

**OREGON STATE BAR
SUSTAINABLE FUTURE SECTION
CLIMATE CHANGE TASK FORCE REPORT**

January 2017

Contents

Overview of the Task Force and the Report.....	3
A. Task Force Recommendations.....	4
Recommendation 1. Issue a Climate Change Policy Statement.....	5
Recommendation 2. Provide Legal Support for Climate Change Legislation	6
Recommendation 3. Encourage Attorneys to Reduce Emissions, Practice Sustainability	6
Recommendation 4. Amend the Oregon Constitution.....	7
Recommendation 5. Align Oregon State Bar investments with ESG values	7
B. Areas for Future Exploration	8
1. The Professional Rules of Conduct Could be Modified	8
2. A New Continuing Legal Education Requirement Could be Added	9
Conclusion:.....	9
Appendix A - The Sustainability Movement and Climate Change	10
Appendix B - Legal Work on Climate Change	14
1. The American Bar Association.....	14
2. The Oregon State Bar	18
3. Other Bar Associations	22
4. Other Legal Profession Initiatives	25
5. Legal Education and Scholarship	27
6. Environmental Public Interest Law	30
Appendix C - Ethical and Legal Frameworks for Climate Change Law	32
1. Climate Litigation Theories	32
2. Environmental Justice	35
3. Environmental Ethics.....	37
4. State and Foreign Constitutions	38
Acknowledgments	51
Glossary	52

Overview of the Task Force and the Report

The Sustainable Future Section (SFS) of the Oregon State Bar is the first state bar association section devoted to the relationship between sustainability and law.¹ SFS formed the Task Force² on Climate Change to consider how the American legal profession could play a leadership role to reduce greenhouse gases and reverse climate change. To structure their analysis, Task Force members addressed two interrelated questions:

1. How has the legal profession responded to climate change, beyond providing paid legal services?
2. Based on our current understanding of climate change, how should the legal profession respond?

To address the first question, Task Force members identified several activities that characterize how the legal profession has responded to climate change. Next, each member studied one or more activities, and wrote a summary of their analysis. These summaries are included in this report under three appendices:

- Appendix A – Sustainability Movement and Climate Change
- Appendix B – Legal Work and Climate Change
- Appendix C – Ethical Legal Frameworks for Climate Change Law

For the second question, the Task Force narrowed its focus to explore how SFS should respond to climate change in light of the American legal profession's response, and taking into account actions that would most likely reduce greenhouse gas emissions. The results of our analysis are presented in five recommendations that should be implemented by SFS.³ These recommendations are presented below under the heading Task Force Recommendations.

Task Force members also explored other actions that could be taken by the legal profession in response to climate change. However, additional time or research was needed before members could make recommendations on these actions. These actions are presented below under the heading Areas of Exploration.

¹ See the Report of the Oregon State Bar Task Force on Sustainability (2009) available at: https://www.osbar.org/_docs/resources/09sustainabilitytaskforcereport.pdf. The work of this Climate Change Task Force is rooted in the 2009 Report which recommended creation of the Sustainable Future Section and adding Oregon State Bar Bylaw Article 26. Article 26 incorporating consideration for future generations and environmental and social considerations within the OSB organization itself, and that the Bar will encourage education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

² See the Acknowledgments for a list of Task Force members and supporters.

³ Some members of the Task Force did not agree with certain recommendations.

Assumptions of Task Force Members

Before making recommendations, the Task Force discussed the science of climate change and how the legal profession has responded to this issue.

As a context for decision-making, Task Force members relied on the data gathered by the National Aeronautics and Space Administration (NASA), the National Oceanic and Atmospheric Administration (NOAA), the global constituency of COP21, the Paris United Nations Summit on Climate Change, and international bodies such as the Intergovernmental Panel on Climate Change.

Collectively, these government bodies publish data that show that the Earth is warming because of greenhouse gas emissions from human beings, and that this warming has already caused damage to life on Earth.⁴ Task Force members are concerned that the damage from climate change will vastly increase unless immediate steps are taken to curb greenhouse gas emissions. Further, with worldwide population exceeding 7.3 billion, members are concerned that climate change will exacerbate other global impacts from human development.

In addition to reviewing scientific information, the Task Force also found that many attorneys, bar associations, academic institutions, and related organizations have advanced significant efforts to mitigate greenhouse gas emissions. However, much more could be done to present a unified and organized response to this global challenge.⁵ On a related point, the July 2014 ABA Sustainability Task Force Report concluded that the legal community has been “noticeably absent” from meaningful participation in implementing sustainable development matters around the world.⁶

A. Task Force Recommendations

Based on these assumptions, the Task Force focused its report on climate change mitigation and issued the following five recommendations that SFS could potentially implement to reduce greenhouse gas emissions.

Underlying these recommendations is a general view that all members of the Bar share responsibility for the emissions that are warming the planet, and that the failure to act by one member does not void our own duty of care. Task Force members also believe that the legal profession is in a unique position to assist in the mitigation of climate change

⁴ A summary of supporting evidence may be found in Appendix A.

⁵ A history of the social movement towards sustainability may be found in Appendix B.

⁶ Lee A. DeHihns et al., American Bar Association, Final Report of The American Bar Assoc. Task Force on Sustainable Development, 18 (July 30, 2015).

given the profession's expertise in understanding, interpreting, and reviewing the law, and its ability to lead by example as citizens who play an integral part in the structure of society.

Recommendation 1. Issue a Climate Change Policy Statement

SFS should issue a policy statement supporting legislation and regulations that will collectively reduce Oregon's greenhouse gas emissions consistent with established state and international goals.

In 2007 the Oregon Legislature established the following climate change goals by passing House bill 3543: achieve greenhouse gas levels that are 10 percent below 1990 levels by 2020; achieve greenhouse gas levels that are 75 percent below 1990 levels by 2050.⁷ Similarly, the United States signed the Paris Climate Agreement on April 22, 2016 and the agreement entered into force on November 4, 2016. The Paris Agreement emphasizes the urgent need for establishing aggregate GHG emission pathways consistent with holding the increase in the global average temperature to well below 2° C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5° C above pre-industrial levels.⁸

Given this information, the Task Force recommends that SFS adopt a policy statement to support legislation and regulations consistent with achieving the state and international policy goals summarized above. There are numerous legal mechanisms for achieving these goals including cap and trade systems, taxes on fossil fuels or greenhouse gas emissions, energy efficiency measures and renewable power initiatives.

The following should be noted in support of the policy statement:

- a. Human-caused climate change is a scientific fact and it poses an immediate and significant threat to human health and the environment;
- b. Observed global warming has been caused largely by burning fossil fuels;
- c. The atmosphere and oceans have a finite capacity to sequester human greenhouse gas emissions and this capacity has likely been exceeded already given observed harm to human and non-human life and to ecosystems that is attributable, in whole or in part, to human-caused increases in carbon dioxide concentrations; and

⁷ H.B. 3543, 74th Oregon Legislative Assembly (2007 Regular Session) <https://olis.leg.state.or.us/liz/2007R1/Downloads/MeasureDocument/HB3543/Enrolled>

⁸ Adoption of the Paris Agreement (December 12, 2015) <http://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf>

- d. Limiting human greenhouse gas emissions is necessary to protect the atmosphere and the life it supports from further damage.

The most stringent goal currently is to limit global atmospheric warming to no more than 1.5°C above pre-industrial levels. The Task Force believes that the exact mechanism to reduce greenhouse gases and how that approach is implemented should be left to the political process as long as that mechanism is consistent with the objectives stated above.

Recommendation 2. Provide Legal Support for Climate Change Legislation

SFS should form a subcommittee charged with creating and maintaining an “on call” list of attorneys interested in providing their skills free of charge to support the drafting and research of legislation and regulations to reduce greenhouse gas emissions.

SFS should organize a mechanism to engage Oregon’s lawyers and law students in support of policies that reduce greenhouse gas emissions. For example, SFS could ask all interested attorneys to register as volunteers to respond to the requests of individuals, firms and government agencies who seek to implement any law or policy that would reduce greenhouse gas emissions. This list serve, site, or registry would be “on call” and able to promptly resolve questions about the legal validity of proposals, their manner of implementation, and how they might compare to the laws in other jurisdictions.

Recommendation 3. Encourage Attorneys to Reduce Emissions, Practice Sustainability

SFS should create an individual certification program for attorneys like the Oregon State Bar Partners in Sustainability Program to encourage attorneys to minimize their individual carbon footprint.

Everyone has a responsibility to avoid excessive emissions of greenhouse gasses. For that reason, SFS could provide all members of the Oregon Bar with educational resources to learn how to reduce their own emissions. Further, SFS could create a greenhouse gas reduction educational certification program to help attorneys to track their behavioral modifications and learning.

There are multiple strategies and certificate platforms that the Section could draw from in creating a new certification program or adapting an existing platform. For example, SFS could request a private implementation of the Northwest Earth Institute’s Eco challenge program with a scoring system.⁹ NWEI is one example of such a platform, but there are other programs that could be woven together. In addition to creating or identifying a specific certification program consistent with this recommendation, SFS

⁹ For more information on the NWEI Eco challenge, visit www.nwei.org/about-ecochallenge/.

should consider creating a list of options for eco-certification or challenge programs. This would be an additional resource for lawyers.

Recommendation 4. Amend the Oregon Constitution

In light of potential standing issues for citizens harmed by climate change, SFS should support an amendment to the Oregon Constitution to include a specific reference to the State's duty to hold all natural resources in trust for future generations.

The Task Force reviewed other state's constitutions and concluded that SFS, in conjunction with the Oregon Bar, should support an amendment to the Oregon Constitution.¹⁰ To avoid challenges of standing it is critical that (1) the provision clearly identifies what parties are responsible for maintaining the environment and considering future generations, and (2) that the provision ensures standing of citizens and other parties to sue to enforce any law (or to remedy a lack thereof) promulgated under such a provision. Such an amendment would give the state a legal obligation to act beyond the short term and create an affirmative duty to hold resources in trust for future generations.

For Oregon, such a provision might read:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Oregon's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the State shall conserve and maintain them for the benefit of all people. All Oregon residents shall possess legal standing to enforce those rights on behalf of all people, including generations yet to come.

For further context in support of the above amendment, see Appendix C, subpart 4.

Recommendation 5. Align Oregon State Bar investments with ESG values

SFS should recommend to the Oregon State Bar that the Board of Governors adopt revised investment guidelines to be consistent with OSB Bylaw Article 26 (supporting the goal of sustainability) to specifically authorize the Budget and Finance and Investment Committees to consider environmental, social and governance (ESG) issues in making investment and divestment decisions.

The Oregon State Bar (OSB) is the governing body for all lawyers licensed to practice in Oregon. According to its Bylaws, the OSB supports the goal of sustainability, and is

¹⁰ See Appendix C, Subsection C for additional discussion of other state constitutions.

required to “be cognizant of sustainability in its internal operating practices as well as in its service to members.”¹¹ The OSB’s mission is to serve justice by promoting respect for the rule of law, which includes “promoting high standards of honor, integrity, professional conduct, professional competence, learning and public service among the members of the legal profession.”¹²

Based on OSB’s standards and the immediate threat posed by climate change, the Board of Governors should provide clarification regarding the ability of the Budget and Finance Committee and Investment Committee to consider ESG when making decisions on Bar investments. Section 7.5, Subsection 7.400, should be revised to read:

This investment policy is established to provide direction and limits for the Bar’s investment manager in investing all cash assets held by the Bar. The Bar supports the goal of sustainability and believes that our investment decisions should include analysis of environmental, social and governance (ESG) factors. Accordingly, Bar The funds are to be invested in a manner that ensures the protection of the Bar’s cash assets and provides a dependable source of operating revenue. The investment objectives are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity and to pursue investments that consider ESG factors, favoring ESG investing where economically equivalent. ~~to obtain the highest possible rate of return.~~¹³

B. Areas for Future Exploration

In their evaluation of the problems of climate change and the range of possible solutions, members of the Task Force considered two additional actions that SFS (or another institution) could take to reduce greenhouse gas emissions. More time and research is needed to explore the impact of these actions.

1. The Professional Rules of Conduct Could be Modified

The Oregon Professional Rules of Conduct could be modified to define actions that are sustainable and protect the climate as “ethical” actions.

