He continues to teach at the graduate level in both the Conservation Ecology Program and as a member of the Water Resources faculty. His current research projects include comprehensive state water planning, riparian buffer requirements, land conservation, growth management, and solid and hazardous waste reduction and management.

**Milbree Lankford** ~ Ms. Lankford has an undergraduate degree in history from the University of North Carolina at Chapel Hill, and she graduated from the University of Georgia School of Law, cum laude. She worked for five years in private practice, primarily in the areas of civil litigation and business formation. She has been employed by the Douglasville-Douglas County Water and Sewer Authority since 1999, where she was instrumental in the formation and implementation of its stormwater utility in 2003. She currently serves as General Counsel and is responsible for the legal affairs of the Authority, including contract and ordinance preparation, property acquisition, public policy, legislative issues, contract litigation, and the prosecution of soil erosion violations. She is a member and former chair of the Georgia Association of Water Professionals' Legislative Committee. She is President-Elect of the Rotary Club of Douglas County and an active member of the Junior League of Douglas County. She is married to Michael Lankford, and they have two elementary-age children - Jackson and Carter.



**Deborah Miness** ~ Currently Vice President of Land Programs and Education for the Georgia Conservancy, a statewide non-profit organization promoting environmental awareness and stewardship through a focus on protection of Georgia's land, air, and water resources. At the Conservancy, Ms. Miness is in charge of growth management programs including Blueprints for Successful Communities, and programs in land conservation and environmental education. She is the incoming President of the Georgia Planning Association and is a certified professional planner with 20 years of planning experience.

For the last seven years before joining the staff of the Georgia Conservancy, Ms. Miness was the Assistant Director of the Office of Planning (later Planning and Quality Growth) for the Georgia Department of Community Affairs, which administers Georgia's comprehensive local and regional planning program. Before moving to Atlanta in 2000, she was the Director of Comprehensive Planning for the Metropolitan Planning Commission in Savannah, Georgia.

Ms. Miness holds a Master of Public Administration degree from Florida Atlantic University, where she specialized in Environmental Growth Management, and a Bachelor of Arts in History from Armstrong State University in Savannah. A native of the Georgia coast, she has spent many years in childhood and beyond in other countries and other states. From 1990 to 1996 she was the Research Coordinator for the Lincoln Institute of Land Policy in Cambridge Massachusetts, where she co-authored (with John DeGrove and Robert C. Einsweiler) major publications based on multi-year national growth management research projects.

**Gil Rogers** ~ Mr. Rogers is a staff attorney with the Southern Environmental Law Center in Atlanta. SELC is a regional nonprofit legal organization dedicated to protecting natural resources and special places throughout the Southeast. Mr. Rogers is a native of Birmingham, AL, and graduated Princeton University in 1998 with a degree in ecology and evolutionary biology and a certificate in environmental studies. He went on to Harvard Law School, where he graduated in 2002. Mr. Roger's work at SELC focuses on water management and water quality issues in both Georgia and Alabama.

**Jamie Baker Roskie (J.D. UGA)** ~ Ms. Roskie joined the faculty of UGA in 2002 as managing attorney of the Land Use Clinic, a joint venture of the School of Law and the College of Environment and Design. As managing attorney, she supervises students in a variety of projects assisting local governments with regulatory solutions to help preserve the environment while promoting quality growth. Along with students of the clinic, she co-authored the first comprehensive Transferable Development Rights (TDR) ordinance in Georgia, designed for the Chattahoochee Hill Country.

Before joining the university, Ms. Roskie worked as an associate in the law firm of Shaw Pittman LLP in Washington, D.C., where she represented clients in various land use and immigration matters. While still a law student at UGA, she worked at UGA's Institute of Ecology assisting with the development of land use policy and researching transferable development rights and affordable housing issues. She is currently a policy and legal analyst for the UGA River Basin Center, which integrates science and policymaking to protect water resources and habitat. In addition, she is a member of the Georgia Planning Association's Legislative Advisory Committee and the Etowah Habitat Conservation Plan Advisory Committee. She is a graduate of the university's Institute for Georgia Environmental Leadership (IGEL), a training program for environmental leaders in Georgia.

Ms. Roskie obtained a Bachelor of Arts in International Affairs from Lewis and Clark College in 1989. She worked as a freelance writer/editor and ran an immigration law clinic for a refugee services agency before attending law school. In 2001, she graduated magna cum laude from the University of Georgia School of Law, where she was inducted into the Order of the Coif.

**Professor Alfred Vick** ~ Prof. Vick joined the faculty at UGA in 1998 and currently serves as an assistant professor in the School of Environmental Design. As a professor, Vick currently teaches Applied Landscape Ecology, Reading the Landscape, and Design Studio II. Vick received his Bachelor of Science from the University of Illinois Urbana-Champaign in 1993, and a Masters of Landscape Architecture from the University of Georgia in 1998. His areas of expertise are stormwater management, stream restoration, ecologically-based design and construction and his interests are ecological restoration, invasive plant issues, and the LEED program.

**Dean Rebecca H. White** – Dean White, J. Alton Hosch Professor of Law, became the permanent dean of the School of Law on October 1, 2004, after serving as interim dean for 14 months. Previously, she served as associate provost and associate vice president of academic affairs for the University of Georgia. She specializes in the areas of labor law, employment discrimination, employment law and labor arbitration. She received her undergraduate degree from Eastern Kentucky University and graduated first in her class from the University of Kentucky College of Law.