The Task Force examined the Oregon Professional Rules of Conduct in conjunction with the American Bar Association Model Rules of Conduct to identify portions of the rules that could be clarified to recognize that climate protection is an ethical concern.

¹¹ Oregon State Bar Bylaws, Article 26 ‘Sustainability’, 2014.

¹² Oregon State Bar Bylaws, Article 1 ‘Purpose of Bar and Definitions’, Section 1.2(A) ‘Purposes’, 2014.

¹³ See Appendix B, Subsection 2 for additional discussion of the Oregon State Bar’s investment policies.

The Task Force also recognized that members of the legal profession who act in ways that run notoriously contrary to the preservation of the planet may damage the reputation of the profession. The Task Force also recognizes that attorneys who consider environmental factors when they counsel clients are in need of a formal recognition of environmental ethics as a form of professional ethics.

2. A New Continuing Legal Education Requirement Could be Added

The Section could work with the Oregon State Bar to secure access to justice credits for environmental justice programmatic offerings, and work to increase the number of environmental justice CLEs offered.

The Task Force reviewed the Oregon State Bar Continuing Legal Education (CLE) requirements to determine two things: (1) how those requirements might support specific CLE offerings dealing with climate change, and (2) whether a new requirement for climate change CLE credits (like the required Child Abuse Reporting credit or the required Access to Justice credit) would be beneficial.

We note that the Bar's CLE requirements already support CLE offerings pertaining to environmental law, including subtopics related to climate change and environmental justice. That said, more offerings specifically related to climate change should be made available. Additional CLE courses related to climate change and environmental justice may already qualify in the ethics CLE category without adjustment to the rules by relating them to the Statement of Professionalism, which presently includes promises to act for the "benefit" of the "public good," among other relevant statements.¹⁴

In addition, environmental justice is often an access to justice issue. For example, there can be disproportionate environmental impacts, including impacts of climate change, on lower socio-economic communities. The Task Force observed that there are too few Access to Justice CLE programs available to the Oregon legal community.

Conclusion:

The Climate Change Task Force submits the foregoing recommendations and areas of future exploration to the Sustainable Future Section. The Task Force respectfully notes that time is of the essence in the implementation of all efforts to combat climate change and requests that any recommendations that are ripe for implementation be so implemented, individually or together, as permits the Sustainable Future Section, the Oregon State Bar, or other governing bodies.

¹⁴ Oregon State Bar Statement on Professionalism, adopted by the Oregon State Bar House of Delegates and approved by the Supreme Court of Oregon effective December 12, 2011, available at: www.osbar.org/_docs/forms/Prof-ord.pdf.

Appendix A – The Sustainability Movement and Climate Change

To better understand the context for how lawyers have engaged in climate change matters, the Task Force studied the evolution of the environmental and sustainability movements, and knowledge of human impacts on the climate system.

1. Background on the Environmental and Sustainability Movements

The publication in 1962 of *Silent Spring* by Rachel Carson is often cited as the birth of the modern environmental movement. The movement blossomed with the celebration of the first Earth Day on April 22, 1970. In the late 1960s and early 1970s, national and local environmental organizations began forming. In 1968, the Natural Resources Defense Council, a national nonprofit staffed with scientists and lawyers was formed, and the Oregon Environmental Council was founded as the first environmental nonprofit in Oregon with a paid employee.

The late 1960s and 1970s also produced a spate of environmental laws and regulations at the state and federal levels,¹⁵ such as Oregon’s famous bottle bill in 1971 and the federal Clean Water Act in 1972. The modern discipline of environmental law began developing in the mid-1970s. With the passage of the National Environmental Policy Act of 1970 and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, legions of lawyers in law offices across the nation were organized to handle the very detailed legal matters related to these laws.

In the 1980s, in response to increased environmental laws and regulations, an industry mantra of “no more command and control” took hold. Market incentives and voluntary acts to reduce environmental impact gained popularity. Passage of additional environmental legislation was rare and attempts to weaken existing laws and regulations were underway.

With the impetus of the 20th anniversary of Earth Day in 1990, the sustainability movement emerged, along with deregulation – a legislative theme of the 1990s. In contrast to laws, regulations, and litigation associated with the environmental movement, the sustainability movement focused on voluntary steps (with or without incentives) that might be taken by businesses, public agencies, and individuals to reduce use of energy and materials.

By 2000 the sustainability movement was mature and the goal of sustainability was widely accepted, at least in theory, by public agencies and a major segment of the business community. In the business sector the movement’s metaphor was the three-legged stool; a society balanced by economic, social, and environmental factors. However, the concept of the triple bottom line had no accepted standards, which opened the door to greenwashing by those who wished to continue business as usual.

¹⁵ Environmental Protection Agency, Laws and Executive Orders, www.epa.gov/laws-regulations/laws-and-executive-orders (last visited Feb. 27, 2017).

In application, the economic leg of the three-legged stool seemed much longer than the environmental leg. So it was not uncommon to hear something along the following lines, “I am very enthusiastic about sustainability initiatives, so long as they add to the bottom line.”

Because the progress of the sustainability movement did not rely on formal legal structures to advance its objectives, to define what is “sustainable”, and to provide a center around which the legal profession could coalesce, the legal profession’s response has been disorganized.

2. Background on Climate Science and Public Concern

In the late 1980s the Congressional testimony of Dr. James Hansen, Director of NASA’s Institute for Space Studies in Manhattan in 1988, and the publication of *The End of Nature* by Bill McKibben in 1989, made the threat of climate change known to the American public. Since the concept seemed remote in time and space, it did not trigger widespread public concern at the time.

In 1988, at the instance of the United Nations Environment Program (UNEP) and the World Meteorological Society, the Intergovernmental Panel on Climate Change (IPCC) was created to provide periodic assessments on the impact of climate change. In 1990, the U.S. Congress enacted the Global Change Research Program (with bipartisan support) to provide periodic assessments to Congress on the impact of climate change.

Greenhouse gas emissions, both the total accumulated volume in the atmosphere and the rate of emissions into the atmosphere each year, are the basis for concern over climate change. GHGs include the following: carbon dioxide (CO₂), methane, and nitrous oxide. Non-CO₂ gases are standardized based on their impact compared to CO₂. The measure of their impact is given as their equivalent in CO₂ (abbreviated as CO₂e) in parts per million of the atmosphere by volume. The impact of GHGs is that, as their relative volume in the atmosphere increases, the atmosphere thickens and begins to capture and retain more solar energy which increases the planet’s temperature.

The key question of climate change science and policy is: “What is the limit of warming the earth can sustain without the threat of catastrophic consequences?” The answer to that question is not clear because the combination of physical and biological impacts on Earth cannot be predicted with certainty. At the second World Climate Conference in 1990 the participants agreed that the ceiling should be a 2°C increase over pre-industrial times. This limit was adopted when the Stockholm Environment Institute suggested to policy makers that 2 degrees should be the maximum warming allowed.¹⁶ It is also listed as the desirable temperature target in the 2009 Copenhagen accord. In pre-industrial times the atmosphere had 280 ppm of CO₂e. Today that level, which

¹⁶ Targets and Indicators of Climate Change, (F.R. Rijsberman and R.J. Swart, eds.) viii–ix (1990), www.sei-international.org/mediamanager/documents/Publications/SEI-Report-TargetsAndIndicatorsOfClimaticChange-1990.pdf.

fluctuates over the course of a year, has recently averaged 403 ppm.¹⁷ In 2013, the average mean terrestrial temperature was 14.6°C, which is a 0.8°C increase since 1880.¹⁸ At the 1990 World Climate Conference participants assumed that the ceiling on accumulated CO₂e that would keep the planet below a temperature increase of 2°C would be 550 ppm. In 2005, with additional data to consider, the figure was lowered to 450 ppm and that figure continues to govern deliberations today. The Fifth IPCC Assessment Report states that “emissions scenarios leading to CO₂-equivalent concentrations in 2100 of about 450 ppm or lower are likely to maintain warming below 2°C over the 21st century relative to pre-industrial levels.”¹⁹

In 2006 Al Gore published *An Inconvenient Truth* about climate change. From 2006 to 2008, interest in climate change burgeoned throughout the U.S. Public interest and concern has continued to increase, in large part because the physical and biological consequences of climate change can now be felt and seen. The climate movement is now a primary focus of many environmental organizations, public agencies, and a growing segment of the American public. The climate movement involves a mix of public policy initiatives and litigation (similar to the environmental movement) and voluntary efforts (similar to the sustainability movement).

In 2014, the 5th IPCC Assessment and the 3rd U.S. Assessment were completed and the results published. These Assessments, each involving hundreds of scientists and years of data, provide the most credible source of climate science and impact projections. The findings of the 5th IPCC Assessment, in its Climate Change 2014 Synthesis Report Summary for Policymakers are as follows:

- Human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate changes have had widespread impacts on human and natural systems.
- Continued emission of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems. Limiting climate change would require substantial and sustained reductions in greenhouse gas emissions which, together with adaptation, can limit climate change risks.
- Adaptation and mitigation are complementary strategies for reducing and managing the risks of climate change. Substantial emissions reductions over the next few

¹⁷ Trends in Atmospheric Carbon Dioxide, Recent Global CO₂ for November 2016, Earth System Research Laboratory, National Oceanographic and Atmospheric Administration, www.esrl.noaa.gov/gmd/ccgg/trends/global.html (last visited Feb. 27, 2017).

¹⁸ National Aeronautics and Space Administration, Goddard Institute for Space Studies, GISS Surface Temperature Analysis, http://data.giss.nasa.gov/gistemp/graphs_v3/ (last visited Feb. 27, 2017).

¹⁹ Climate Change 2014 Synthesis Report Summary for Policymakers 20 (2014), www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf.

decades can reduce climate risks in the 21st century and beyond, increase prospects for effective adaptation, reduce the costs and challenges of mitigation in the longer term and contribute to climate-resilient pathways for sustainable development.

- Many adaptation and mitigation options can help address climate change, but no single option is sufficient by itself. Effective implementation depends on policies and cooperation at all scales and can be enhanced through integrated responses that link adaptation and mitigation with other societal objectives.²⁰

²⁰ *Id.* at 2, 8, 17, and 26.

Appendix B – Legal Work on Climate Change

For purposes of exploring the legal profession’s response to climate change, the Task Force defined the legal profession as including the American Bar Association (ABA), state and local bar associations, law schools, law offices, and individual lawyers. Although some sections refer specifically to activity and organizations in Oregon, they should be instructive to readers in other jurisdictions.

1. The American Bar Association

The ABA Task Force on Sustainable Development’s first Report, published in 2014, highlights the traditional lack of attorney involvement and leadership in the sustainability movement, noting that sustainability education for lawyers and sustainable practices within law firms will become increasingly imperative essentially due to market demands.²¹

a. The 2003 ABA Resolution: Sustainable Development

This resolution stated, among other things, that U.S. governmental agencies, businesses, and nongovernmental organizations should adopt appropriate measures to encourage sustainable development.

This resolution was an outgrowth of ABA participation at the 2002 World Summit on Sustainable Development. Participation helped the ABA gain visibility and credibility among non-U.S. international lawyers and among environmental and other NGOs based outside the United States. The 2002 delegation’s report to the ABA recommended that the ABA play a significant role in fostering sustainable development through committees and sections at both the domestic and international level.

The 2003 resolution promotes laudable goals, but since it is phrased in aspirational terms of “should” and “encourage,” it is unclear what environmental benefit may have resulted.

b. The 2008 ABA Resolution: Call for Action

In 2008, the ABA House of Delegates passed a Recommendation urging the United States government to take a leadership role in addressing the issue of climate change through legal, policy, financial, and educational mechanisms.²² In the Recommendation, the House of Delegates resolved, among other things, that the U.S. should enact federal-level legislation that would cap and reduce U.S. greenhouse gas emissions; utilize appropriate market mechanisms to assist in emissions reduction; incorporate

²¹ Lee A. Deihns et al., American Bar Assoc., Task Force on Sustainable Development, First-year Report, American Bar Assoc., 3 (July 31, 2014)

²² Lee A. Deihns, American Bar Assoc., Recommendation, (adopted by the House of Delegates February 11, 2008)

principles of sustainable development; increase fuel economy and energy efficiency standards; and coordinate state and local programs into a federal program. The Recommendation also urged the U.S. government to actively participate in international discussions about mitigation and adaptation for the impacts of climate change.

The report accompanying the Recommendation states that climate change presents significant risks to current and future generations:

Climate change presents environmental risks, to be sure, but it also presents security, economic, and social risks. At the same time, the national and international response to climate change provides major opportunities for improving environmental quality, fostering economic growth and job creation, and enhancing domestic and global security. To foster sustainable development, the United States should play a leadership role in addressing climate change.²³

The report draws several conclusions. As in many other areas of law and policy, the United States' ability to influence other countries to reduce greenhouse gas emissions is directly dependent on what we do at home. This is particularly true because the historic contribution of developed countries like the U.S. to greenhouse gas emissions, and their superior financial and technological resources, are acknowledged by the United Nations Framework Convention on Climate Change (UNFCCC) to which the U.S. is a party. Moreover, it is noted that negative climate change effects will occur disproportionately in developing countries that are particularly vulnerable to climate change and that lack the resources to adapt effectively. The many strengths of the United States – including its technological capacity, economic strength, educational system, commitment to innovation, and legal institutions – give this country a unique and unparalleled opportunity to play a significant and constructive role in addressing climate change.

The language of this Recommendation appears to be stronger than earlier resolutions, and has probably resulted in participation by lawyers in global climate change related activities connected with the Recommendation's goals.

c. The 2009 ABA Resolution: Law Office Climate Challenge

This resolution was an outgrowth of the earlier 2008 resolution, after which:

numerous law firms and other law organizations sought flexible tools through which they could demonstrate their commitment to addressing sustainable development (or sustainability) and climate change in their own operations. In many cases, the organizations sought this not only as a reflection of their personal values, but also to better align with major

²³ *Id.* at 16.

clients that were also undertaking significant action in these areas and looking to their suppliers and service providers to do the same.²⁴

The ABA Section of Environment, Energy, and Resources (SEER) developed the ABA-EPA Law Office Climate Challenge.²⁵ The tool is designed to encourage law offices to take specific steps to conserve energy and resources, as well as reduce emissions of greenhouse gases and other pollutants. Law offices need to adopt at least one of the following:

- Best practices for office paper management: Switch to double-sided printing and copying to reduce the amount of paper you use; buy paper with recycled content; and increase recycling.
- WasteWise: Join this EPA program, adopt best practices for office paper management, and quantify the benefits.
- Green Power Partnership: Join this EPA program and support the growing field of renewable energy. Buy some - or all - of the amount of electricity you use from renewable sources such as solar cells or wind farms.
- ENERGY STAR: Join this EPA program, adopt an energy management plan designed for law offices, and set a goal to reduce your electricity use by at least 10%.

d. SEER Activity: The One Million Trees Project

In 2009, SEER initiated the One Million Trees Project²⁶, which was later endorsed by the full ABA. SEER sponsors tree-planting projects at each of its major events. At the annual meeting, and at many of its conferences, SEER members organize a public service event at which SEER partners with a local organization and plants trees at locations mutually chosen by the SEER and the partner organization.

The tree-planting project appears to have had some local success in terms of ecosystem and riparian restoration. As of November 4, 2014, the Section had reportedly planted a total of 52,583 trees. It is possible that the tree-planting may have some carbon benefit in the long-term, but with fewer than 1 million trees planted and saplings only a few years old, there has not been significant carbon benefit to date.

²⁴ Claudia Rast, American Bar Assoc., Recommendation, 1 (adopted by the House of Delegates February 16, 2009).

²⁵ ABA Website, *ABA-EPA Law Office Climate Challenge*, Section of Environment Energy and Resources, http://www.americanbar.org/groups/environment_energy_resources/public_service/aba_epa_law_office_climate_challenge.html (last visited Feb. 27, 2017).

²⁶ ABA Website, *One Million Trees Project*, Section of Environment Energy and Resources, http://www.americanbar.org/groups/environment_energy_resources/public_service/one_million_trees_project.html (last visited Feb. 27, 2017).

e. SEER Offsets

Since approximately 2010, SEER has given conference attendees the option of reducing the carbon footprint of their attendance at the Section's annual meeting by purchasing offsets. SEER has estimated that the average attendee will generate approximately one metric ton of carbon emissions attending a SEER conference. Contributions of \$20 or more go towards the cost of a one-ton carbon credit from a verified offset project that will reduce greenhouse gases. SEER states that for every \$20 given, 75% will go toward programming costs and 25% will be considered a charitable donation.

Although carbon offsets have been criticized over the years, many experts working in the field believe the concept is valid. Implementation, however, has been erratic. Many offsets that are available for purchase likely do not result in carbon reductions.²⁷ The ABA offset program was developed by two SEER members with experience in the offsets field and they chose a reputable offsets provider that follows industry-accepted standards. Based on the nature of the projects chosen and the standards followed, it is likely there has been some environmental and carbon benefit. However, without significantly more participation, the number of tons offset is likely quite low.

f. SEER 2010 Sustainability Framework for Law Organizations

In 2010, the SEER created a Sustainability Framework for Law Organizations.²⁸ The goal of the Sustainability Framework is to offer law firms a way to reflect the ABA's stated commitment to sustainability in their own operations. It was expected that firms would draw on and highlight a range of ABA initiatives and policies they are using, such as those dealing with the environment, diversity, pro bono legal services, and professional responsibility. The Framework provides a model sustainability policy for law firms and other legal organizations to adopt.

The ABA SEER's Climate Change and Sustainable Development Committee developed this Framework with ABA members from over 20 law firms, and had support from the ABA Standing Committee on Environment Law, the Law Practice Management Section, and other ABA groups. The intent of the Framework was also to embrace environmental and other sustainability practices tools developed by various state and local bar organizations and cities.

g. The 2011 ABA Resolution: Tribal Participation in Climate Policy

This resolution urges the United States to provide full, meaningful and effective participation in international climate change fora by Tribal leaders or their designated

²⁷ ABA Website, *Donate Now to the ABA Section of Environment, Energy, and Resources (SEER)*, <https://donate.americanbar.org/environ> (last visited Feb. 27, 2017).

²⁸ ABA Website, *Law Firm Sustainability Framework*, http://www.americanbar.org/groups/environment_energy_resources/public_service/model_law.html (December 2, 2010).

representatives. The resolution also urges that Congress and the Executive Branch consult on a government-to-government basis with Tribes on climate change and provide adequate and equitable financial and other support to Tribes for carrying out measures such as reducing greenhouse gas emissions, promoting renewable energy and energy efficiency, and adapting to impacts from climate and sea-level changes to their territorial and reservation land bases and resources.

The resolution complements existing ABA policies addressing environmental justice, sustainability, public participation, and climate change. Federal leadership will also be important in helping Tribes adapt to direct impacts from climate and sea-level changes to their territories, lands, and resources, including Alaskan Native Tribes imminently threatened by erosion and flooding and with their free, prior, and informed consent, the development and implementation of permanent relocation plans. In the spirit of U.N. Climate Chief Yvo de Boer's COP15 remarks, the United States and other countries of the world can and should do better in addressing climate change. Towards that end, and in conjunction with the ABA's position that "the presence of environmental injustice – or the lack of environmental justice – cannot be ignored and should be addressed" the resolution urges affirmative and significant steps in the right direction with respect to Tribes and climate change.

2. The Oregon State Bar

a. Creation of the Sustainable Future Section

In early 2006, 45 Oregon lawyers attended three focus-group lunches in Portland to answer two questions: (1) Is the Oregon legal profession standing at the sidelines of the sustainability movement? (2) If so, should an Oregon organization be formed to promote sustainability as a core value of the profession?

Based on the overwhelmingly affirmative response to both questions, Dick Roy, together with ten other lawyers who participated in the 2006 focus-group lunches, formed Oregon Lawyers for a Sustainable Future (OLSF), a project of the local nonprofit the Center for Earth Leadership. OLSF developed seven tools for the sustainable law office, presented 20 CLE programs on "Sustainability – the Emergent Context for the Practice of Law", and delivered a four-session training, the Oregon Lawyers Earth Leadership Seminar, to 14 cohorts totaling 200 lawyers.

In 2008, aware of burgeoning interest among Oregon lawyers in sustainability, the Board of Governors of the Oregon State Bar (OSB) invited two OLSF representatives to its fall planning retreat to present a recommendation for how OSB might address sustainability. The OLSF recommendation to form a 14-lawyer Oregon Lawyer Task Force on Sustainability was approved.

In late 2009, the OSB Board of Governors, with the task force report in hand²⁹, approved its two primary recommendations: (a) adopt a Sustainability Bylaw (now OSB Bylaw 26) and (b) authorize formation of the OSB Sustainable Future Section (SFS) – the only bar association section in the United States formed to promote the societal goal of sustainability.

Since that time, SFS has published a quarterly newsletter, offered approximately 40 CLE programs, established a Partners Program by which Oregon law offices are publicly recognized if they meet prescribed sustainability criteria in office operations, and has generally served as the OSB conscience on matters related to sustainability and climate change. In November 2014, to recognize the national leadership role of SFS, the ABA Section on Environment, Energy, and Resources presented SFS with the 2013 State or Local Bar Environment, Energy, and Resources Program of the Year Award.

At the end of 2015, SFS had 285 members (top half of OSB’s 42 sections), an Executive Committee of 10 lawyers, which meets ten times a year, and an independent web site.

As to the internal operations of OSB, Sustainability Bylaw 26 mandates that the OSB Executive Director “will designate a sustainability coordinator for Bar operations”, who “will encourage continuous sustainability improvement in Bar operations.” Since 2010, OSB has replaced disposable plates, cups, and silverware with reusable flatware; provided containers for recycling; and moved the Membership Directory to an exclusively online format that saved over 4.5 million sheets of paper.³⁰ The Bar is now considering adding charging stations for electric cars and solar panels.

b. Oregon State Bar Investment Policies

The OSB Board of Governors Budget and Finance Committee is responsible for adopting policies and guidelines for the investment of OSB funds. Once those policies are approved by the Board of Governors, and Investment Committee, which includes members of the Budget and Finance Committee and OSB’s Chief Financial Officer, monitors the investment policy and portfolio. OSB Bylaws, Section 7.4 Subsection 7.401.

The OSB’s investment policy is found in the Bylaws at Section 7.5, Subsection 7.400:

This investment policy is established to provide direction and limits for the Bar’s investment manager in investing all cash assets held by the Bar. The

²⁹ Report of the Oregon State Bar Task Force on Sustainability, submitted to the Board of Governors, October 2009; available at: www.osbar.org/docs/resources/09sustainabilitytaskforcereport.pdf.

³⁰ Rod Wegener, Sustainable Future Section Newsletter, Putting Sustainability Policy Into Practice at the Oregon State Bar, 6, <https://osbsustainablefutures.files.wordpress.com/2010/04/1q16.pdf> (Spring 2016).

funds are to be invested in a manner that ensures the protection of the Bar's cash assets and provides a dependable source of operating revenue. *The investment objectives are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity and to obtain the highest possible rate of return.* (emphasis added.)

These investment guidelines and policies are subject to annual review by the Budget and Finance Committee.

The Oregon State Bar is a public corporation and an instrumentality of the Judicial Department of the State of Oregon. ORS 9.010. A public corporation is a special government body as defined in ORS 174.117 and therefore funds maintained by the OSB are exempt from the Uniform Trust Code under ORS 130.005(2)(e). However, the Bylaws adopt the prudent investor standard for the investment manager of the OSB portfolio, which provides:

"Investments shall be made with judgment and care, under circumstances the prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived." Bylaws, Section 7.4, Subsection 7.404.

The Board of Governors has also adopted a policy to support sustainability at the Bar. Article 26 of the Bylaws provides:

The Bar supports the goal of sustainability, generally defined as meeting present needs without compromising the ability of future generations to meet their own needs. Because Bar operations and the practice of law impact the environment and society generally, the Bar will be cognizant of sustainability in its internal operating practices as well as in its service to members. Internally, the Executive Director will designate a sustainability coordinator for Bar operations, will encourage continuous sustainability improvement in Bar operations, and will report to the Board of Governors at least annually on progress and impediments. In the practice of law, principles of sustainability may be important in addressing competing economic, social and environmental priorities that impact future generations. The Bar will encourage education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

Article 26 permits the Budget and Finance Committee and Investment Committee to consider sustainability when making investment and divestment decisions with respect to the OSB portfolio without violating applicable fiduciary duties. There is evidence that a prudent investor may engage in socially responsible investing (SRI) without violating

any fiduciary duty because the effect of SRI on fund performance is most often neutral or positive.³¹

There is growing agreement that SRI or ESG investing is wholly consistent with the prudent investor standard and associated fiduciary duties. (ESG stands for environmental, social and governance). ESG investing is an investment strategy that considers non-traditional factors as part of an overall financial investment strategy. ESG investment combines traditional financial analysis with information that may not be reflected in usual market data. The goals are (1) to improve stock selection by expanding the information considered and (2) to invest in a sustainable and responsible manner.

For example, the Department of Labor recently issued a Bulletin clarifying that fiduciaries managing private employee benefit plans can use ESG investing. Current guidance from DOL makes it clear that “fiduciaries should appropriately consider factors that potentially influence risk and return” and that “environmental, social, and governance issues may have a direct relationship to the economic value of the plan’s investment.” The DOL states, “In these instances, such issues are not merely collateral considerations or tie-breakers, but rather are proper components of the fiduciary’s primary analysis of the economic merits of competing investment choices.”³²

Oregon legislation provides additional support for the premise that the prudent investor rule authorizes investors to consider non-financial factors, such as sustainability and the environment, in making investment decisions. The Oregon Legislature declared that essentially all investments under Senate Bill 1547 in furtherance of this bill to replace coal power with renewable power and other energy efficiency and electrification of transportation costs are “prudent” investments. This support is found primarily in Section 19, Chapter 28, Oregon Laws 2016, with other references to prudently incurred costs throughout the bill.

As did the DOL, the BOG should provide clarification regarding the ability of the Budget and Finance Committee and Investment Committee to use ESG investing. Section 7.5, Subsection 7.400, should be revised to read:

³¹ DEUTSCHE BANK, SUSTAINABLE INVESTING: ESTABLISHING LONG-TERM VALUE AND PERFORMANCE (2012); See THE ASSET MANAGEMENT WORKING GROUP OF THE UNITED NATIONS ENVIRONMENT PROGRAMME FINANCE INITIATIVE AND MERCER, DEMYSTIFYING RESPONSIBLE INVESTMENT PERFORMANCE (2007), http://www.unepfi.org/fileadmin/documents/Demystifying_Responsible_Investment_Performance_01.pdf; Robert G. Eccles, Ioannis Ioannou, & George Serafeim, The Impact of Corporate Sustainability on Organizational Processes and Performance, SOCIAL SCIENCE RESEARCH NETWORK (Mar. 1, 2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1507874; See Environmental, Social, and Governance Impact Report, GOLDMAN SACHS, <http://www.goldmansachs.com/citizenship/esg-reporting/index.html> (last visited Feb. 27, 2017). Goldman began publishing an Environmental Report in 2006. It became an Environmental, Social and Governance Report in 2010. *Id.*

³² DOL Interpretive Bulletin 2015-01, published as Section 2509.2015.01.

This investment policy is established to provide direction and limits for the Bar's investment manager in investing all cash assets held by the Bar. The Bar supports the goal of sustainability and believes that our investment decisions should include analysis of environmental, social and governance (ESG) factors. Accordingly, Bar The funds are to be invested in a manner that ensures the protection of the Bar's cash assets and provides a dependable source of operating revenue. The investment objectives are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity and to pursue investments that consider ESG factors, favoring ESG investing where economically equivalent. ~~to obtain the highest possible rate of return.~~

3. Other Bar Associations

The Task Force researched several state and local bar associations outside of Oregon to get a sense of what other legal communities have done to address climate change. The analysis informed the Task Force's recommended actions that could be taken by SFS to address the threat of climate change.

a. State Bar Associations

California: In September of 2008 the Environmental Law Section of the California state bar established a policy titled "Voluntary state bar of California lawyers eco-pledge and voluntary law office sustainability policy."³³ The California state bar encourages all members of the bar to sign the eco-pledge, which includes a pledge to adopt a detailed list of sustainable office practices.

No system appears to exist within the program to monitor compliance. The eco-pledge does, however, require good faith. After taking the eco-pledge, the firm or lawyer can use the logo "Lawyers for a Sustainable California."

Colorado: The Colorado Bar Association has an Environmental Sustainability program. The program was created at a directive from the bar in May, 2014 and is modeled after the ABA guidelines. The program outlines a number of different "challenges" for lawyers or law firms to undertake.³⁴ The program also contains 3 levels of participation: Advocate, for 10-15 challenges met; Leader, for 16-20 challenges met; and Partner, for practices that meet 20 or more of the challenges. The program is administered by the Environmental Sustainability Committee.

³³ California State Bar, *Voluntary State Bar of California Lawyers Eco-pledge and Voluntary Law Office Sustainability policy*, http://environmental.calbar.ca.gov/Portals/15/2015-05_Eco-Pledge-Form.pdf (Adopted by Board of Governors September 24, 2008)

³⁴ For example, # 14. "My law practice has adopted low-power management by modifying computers to automatically enter sleep mode after no more than 15 minutes of inactivity" (See Colorado Bar Association, *CBA Environmental Sustainability Program*, <http://www.cba.cobar.org/applications/espapp.cfm> (last visited Feb. 27, 2017).

The program requires participants to calculate and certify the number of measures taken to meet the objectives of the program. There are three different types of challenge: People, planet, and profit. It should be noted that challenges within the “profit” category, even if all completed, do not amount to enough to reach even the lowest level of participation, advocate. There appears to be no external monitoring system, however, there is a good faith standard, and the certifying attorney must provide his or her bar number as part of the application. Benefits of participation include permission to use the generic logo of the ESP or one which signifies their level of participation (Silver, Gold, and Platinum).³⁵

Florida: On the Florida Environmental and Land Use Law Section website, there is a “Green Law Firm” section which provides resources for sustainable office practices and encourages its members to engage in such practices. It is unclear if there is an official pledge, monitoring system, or recognition for engaging in sustainable office practices.

Massachusetts: The Massachusetts Bar Association (MBA) has implemented a program to promote sustainable office practices.³⁶ The program was composed by a task force formed by the MBA in November, 2007. Like California, there is no apparent external monitoring system. Members are, however, required to appoint someone within their organization as an environmental liaison. The MBA Eco-Challenge requires each member to renew its pledge of commitment at the beginning of each year.³⁷

New York: In 2009, the New York State Bar Association Environmental Task Force on Global Warming issued a report calling on then Governor Paterson to implement several readily identified policy changes with no fiscal impact to reduce the state’s greenhouse gas emissions.³⁸ In 2013, following Superstorm Sandy, the New York City Bar Association prepared a report entitled “Policy Recommendations for New York City’s Next Mayor.” Section II of the report includes numerous recommendations related to greenhouse gas emissions reductions and climate change adaptation and, in fact, the first recommendation in the report’s executive summary is for the mayor to encourage

³⁵ Colorado Bar Association, *CBA Environmental Sustainability Committee*, http://www.cba.cobar.org/repository/Inside_Bar/Enviro/ESPForm.pdf (last visited Feb. 27, 2017).

³⁶ Mass. Bar Assoc., *Green Guidelines*, <https://www.massbar.org/media/252221/greenguidelines0108.pdf> (last visited Feb. 27, 2017).

³⁷ *Id.* at 1.

³⁸ New York State Bar Assoc., *Governor Can Implement Global Warming Recommendations Now*, <https://www.nysba.org/CustomTemplates/Content.aspx?id=6191>, (April 6, 2009). https://www.nysba.org/Sections/Environmental/Task_Force_on_Global_Warming/FinalGlobalWarmingTaskForceReportUpdatedCOVER_pdf.html

and empower all New York City residents and commuters to reduce their carbon footprint.³⁹

Pennsylvania: The Pennsylvania Lawyers United for Sustainability (PLUS) program was formed in 2009. The PLUS program "provides Pennsylvania attorneys and law firms an opportunity to demonstrate publicly their commitment to environmental sustainability in their professional practices." PLUS grew out of requests from within the Environmental and Energy Law Section of the Pennsylvania Bar. The section formed a committee to develop a program through which Pennsylvania attorneys and law firms could demonstrate their commitment to sustainability in their professional practices. Modeled after similar programs in California, Oregon, Massachusetts, and Washington, the program requires participants to renew their pledge to act sustainably.⁴⁰

Washington: Washington Lawyers for Sustainability is an independent group of lawyers focused on promoting sustainability through education, role modeling, counseling, and advocacy.⁴¹ Benefits to membership include opportunities to litigate, write about, or assist the sustainability movement. The association has an entire committee devoted to promoting best office practices for sustainability. |

Other Washington Lawyers for Sustainability committees include:

- Continuing Legal Education and Public Events Committee
- Energy Policy Committee
- Sustainable Restructuring of Washington Business Entities
- Stormwater Runoff Scorecard Committee
- Pro Bono Action Committee

b. Local Bar Associations

Boston: In 2012 the Boston Bar Association (BBA) issued a report titled "Greening the Profession." The report was the result of an Environmental Sustainability Task Force which investigated and made several recommendations for lawyers about how to promote sustainability within the legal profession. Such recommendations include promoting sustainable office practices, doing pro bono work, and planting trees. The goals of the task force are, "1) to gather, evaluate, and present to BBA members tips for promoting environmental sustainability in the practice of law in various practice settings;

³⁹ New York State Bar Association Task Force on Global Warming, *Taking Action in New York on Climate Change*, <http://www.nycbar.org/images/stories/pdfs/mayoralreport04302013.pdf> (April 4, 2009).

⁴⁰ Penn. Bar Assoc., *Pennsylvania Lawyers United for Sustainability (PLUS) Program*, <https://www.pabar.org/public/sections/envco/plusprogram.asp>, <https://www.pabar.org/public/sections/envco/PLUSProgramGuidelines.pdf> (Adopted May 14, 2010).

⁴¹ Washington Lawyers for Sustainability, *About Us*, <http://www.washingtonlawyersforsustainability.org/about-us/> (last visited Feb. 27, 2017).

and 2) to identify and promote pro bono and public service opportunities for lawyers pertaining to environmental sustainability issues.”⁴²

Cleveland: In 2008, at the Cleveland Metro Bar Association annual meeting, the Green Initiative Committee was announced. The Green Initiative Committee seems to be successful. It has ongoing applications for 2015-2017 certification. Certification requires commitment to specific requirements. Beyond simple green certification, there is another level, Green+ certification, which requires law offices to document a 10% energy savings. Firms are required to have a lawyer submit a pledge in writing to be certified. Certification lasts two years. Certified firms are recognized on the Green Initiative website as well as formally recognized at the annual Luncheon.⁴³

Philadelphia: In 2010, the Philadelphia Bar Association formed the Green Ribbon Task Force. The result of the task force was the Green Ribbon Sustainability Initiative Pledge, which was endorsed by the Philadelphia Board of Governors on September 10, 2010. The pledge includes guidelines for law offices to follow to reduce their carbon footprint and promote sustainability. Guideline topics include:

- Energy and Lighting
- Food
- Paper
- Pleadings/Documents
- Recycling
- Transportation
- General Business Practices

4. Other Legal Profession Initiatives

In response to climate change, private law firms and specialty sections of bar associations and other groups of lawyers have engaged in three basic types of activities.

First, under the umbrella of sustainability, some law firms and associations of lawyers have undertaken voluntary efforts to raise awareness of sustainability issues and to reduce their environmental and carbon footprints. An example of private law firm sustainability efforts is the Law Firm Sustainability Network, which was founded in August, 2011, as an informal platform for law firm professionals to share ideas, network, and develop best practices and industry standards for sustainability.⁴⁴ An excellent example of lawyers organizing to promote sustainability (prior to being incorporated into

⁴² Boston Bar Assoc., *Report of the Sustainability Task Force*, <http://www.bostonbar.org/docs/default-document-library/environmental-sustainability-task-force-report.pdf> (September, 2012).

⁴³ Cleveland Metro Bar Assoc. Green Initiative Comm., https://www.clemetrobar.org/cmbar_prod/CMBA/CMBA/Legal_Professionals/Sections_Committees/Committees/Green_Initiative%20Committee/Green-Initiative_Committee.aspx (last visited Feb. 27, 2017).

⁴⁴ Law Firm Sustainability Network, www.lfsnetwork.org/about/who-we-are/ (last visited Feb. 27, 2017).

state bar associations as specialty bar sections) is Oregon Lawyers for a Sustainable Future. This began as a project of The Center for Earth Leadership and ultimately led to the creation of the Sustainable Future Section of the Oregon State Bar.⁴⁵

Second, groups of lawyers have organized to provide pro bono legal services to nonprofit and other qualifying organizations working to address climate change. Green Pro Bono appears to be the leading organization doing this type of work, billing itself as the first non-profit pro bono legal initiative in the United States dedicated to helping climate change-driven non-profit organizations and social entrepreneurs. Green Pro Bono's mission is to help these environmental "change makers" identify their legal needs and connect them with free legal assistance. Green Pro Bono is not a law firm; it acts as a clearinghouse to connect attorneys and clients, with volunteer attorneys providing vital legal assistance to organizations working in areas such as renewable energy, energy efficiency, habitat protection/carbon sequestration, and other innovative ideas and projects to combat climate change.⁴⁶

Third, using specialty bar sections, lawyers have engaged in efforts to educate the public and policy makers through legal scholarship that evaluates how existing laws and regulations have shaped greenhouse gas emissions pathways and how changes in existing laws, regulations, and policies could reduce future emissions. One example of this type of work is a 2014 ABA task force effort to compile a 50-state survey summarizing climate change and related legislation and regulation, including internal agency and state government mandates, as well as regional initiatives.⁴⁷ The survey presents information chronologically. Using Oregon as an example, the earliest identified legislation to address GHGs here was a 1977 Residential Tax Credit program for household use of solar heating, geothermal heating, and wind power generation. The overarching purpose of the survey is to identify and share the many creative legal and policy initiatives taken at the state and regional levels to mitigate greenhouse gas emissions.

A second example of this type of work also occurred in 2014 and was completed by the International Bar Association. Recognizing that climate change is a global problem requiring global solutions, the International Bar Association completed a comprehensive review of domestic and international law relevant to climate change with recommended actions. The analysis was performed and recommendations made largely through the lenses of human rights and justice.⁴⁸

⁴⁵ For a brief history, see Oregon State Bar, Sustainable Future Section, <http://osbsustainablefuture.org/home/section-newsletter/20101spring2roy/> (last visited Feb. 27, 2017).

⁴⁶ Green Pro Bono, www.greenprobono.org/index.cfm (last visited Feb. 27, 2017).

⁴⁷ American Bar Association, www.americanbar.org/content/dam/aba/administrative/environment_energy_resources/committees_dch/Full_50_State_Survey_%20Final_Thru_April_2014.authcheckdam.pdf (last visited Feb. 27, 2017).

⁴⁸ International Bar Association, www.ibanet.org/PresidentialTaskForceClimateChangeJustice2014Report.aspx (last visited Feb. 27, 2017).

5. Legal Education and Scholarship

To assess the response of the legal profession to the threat of global climate change, a member of the Task Force contacted the three major law schools in Oregon (Lewis and Clark Law School, University of Oregon, Willamette University) to ask them about their pedagogical programs relating to this topic.

Lewis and Clark Law School: Lewis and Clark (LC) appears to have a very robust set of offerings to law students on climate change, which is not surprising as it a well-regarded school for environmental law. In addition to a curriculum that includes classes related to climate change (Climate Change, Energy Law, Renewable Energy Seminar, summer field classes), as well as a Certificate in Environmental and Natural Resources Law,⁴⁹ LC recently founded a Green Energy Institute (GEI), with the following mission:⁵⁰

The Green Energy Institute is a renewable energy policy organization within Lewis & Clark Law School's Environmental and Natural Resources Law Program. The Green Energy Institute develops and advocates for effective policies to advance renewable energy. Our mission is to facilitate a swift transition to a sustainable, carbon-free energy grid. The Green Energy Institute is undertaking a suite of policy programs and projects to promote renewable energy development, and our Charged Debate blog explores current energy policy issues impacting communities throughout the nation.

The GEI also provides staff attorney opportunities for recent graduates, and plans to add externship opportunities as well.

Lewis and Clark offers several clinical opportunities for students: Earthrise,⁵¹ a domestic pro bono environmental law clinic, and the International Environmental Law Program,⁵² (IELP) an international pro bono environmental law clinic both engage in matters directly or indirectly related to climate change issues. Earthrise represents nonprofit environmental organizations in clean energy, land management, and species protection issues, which are affected by a changing climate.

⁴⁹ Lewis and Clark Law School, <http://law.lclark.edu/live/files/9112-environmental-law> (last visited Feb. 27, 2017).

⁵⁰ Lewis and Clark Law School, Green Energy Institute, http://law.lclark.edu/centers/green_energy_institute/ (last visited Feb. 27, 2017).

⁵¹ Lewis and Clark Law School, Earthrise, <http://law.lclark.edu/centers/earthrise/> (last visited Feb. 27, 2017).

⁵² Lewis and Clark Law School, International Environmental Law Project, http://law.lclark.edu/clinics/international_environmental_law_project/ (last visited Feb. 27, 2017).

In addition, the Western Resources Legal Center is an environmental law clinic associated with Lewis and Clark Law School that provides pro-bono legal services to farmers, ranchers, miners, foresters, resource developers and other natural resource dependent entities.⁵³

Finally, Lewis and Clark publishes *Environmental Law*, which regularly publishes articles on climate change.⁵⁴

University of Oregon School of Law: The School of Law has also developed a substantial emphasis on climate change and sustainability, and offers a Certificate in Public Interest and Public Service Law. The school offers a number of courses to fulfill this requirement that are focused solely on climate change and the law including Climate Change Law & Policy, Climate Change Litigation, and Climate Change in International Law.⁵⁵ Additionally, the legal and policy considerations associated with climate change are present in nearly every environment and natural resources (ENR) class offered, and some classes use innovative scenario-based tools to more realistically teach legal topics implicated by a changing climate.

The University of Oregon's collective scholarship on issues relating to climate change is significant. For example, the law school publishes *Journal of Environmental Law and Litigation*, its natural resources environmental law journal.⁵⁶ Of particular interest, the school's Environment and Natural Resources Newsletter includes articles on climate change, including the Fall 2009 *ENR Newsletter* that featured a cover story from Professor Mary Wood, the Faculty Director of Oregon's ENR Center, which highlights the school's view of the need to transform legal education to meet the challenges of climate change.⁵⁷

The University of Oregon is also home to the Western Environmental Law Center (WELC).⁵⁸ This clinic allows students to work with WELC staff attorneys in representing conservation groups, individuals, and others in state and federal courts. Students work

⁵³ Lewis and Clark Law School, Western Resources Legal Center, <http://www.wrlegal.org/> (last visited Feb. 27, 2017).

⁵⁴ Lewis and Clark Law School, Environmental Law Review, http://law.lclark.edu/law_reviews/environmental_law/ (last visited Feb. 27, 2017).

⁵⁵ University of Oregon School of Law, <https://law.uoregon.edu/explore/JD-ENR-law-concentration> (last visited Feb. 27, 2017).

⁵⁶ University of Oregon School of Law, Journal of Environmental Law and Litigation <https://law.uoregon.edu/explore/JELL> (last visited Feb. 27, 2017).

⁵⁷ University of Oregon School of Law, Environmental & Natural Resources Law Center, <https://law.uoregon.edu/explore/enr> (last visited Feb. 27, 2017).

⁵⁸ Western Environmental Law Center, <http://www.westernlaw.org/> (last visited Feb. 27, 2017).

in both of WELC's practice groups – Climate and Energy, and Wildlands – and are engaged in intellectually challenging and creative work.

Finally, the University supports several educational conferences and events, which often address climate-related topics. The annual Public Interest Environmental Law Conference convenes roughly 2,000 environmental attorneys, policy-makers, and advocates working for the public interest at the law school.⁵⁹ The four-day event consists of keynote speeches by internationally renowned leaders and 75 to 100 panelists. Climate change has been a prominent topic for many years.

Willamette University School of Law: Over the past decade, the School of Law has expanded its course offerings in sustainability and natural resources law. Willamette now offers a Certificate Program in “Sustainable Environmental, Energy & Resources Law (SEER)”, a program emphasizing the role of the lawyer in formulating environmental and natural resources law and policy.⁶⁰ Students enrolled in the SEER Certificate Program are required to take courses in International Law & Dispute Resolution, Environmental Law & Policy Law, Sustainable Natural Resources Law and elective courses such as Energy & Climate Law, Water Law, Wildlife Law, and Native American Law.⁶¹ The SEER faculty includes Professor Robin Morris Collin, previously a professor at the University of Oregon, and, in 1993, the first law professor to teach a class in sustainability at an American law school. The Director of the program is Professor Susan L. Smith, co-author of the book *Crimes Against the Environment* (co-authored with Susan Mandiberg) (1997; 2d edition 2004) with a background in international environmental law.

Willamette Law also offers a Study Abroad program, giving students practical experience with natural resources laws in Germany and Ecuador.⁶² There is also the *Willamette Environmental Law Journal* (WELJ), which completed its first publication in the fall of 2012. It is currently an annual publication journal, publishing in the spring and available online only. WELJ is a student-managed and student-edited legal journal and is committed to publishing articles pertaining to environmental law and sustainability policy considerations, selecting both outside and student articles for publication.⁶³

Non-Oregon Law Schools: The Task Force did not conduct extensive research of law school offerings or programs outside of Oregon, though it is aware that other resources

⁵⁹ Public Interest Environmental Law Conference, <http://pielc.org/> (last visited Feb. 27, 2017).

⁶⁰ Willamette University School of Law, <http://willamette.edu/law/programs/certificate-programs/environ-energy-resources/index.html>

⁶¹ *Id.* <http://willamette.edu/law/programs/certificate-programs/environ-energy-resources/course-requirements/index.html>

⁶² Kyle Pietari, *Ecuador's Constitutional Rights of Nature: Implementation, Impacts, and Lessons Learned*, 5 WILLAMETTE ENVTL. L. J. 37 (2016).

⁶³ *Id.* <http://willamette.edu/law/resources/journals/welj/>.

exist. For example, the Sabin Center for Climate Change Law at Columbia Law School has developed several resources for law students, lawyers, and the general public concerning climate change law and policy. These resources broadly include several international topics and specifically include a database of international climate change laws and policies.⁶⁴ Another example is the Environmental Law and Policy group at Yale Law School, which initiated the Yale Climate Change Dialogue to create and advance a new policy framework that broadens “ownership” of the climate change action agenda.⁶⁵ This effort was timed to coincide with the United Nations’ climate talks at the 21st Conference of Parties in Paris in 2015 and was intended to improve the talks’ outcome by bringing to greater prominence the voices and policy initiatives of local governments that have been at the forefront of both climate change impacts and climate change policy in recent years.

Other Legal Scholarship: Outside of Oregon law schools and their educational offerings, there is a substantial body of legal scholarship on the topic of climate change. Numerous law reviews and journals, as well as legal articles published in the popular media, discuss various implications of climate change.⁶⁶

6. Environmental Public Interest Law

In addition to the legal clinics operated by the various Oregon law schools discussed above, there are three major public interest environmental law firms based or operating in Oregon: Western Environmental Law Center (WELC),⁶⁷ Crag Law Center (CRAG),⁶⁸ and Earthjustice (based in Seattle, Washington).⁶⁹ Washington Forest Law Center, also based in Seattle, Washington, also represents clients in Oregon, primarily on nonfederal forest management issues.⁷⁰

There are also numerous solo practitioners who represent conservation organizations and other clients pro bono on climate change issues. These firms typically represent, for

⁶⁴ Columbia Law School, Sabin Center for Climate Change Law, <http://columbiaclimatelaw.com/resources/climate-change-laws-of-the-world-2/> (last visited Feb. 27, 2017).

⁶⁵ Yale University, Yale Center for Environmental Law & Policy, <http://envirocenter.yale.edu/projects/yale-climate-change-dialogue> (last visited Feb. 27, 2017).

⁶⁶ See generally, John C. Dernbach, *The Essential and Growing Role of Legal Education in Achieving Sustainability*, Widener Law School Legal Studies Research Paper No. 09-20 (September 9, 2009); see also Burns H. Weston and Tracy Bach, *Recalibrating the Law of Humans with the Laws of Nature: Climate Change, Human Rights and Intergenerational Justice*, Vermont Law School (2009), http://earthlawyers.org/wp-content/uploads/2014/08/CLI_Policy_Paper.pdf (last visited Feb. 27, 2017).

⁶⁷ Western Environmental Law Center, <http://www.westernlaw.org/> (last visited Feb. 27, 2017).

⁶⁸ CRAG Law Center, <http://crag.org/> (last visited Feb. 27, 2017).

⁶⁹ Earthjustice, <http://earthjustice.org/> (last visited Feb. 27, 2017).

⁷⁰ Washington Forest Law Center, <http://www.wflc.org/> (last visited Feb. 27, 2017).

little or no-cost, conservation organizations and others in legal actions challenging projects in local, state, and federal court.

Appendix C – Ethical and Legal Frameworks for Climate Change Law

1. Climate Litigation Theories

At the start of 2015, there were 740 active climate change cases filed in United States Courts.⁷¹ The cases arise under a variety of statutory and common law theories, but the majority seek to enforce existing regulations or the promulgation of new regulations to mitigate climate change.⁷² Climate change litigation is increasing at a time when international efforts are failing, and the cases may prompt new regulatory solutions, shape public opinion and have a cumulative impact across jurisdictions.⁷³ At the same time, anti-regulatory litigation, from industries and states opposed to greenhouse gas regulation, is also increasing.⁷⁴

Perhaps the earliest climate change case in the United States was City of Los Angeles v. National Highway Transportation Safety Administration (NHTSA), which challenged the federal government's failure to evaluate the impact of lowering fuel efficiency standards under the National Environmental Policy Act (NEPA).⁷⁵ The case was not successful, but laid the groundwork for many cases that followed, such as Massachusetts v. Environmental Protection Agency in 2006, which challenged the EPA's failure to regulate greenhouse gas emissions under the Clean Air Act (CAA).⁷⁶ The Supreme Court's decision in Mass. v. EPA confirmed the EPA's authority to regulate greenhouse gas emissions and to establish national emissions standards for new vehicles under the CAA.⁷⁷ It also held that individual states have standing to sue EPA if they fail to exercise that authority, but left open the question whether individuals have standing to do the same.⁷⁸

Cases brought under the National Environmental Policy Act (NEPA) and the Administrative Procedure Act have required consideration of greenhouse gas impacts

⁷¹ Arnold and Palmer LLP, "U.S. Climate Change Litigation Chart", www.climatecasechart.com. A comprehensive chart of U.S. climate change case law, organized by both claim and case name, with links to decisions, briefs, and memos; Michael B. Gerrard, J. Cullen Howe and L. Margaret Berry, Columbia Law School–Sabin Center for Climate Change Law.

⁷² JACQUELINE PEEL & HARI M. OSOFSKY, CLIMATE CHANGE LITIGATION 40-45 (2015).

⁷³ *Id.* at 10.

⁷⁴ Coalition for Responsible Regulation v. EPA, 684 F.3d 102, 116 (D.C. Cir. June 26, 2012); PEEL & OSOFSKY, *supra* note 72, at 283.

⁷⁵ City of Los Angeles v. National Highway Transportation Safety Administration (NHTSA), 912 F. 2d 478 (DC Circuit 1990).

⁷⁶ Massachusetts v. Environmental Protection Agency, 549 US 497 (2007).

⁷⁷ *Id.* at 533.

⁷⁸ *Id.* at 521.

before federal projects such as coal fired power plants and federal fuel standards are approved.⁷⁹ However, challenges to limit greenhouse gas emissions under these statutes are primarily procedural in that they can delay projects by requiring environmental assessments, but the courts usually defer to the agencies issuing the permits when it comes to assessing whether or not a project can proceed and what mitigation methods are necessary.⁸⁰

In 2005, the Center for Biological Diversity sued the Bush Administration under the Endangered Species Act (ESA) to list the polar bear as a threatened and endangered species due to the impacts of climate change in the arctic.⁸¹ Although the Bush Administration finally listed the polar bear as threatened in 2008, the impact of that listing was thwarted by the adoption of a special rule for polar bears under Section 4(d) of the ESA.⁸² That special rule exempts all greenhouse gas-emitting projects from consideration when establishing critical habitat for polar bears under section 7 of the ESA.⁸³ This special rule was challenged on procedural grounds under NEPA, with some limited success, but the rule was readopted by the Obama administration in 2013.⁸⁴ The inability to consider regulation of greenhouse gas emissions when establishing critical habitat under the ESA raises doubt on the usefulness of the ESA as a tool for mitigating climate change.⁸⁵

Common law theories of nuisance, negligence, and the public trust doctrine have also been used in both federal and state court cases.⁸⁶ In American Electric Power v. Connecticut, the Supreme Court considered common law nuisance claims brought against several large power plants responsible for greenhouse gas emissions.⁸⁷ The case was brought by a coalition of states, cities and other parties and the Court found

⁷⁹ PEEL & OSOFSKY, *supra* note 72, at 73; Center for Biological Diversity v. NHTSA, 508 F.3d 508 (9th Circuit 2007).

⁸⁰ MARY CHRISTINA WOOD, NATURE'S TRUST 119 (2014); Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 558 (1978); Chevron, U.S.A., Inc. v Nat. Resources Def. Council, Inc., 467 U.S. 837, 844 (1984).

⁸¹ In re Polar Bear Endangered Species Act Listing & Sec.4(d) Rule Litig., 2011 U.S. Dist. LEXIS 119476 (D.D.C., Oct. 17, 2011).

⁸² PEEL & OSOFSKY, *supra* note 72, at 75.

⁸³ Determination of Threatened Status for the Polar Bear (*Ursus maritimus*) throughout Its Range, 50 CFR Part 17, 73 Fed. Reg. 28,212-28,303 (May 15, 2008).

⁸⁴ 50 CFR § 17.40(q) (2013), Special Rule for the Polar Bear Under Section 4(d) of the Endangered Species Act.

⁸⁵ In re Polar Bear Endangered Species Act Listing & 4(d) Rule Litig., U.S. Dist. LEXIS 119476; PEEL & OSOFSKY, *supra* note 72, at 76.

⁸⁶ Arnold and Palmer LLP, www.climatecasechart.com.

⁸⁷ American Electric Power Company, et al. v. Connecticut et al., Case 10-174 (S. Ct. 2011).

no problem with standing (per its ruling in Massachusetts v. EPA), but used the displacement doctrine to refuse ruling on the merits.⁸⁸ The Court held that as long as the EPA had the authority to regulate greenhouse gas emissions under the CAA, even if it chose not to do so, the Court would not weigh in on a case of common law nuisance.⁸⁹

The public trust doctrine, a legal theory founded in constitutional common law, has been used by the Oregon group Our Children's Trust to bring atmospheric trust litigation cases in all 50 states and against several federal agencies.⁹⁰ The public trust doctrine sees the atmosphere as a trust asset and federal, state, and tribal governments as trustees, bound by a fiduciary duty to protect the land, water and atmosphere so they are available for future generations.⁹¹ Since these cases are still going through the courts the outcome is unclear, but the decisions, based on state property laws, are likely to vary state to state.⁹² In a recent Circuit Court case for the State of Oregon, the Court held that "the public trust doctrine does not apply to the atmosphere."⁹³ However, that State Court decision has been appealed, and a similar case is ongoing in the Federal District Court in Oregon. In the federal case, a US Magistrate Judge denied the government's motion to dismiss and held that the public trust doctrine does provide substantive due process protections for Oregon youth plaintiffs.⁹⁴

Significant obstacles to bringing climate change litigation exist that may limit the long-term effectiveness of litigation as a tool to fight climate change. The issue of standing must be confronted every time a litigant chooses to file a claim. Currently, federal courts are divided as to whether individual plaintiffs (including environmental groups) have standing to sue the federal government for failure to address climate change.⁹⁵ Another obstacle is the judicial deference given to agencies in interpreting environmental regulations, which is subject to change depending upon which political party is in office

⁸⁸ *Id.* at 19.

⁸⁹ *Id.* at 20.

⁹⁰ Our Children's Trust, <http://ourchildrenstrust.org>; PEEL & OSOFSKY, *supra* note 72, at 82; Wood, "Nature's Trust" at 227.

⁹¹ WOOD, *supra* note 80, at 138.

⁹² PEEL & OSOFSKY, *supra* note 72, at 82.

⁹³ Chernaik et. al v. Kate Brown, Opinion and Order at page 12, Judge Karsten H. Rasmussen, Lane County Circuit Court, Case No. 16-11-09273 (May 11, 2015). The youth plaintiffs appealed the decision on July 7, 2015 and filed their opening brief with the Oregon Court of Appeals on February 5, 2016.

⁹⁴ Juliana et. al v. United States of America, Order and Findings and Recommendation at page 24, Judge Thomas M. Coffin, United States District of Oregon, Case No. 6:15-cv-1517-TC (April 8, 2016).

⁹⁵ WOOD, *supra* note 80, at 11.

and in charge of those agencies.⁹⁶ The constraints of current federal laws and regulations mean that judges are often left to determine whether a specific set of regulatory procedures have been followed rather than trying to remedy the underlying problems in a case. Money can be a barrier for citizens and environmental groups using litigation to try to limit the actions of large corporations or the government. Additionally, well-funded antiregulatory litigation has expanded significantly in the United States in reaction to efforts by the EPA to regulate greenhouse gas emissions based on the Supreme Court's decision in Mass. v. EPA.⁹⁷

2. Environmental Justice

a. The Lawyer's Role in Environmental Justice

According to the EPA, “environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”⁹⁸ Lawyers play an important role navigating environmental justice concerns. For example, EPA uses screening tools to consider environmental justice in its permitting, enforcement, and compliance actions, and lawyers for the agency and third parties are regularly involved in these regulatory actions.⁹⁹ Lawyers also serve as advocates for communities that suffer disproportionate burdens from environmental policies and practices. In these cases, lawyers are involved in setting legal strategy, championing arguments, and seeking injunctions to protect a community's rights and to seek penalties to redress grievances.

b. The Lawyer's Role in Environmental Justice in the Context of Climate Change

Lawyers also address environmental justice in the context of GHG adaptation and mitigation.

⁹⁶ *Id.*

⁹⁷ PEEL & OSOFSKY, *supra* note 72, at 81.

⁹⁸ U.S. Environmental Protection Agency, *What is Environmental Justice?*, www.epa.gov/environmentaljustice/. Similarly, Oregon's Environmental Justice Task Force defines environmental justice as “equal protection from environmental and health hazards, and meaningful public participation in decisions that affect the environment in which people live, work, learn, practice spirituality and play.” State of Oregon, *Environmental Justice Task Force*, www.oregon.gov/gov/policy/environmental_environmental_justice/Pages/default.aspx.

⁹⁹ U.S. Environmental Protection Agency, *How Does EPA Use EJSCREEN?*, www2.epa.gov/ejscreen/how-does-epa-use-ejscreen. See also U.S. Environmental Protection Agency, *Environmental Justice Topics*, www.epa.gov/environmentaljustice/ (listing several programs for environmental justice such as National Environmental Justice Advisory Council, EJ 2020 Action Agenda, Environmental Justice Grants & Programs, Federal Interagency Working Group on Environmental Justice, EPA Policy on Environmental Justice for Tribes and Indigenous Peoples); (OR. REV. STAT. §182.545(1) (2015) (Oregon law requiring natural resource agencies to consider environmental justice in deciding “whether and how to act”).

While this report focuses on mitigation, adaptation to a warming climate is a major environmental justice challenge. Climate change will cause a disproportionate burden on low-income populations who are ill prepared to manage rapid environmental change (e.g., rising seas, heat waves, storm surges) or economic costs (e.g., higher costs of food, water, health care).¹⁰⁰ Reflecting on the major storms that recently hit U.S. shores, one activist summed up these concerns: “Black, brown, and poor communities are hit first and hardest by the impacts of climate change. It was true ten years ago here in Louisiana, it was true three years ago when Hurricane Sandy hit New York City, and it’s true today.”¹⁰¹

Mitigating GHG emissions also raises major environmental justice concerns for at least two reasons. First, mitigation implies that there is a finite amount of GHGs that can be released into the atmosphere without causing dangerous interference with the climate system. During the last several decades, wealthier nations (and their populations) have powered their development by burning fossil fuels and releasing GHGs into the atmosphere. There is widespread recognition that these countries bear a greater responsibility to mitigate GHG emissions – a recognition grounded in environmental justice.¹⁰² Lawyers will continue to play a role in the debate about which governments should pay for the cost of past, present, and future GHG emissions, and which governments are entitled to release more GHGs into the atmosphere.

Second, mitigation requires that we substantially reduce GHG emissions, which will require new policies to control the sources of GHG emissions and investment in new technology and infrastructure to further reduce emissions. As these policies are developed, lawyers will be involved to scrutinize whether policies that may be neutral on their face cause disparate impacts on vulnerable communities, including low-income and communities of color.¹⁰³ For instance, policies that may increase the cost of transportation fuels can have a disproportionate impact on low-income populations because these populations spend more of their income on transportation, rely more on public transit, and are disproportionately impacted by poor or costly public transit

¹⁰⁰ In Oregon, local governments are focused on the severe impacts of climate change on low income and communities of color. See Multnomah County and City of Portland, *Climate Change Preparation Strategy: Risk and Vulnerabilities Assessment*, 7-9, 33-40 (2014). See also National Geographic Society, *Climate Refugees*, http://education.nationalgeographic.com/education/encyclopedia/climate-refugee/?ar_a=1 (discussing a new class of climate refugees).

¹⁰¹ E-mail from Rae Breaux, Frontline Partnerships Manager, 350.org (August 29, 2015).

¹⁰² United Nations, *First steps to a safer future: Introducing The United Nations Framework Convention on Climate Change*, http://unfccc.int/essential_background/convention/items/6036.php (discussing the responsibility of developed countries to lead the way to cut emissions on home ground).

¹⁰³ See *Association of Irrigated Residents, et al. v. California Air Resources Board, et al.*, Order Granting in Part Petition for Writ of Mandate, No. CPF-09-509562, at 16 (Superior Court of California, County of San Francisco, March 18, 2011) (Petitioners argued, among other things, that the California Air Resources Board failed to evaluate the potential disparate impacts of cap and trade as part of AB 32 implementation, particularly for communities living closest to the facilities eligible to participate in the cap and trade system).

infrastructure. Where mitigation policies generate revenue, lawyers will also be involved to evaluate how that revenue may be used to offset the adverse economic impact of these policies on overburdened communities.¹⁰⁴

3. Environmental Ethics

One of the strongest influences on law is ethics. Ethics concerns, among other things, access to justice, and justice must be informed by law. While what is morally “right” in the eyes of a populace is not always law, it usually embodies the ideal conduct that law seeks to encourage, but it often circumscribes the outer boundaries of what behavior society is willing to accept.

In *The Rights of Nature*, by Roderick Nash, the author explains how American culture now acknowledges an ethic that nature itself has rights, and explains how this is part of a wider arc of history encompassing other social movements that recognize the inherent value of people. Nash summarizes the progression of these rights with the following table that relates the group gaining official rights with the primary legislative act and the year of its adoption.

Group	Act	Year
Nature	Endangered Species Act	1973
Blacks	Civil Rights Act	1957
Laborers	Fair Labor Standards Act	1938
Native Americans	Indian Citizenship Act	1924
Women	Nineteenth Amendment	1920
Slaves	Emancipation Proclamation	1863
A m e r i c a n Colonists	Declaration of Independence	1776
English Barons	Magna Carta	1215

In each movement, a group was recognized as possessing inherent value that was not formerly respected by the government. For instance, the Declaration of Independence

¹⁰⁴ See California Environmental Protection Agency, Greenhouse Gas-Reduction Investments to Benefit Disadvantaged Communities, www.calepa.ca.gov/EnvJustice/GHGInvest/#sthash.a5gAmO3m.dpuf (stating “Disadvantaged communities in California are specifically targeted for investment of proceeds from the State’s cap-and-trade program. These investments are aimed at improving public health, quality of life and economic opportunity in California’s most burdened communities”)

was an assertion of the inherent value of colonists as citizens in their own self-government, just as the Emancipation Proclamation recognized the inherent value of blacks as human beings who could and should participate in our democracy. The Endangered Species Act, likewise, was legislation that finally recognized the inherent worth in the animals provided by nature, and their right to exist.

For each of the important acts listed in the above table, there was a persistent social movement that expressed an ethic, which in turn required justice. The Magna Carta, was, in a sense, a written document expressing an ethic of self-government and human rights during a long, slow rebellion of the English nobles against the Plantagenet Norman kings, of which King John was the last. The Endangered Species Act was the culmination of the ethic of conservation that demanded justice in the face of the near extinction of the once great and iconic bison herds.

Likewise, there is a building social movement and public recognition of the changing climate, which expresses the ethic that it is wrong to radically worsen the Earth's climate and wrong to place the burden of its consequences on the shoulders of our progeny. This ethic and ongoing harm requires justice, and therefore legislation must be passed to ensure justice in an orderly and fair manner.

4. State and Foreign Constitutions

a. The U.S. Constitution Preamble

The United States Constitution does not address environmental concerns, but it does make a specific reference to the concept of intergenerational responsibility in its Preamble.

The Preamble to the United States Constitution states that “We the People” established the Constitution, in part, to “secure the blessings of Liberty to ourselves and our Posterity.” [sic.] The capitalization of the word Posterity, the separate reference to “ourselves” and also to “our Posterity,” indicates that the Constitution is intended to apply separately to Posterity and not just to those alive at the time of the drafting, referred to as “ourselves.” The Preamble has never been held to confer any rights or obligations that are not specifically enumerated elsewhere in the Constitution, but in plain English it was intended to consider future generations.

The power to protect the environment for future generations was granted to Congress traditionally through the power to regulate interstate commerce and secondarily through other key sources of the treaty power, Congress' power over federal property, and the

spending power.¹⁰⁵ Congress is also granted the power to make all laws that are necessary and proper for carrying out its other powers.¹⁰⁶

b. The Constitutions of the States

To date, a minority of States mention environmental subjects in their Constitutions. States that refer to natural resources or environmental subjects in their Constitutions are presented in Figure 1 below and encompass Hawaii, Illinois, Montana, New Mexico, and Pennsylvania. Even where such provisions exist, there is often a lack of case law, such as in Hawaii, or courts have removed any interpretation that would allow standing, such as with Illinois.

Figure 1.

State	Basis for climate protection?	Constitutional Excerpt	Const. Cite	Case Law
		PRESERVATION OF A HEALTHFUL ENVIRONMENT		
		Section 8. The State shall have the power to promote and maintain a healthful environment, including the prevention of any excessive demands upon the environment and the State's resources. [Add Constitutional Convention 1978 and election Nov 7, 1978]		
		WATER RESOURCES		
		Section 7. The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people		

¹⁰⁵ *Challenges to Environmental Protection in the Courts Continued*, Environmental Law Institute, <http://www.eli.org/challenges-environmental-protection-courts-continued> (last visited Feb. 27, 2017).

¹⁰⁶ U.S. Const. art. I, § 8, cl. 18. “The Congress shall have Power ... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested “by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

Hawaii	Yes	<p>The legislature shall provide for a water resources agency which, as provided by law, shall set overall water conservation, quality and use policies; define beneficial and reasonable uses; protect ground and surface water resources, watersheds and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses and establish procedures for regulating all uses of Hawaii's water resources. [Add Constitutional Convention 1978 and election Nov 7, 1978]</p> <p>ENVIRONMENTAL RIGHTS</p> <p>Section 9. Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law. [Add Constitutional Convention 1978 and election Nov 7, 1978]</p>	HA Const. Art IX, § 8,9	No case law
Illinois	Yes, but negative case law	<p>SECTION 1. PUBLIC POLICY - LEGISLATIVE RESPONSIBILITY</p> <p>The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.</p> <p>RIGHTS OF INDIVIDUALS</p>	IL Const. Art. XI, entire article	<p>Glisson v. City of Marion, 297 Ill. App. 3d 841, 231 Ill. Dec. 879, 697 N.E.2d 433 (App. 5th Dist. 1998) Plaintiff did not have standing</p>

		<p>Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.</p>	Article	as a naturalist to protect a certain lamprey under this law.
Montana	Yes	Section 1. PROTECTION AND IMPROVEMENT	MO Const. Art. II, § 1	No relevant case law
		(1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.		
		(2) The legislature shall provide for the administration and enforcement of this duty.		
		(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.		
		Section 2. RECLAMATION		
		(1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.		
		(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.		
(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars (\$100,000,000), guaranteed by the state against loss or diversion.				
		Section 21. POLLUTION CONTROL		

New Mexico	Yes	The protection of the state's beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare. The legislature shall provide for control of pollution and control of despoilment of the air, water and our natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people. (Adopted by the people November 2, 1971.)	NM Const. Art XX, § 21	
Pennsylvania	Yes, with positive case law.	The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment, Pennsylvania's public natural resources are the common property of all the people, including generations yet to come, As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people,	PA Const. Art I, § 27	Robinson Twp. v. Commonwealth (Pa., 2013) - "under Article I, Section 27, the General Assembly has the obligation to prevent degradation, diminution, and depletion of our public natural resources, which it may satisfy by enacting legislation that adequately restrains actions of private parties likely to cause harm to protected aspects of our environment." Invalidated legislation that was an overextension of police power.

The juxtaposition of two seminal cases under the Illinois constitution and the Pennsylvania constitution provides support for why and how an Oregon constitutional amendment could be proposed that would avoid issues of lack of standing on the part of individual citizens.

Despite an explicit right to a "healthful environment", an Illinois naturalist lacked standing to sue a state actor (the City of Marion) for failing to protect an endangered

animal. To begin, it is useful to see the specific language of the Illinois constitution that was at issue.

The Illinois Constitution, Article XI, Section 2 states:

“Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.”

Despite the direct grant of a private cause of action to private citizens in the Illinois provision, the State’s high court held in a 1998 case that the plaintiff, a naturalist, lacked standing to sue to protect an endangered lamprey; the stated “right to a healthful environment” was interpreted by the Illinois court to mean the relationship between human health and the environment; and the court held that there was no connection between human health and the threat to the endangered lamprey sufficient to provide standing.¹⁰⁷

Litigants have had much greater success enforcing Pennsylvania’s constitution, which does not specifically grant a private right of action, but instead clarifies the state’s duty as the steward of natural resources, not only for present voters, but for future generations. Article 1, Section 27, of the Pennsylvania constitution places responsibility for natural resources in trust upon the Commonwealth, and also provides that the Commonwealth must conserve and maintain “natural resources” “in trust” for “the benefit of all people” including “generations yet to come”.

Article I, Section 27, was successfully used by an individual to invalidate a 2012 law called “Act 13”, which was designed to limit the ability of local government to regulate the mining of Marcellus Shale. This type of mining uses the extraction process known as hydrofracking, where water mixed with chemicals is forcibly injected into the ground to break and dissolve the earth, allowing natural gas to escape and be collected. The practice can also release toxic chemicals into the water supply and can trigger earthquakes. The Act included an exception to an environmental rule that had prohibited mining development within a short distance of natural water sources thus purporting to allow hydrofracking to occur close to drinking waters sources. The court imputed standing under Art I, Sec. 27, in conjunction with an additional constitutional provision that requires that “legislation must contain adequate standards that will guide and restrain the exercise of the delegated administrative functions.” The PA Supreme Court invalidated the Act’s exception to the environmental rule, holding that it “does not provide any ascertainable standards by which public natural resources are to be protected if an oil and gas operation seeks a waiver.”¹⁰⁸ The Court also struck down a separate provision on substantive due process grounds.

¹⁰⁷ Glisson v. City of Marion, 297 Ill. App. 3d 841, 231 Ill. Dec. 879, 697 N.E.2d 433 (App. 5th Dist. 1998).

¹⁰⁸ Robinson Twp. v. Pa. Pub. Utility Comm’n, 83. A.3d 901 (Pa., 2013).

It is worth noting that in Pennsylvania, the City of Pittsburgh Charter provides rights to natural resources and standing in its Code of Ordinances to Pittsburgh's residents to natural resources. The Code states in relevant part "Rights of Natural Communities. Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the City of Pittsburgh. Residents of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems." § 618.03¹⁰⁹

The Oregon Constitution is essentially silent with regard to natural resources.

c. Constitutions of Foreign Countries

In considering potential legal frameworks for a constitutional provision, it may be helpful to consider how other nations have incorporated environmental protection into their constitutions. Below is a sampling of national constitutional provisions that convey rights relating to natural resources or refer to environmental issues. In some nations, the constitutional right to a healthy environment has become a unifying principle, permeating the entire body of environmental law and policy.

Argentina: In Argentina, the 1994 reform of the constitution conferred the right to a healthy environment, which in turn "triggered the need for a new generation of environmental legislation." Soon thereafter, Argentina passed a new comprehensive environmental law (which "sought to make the constitution a reality" with laws governing access to environmental information, as well as minimum standard laws on issues ranging from industrial waste to clean water. The national constitution also caused a cascade effect, as provincial constitutions were amended to incorporate the right to a healthy environment, and were amended to identify the right as a guiding principle.

Environmental regulation in countries that are considered middle-income, or that have experienced widespread currency or institutional disruption, are often viewed with skepticism. Laws passed with the best intentions are sometimes weakly or inconsistently enforced when their enforcing institutions lack stability.

In Argentina, citizens broadly pressured their institutions and garnered critical support from industry. Now widespread environmental enforcement is the norm.¹¹⁰ An explanation for this unintuitive industry support for increased environmental regulatory strength was detailed in an article by MIT Assistant Professor Matthew Amengual:

¹⁰⁹ Charter, City of Pittsburgh, PA, Code of Ordinances, T. 6, Art. 1, Ch. 618, § 618.03.

¹¹⁰ Amengual, Matthew, *Pollution in the Garden of the Argentine Republic: Building State Capacity to Escape from Chaotic Regulation*, Massachusetts Institute of Technology (Dec. 2013), available at http://web.mit.edu/amengual/www/Amengual_Pollution_in_the_Garden_of_the_Republic_2013-01.pdf.

It is not that business preferred systematic enforcement to complete deregulation, but given the prevailing conditions of social conflict and [the fact] that some environmental standards were set at the national level, [complete deregulation] was off the table. The choice, instead, was between a [weak] regulatory agency that could only put out fires and a more substantial one that could help with adjustments and quell social unrest. Overall, the industry begrudgingly chose the latter—the refuge from the chaos was sufficiently [valuable] to [override the risk] that regulators would push them on investments for pollution prevention.¹¹¹

Text of Argentine Provision: Chapter 2, Section 41.

All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law. The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education. The Nation shall regulate the minimum protection standards, and the provinces those necessary to reinforce them, without altering their local jurisdictions. The entry into the national territory of present or potential dangerous wastes, and of radioactive ones, is forbidden.¹¹²

Brazil: Brazil also includes strong reference to the environment in its constitution. An important difference between environmental litigation in the U.S. versus Brazil is that, in the United States, private lawyers file suits on behalf of citizen clients, whereas in Brazil public prosecutors file suits to enforce environmental law based on constitutional standing. These public civil actions are the primary vector for enforcement in Brazil, and the constitution's laws have been enforced in this manner versus polluting entities. Below is the relevant constitutional provision:

CHAPTER VI Environment Article 225. All have the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.

¹¹¹ *Id.* at page 37.

¹¹² For further reading on the subject see *The Environmental Laws in Argentina*, <http://www.alfarolaw.com/tapa/The%20Environmental%20Laws%20in%20Argentina.pdf> (last visited Feb. 27, 2017).

Paragraph 1. In order to ensure the effectiveness of this right, it is incumbent upon the Government to:

I – preserve and restore the essential ecological processes and provide for the ecological treatment of species and ecosystems;

II – preserve the diversity and integrity of the genetic patrimony of the country and to control entities engaged in research and manipulation of genetic material;

III – define, in all units of the Federation, territorial spaces and their components which are to receive special protection, any alterations and suppressions being allowed only by means of law, and any use which may harm the integrity of the attributes which justify their protection being forbidden;

IV – demand, in the manner prescribed by law, for the installation of works and activities which may potentially cause significant degradation of the environment, a prior environmental impact study, which shall be made public;

V – control the production, sale and use of techniques, methods or substances which represent a risk to life, the quality of life and the environment;

VI – promote environment education in all school levels and public awareness of the need to preserve the environment;

VII – protect the fauna and the flora, with prohibition, in the manner prescribed by law, of all practices which represent a risk to their ecological function, cause the extinction of species or subject animals to cruelty.

Paragraph 2. Those who exploit mineral resources shall be required to restore the degraded environment, in accordance with the technical solutions demanded by the competent public agency, as provided by law.

Paragraph 3. Procedures and activities considered as harmful to the environment shall subject the infractors, be they individuals or legal entities, to penal and administrative sanctions, without prejudice to the obligation to repair the damages caused.

Paragraph 4. The Brazilian Amazonian Forest, the Atlantic Forest, the Serra do Mar, the Pantanal Mato-Grossense and the coastal zone are part of the national patrimony, and they shall be used, as provided by law, under conditions which ensure the preservation of the environment, therein included the use of mineral resources.

Paragraph 5. The unoccupied lands or lands seized by the states through discriminatory actions which are necessary to protect the natural ecosystems are inalienable. Paragraph 6. Power plants operated by nuclear reactor shall have their location defined in federal law and may not otherwise be installed.”

Colombia: Environmental protection is a theme that is repeatedly referenced in the Colombian constitution. These are the provisions that appear most relevant. Colombia is often noted for its sustainable forestry practices, although deforestation continues at an alarming rate.

Article 49. Public health and environmental protection are public services for which the state is responsible. All individuals are guaranteed access to services that promote, protect, and rehabilitate public health. It is the responsibility of the state to organize, direct, and regulate the delivery of health services and of environmental protection to the population in accordance with the principles of efficiency, universality, and cooperation, and to establish policies for the provision of health services by private entities and to exercise supervision and control over them. In the area of public health, the state will establish the jurisdiction of the nation, territorial entities, and individuals, and determine the shares of their responsibilities within the limits and under the conditions determined by law. Public health services will be organized in a decentralized manner, in accordance with levels of responsibility and with the participation of the community.

Article 79. Every person has the right to enjoy a healthy environment. The law will guarantee the community's participation in the decisions that may affect it. It is the duty of the state to protect the diversity and integrity of the environment, to conserve areas of special ecological importance, and to foster education for the achievement of these ends.

Article 80. The state will plan the handling and use of natural resources in order to guarantee their sustainable development, conservation or replacement. Additionally, it will have to prevent and control the factors of environmental deterioration, impose legal sanctions, and demand the repair of any damage caused. In the same way, it will cooperate with other nations in the protection of the ecosystems located in the border areas.

Chapter 5, CONCERNING DUTIES AND OBLIGATIONS, Sec. 8. To protect the country's cultural and natural resources and watch over the conservation of a healthy environment.

Costa Rica: The following provision supports a broad base of environmental legislation that has protected the natural heritage and booming tourism industry of the country. The Costa Rican provision supports over 30 environmental laws, and is considered one of the most complex areas of the law in the country:¹¹³

TITLE V SOCIAL RIGHTS AND GUARANTEES

¹¹³ For a list of Costa Rican environmental laws, see *Costa Rica Environmental Laws*, Costa Rica Government, available at <http://costaricalaw.com/costa-rica-legal-topics/environmental-law/costa-rica-environmental-laws/>.

ARTICLE 50. The State shall procure the greatest welfare of all inhabitants of the country, organizing and promoting production and the most adequate distribution of wealth. Every person has the right to a healthy and ecologically balanced environment, being therefore entitled to denounce any acts that may infringe said right and claim redress for the damage caused. The State shall guarantee, defend and preserve that right. The Law shall establish the appropriate responsibilities and penalties.

Ecuador: The Ecuador Constitution, Article 71 provides “Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution. Every person, people, community or nationality, will be able to demand the recognitions of rights for nature before the public organisms. The application and interpretation of these rights will follow the related principles established in the Constitution. The State will motivate natural and juridical persons as well as collectives to protect nature; it will promote respect towards all the elements that form an ecosystem.”

Article 72 further provides: “Nature has the right to restoration. This integral restoration is independent of the obligation on natural and juridical persons or the State to indemnify the people and the collectives that depend on the natural systems. In the cases of severe or permanent environmental impact, including the ones caused by the exploitation on non-renewable natural resources, the State will establish the most efficient mechanisms for the restoration, and will adopt the adequate measures to eliminate or mitigate the harmful environmental consequences.”

France: The French Constitution states, “[e]ach one [person] has the right to live in a balanced and respectful environment of health.” The French legal code elaborates, providing that not only does, “each person [have] a duty to safeguard and contribute to the protection of the environment,” but that, “public bodies and private bodies must, in their activities, comply with the same requirements. One such requirement is sustainable development which is necessary to “protect the health of current generations without compromising the ability of future generations to meet their own needs” The same provision goes on to cite the precautionary principle as a guide for achieving its goal.

Germany: The Basic Law of Germany, enacted in 1949, is the country’s constitution. Article 20A provides that “The state takes responsibility for protecting the natural foundations of life and animals in the interest of future generations.” This provision does not create a private right of action, but is interpreted as a guiding principle for legislation.

Philippines: Article II, Sec 16: The state shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

Portugal: Portugal's constitution has Article 66 pertaining to the environment and quality of life that has been in effect since 1976, however most environmental regulation is promulgated and enforced under the so-called "Environmental Main Law (EML)", or law number 11, passed in 1987. The EML is the basis for more specific regulation protecting clean air, clean water, and other critical areas. Portugal has implemented a direct carbon tax.

Article 66 (Environment and quality of life)

1. Everyone shall possess the right to a healthy and ecologically balanced human living environment and the duty to defend it.
2. In order to ensure enjoyment of the right to the environment within an overall framework of sustainable development, acting via appropriate bodies and with the involvement and participation of citizens, the state shall be charged with:
 - a) Preventing and controlling pollution and its effects and the harmful forms of erosion;
 - b) Conducting and promoting town and country planning with a view to a correct location of activities, balanced social and economic development and the enhancement of the landscape;
 - c) Creating and developing natural and recreational reserves and parks and classifying and protecting landscapes and places, in such a way as to guarantee the conservation of nature and the preservation of cultural values and assets that are of historic or artistic interest;
 - d) Promoting the rational use of natural resources, while safeguarding their ability to renew themselves and maintain ecological stability, with respect for the principle of inter-generational solidarity;
 - e) Acting in cooperation with local authorities, promoting the environmental quality of rural settlements and urban life, particularly on the architectural level and as regards the protection of historic zones;
 - f) Promoting the integration of environmental objectives into the various policies of a sectoral nature;
 - g) Promoting environmental education and respect for environmental values;
 - h) Ensuring that fiscal policy renders development compatible with the protection of the environment and the quality of life."

South Africa: The country of South Africa incorporates strong environmental protection in a constitutional framework that declares that private property rights are not absolute. As of August, 2015, South Africa was actively debating passing a carbon tax.

Article 24. Environment

Everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that

- a. prevent pollution and ecological degradation;

- b. promote conservation; and
- c. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

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Glossary

Adaptation: Adjustment or preparation of natural or human systems to a new or changing environment.

Anthropogenic: Made by people or resulting from human activities. Usually used in the context of emissions that result from human activity.

Carbon Dioxide Equivalent (CO₂e): A metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential (GWP). Carbon dioxide equivalents are commonly expressed as "million metric tons of carbon dioxide equivalents (MMT_{CO₂Eq})."

Carbon Footprint: The total amount of greenhouse gases that are emitted into the atmosphere each year by a person, family, building, or organization. A person's carbon footprint includes greenhouse gas emissions from fuel that an individual burns directly, such as by heating a home or riding in a car. It also includes greenhouse gases that come from producing the goods or services that the individual uses, including emissions from power plants that make electricity, factories that make products, and landfills where trash gets sent.

Carbon Sequestration: Terrestrial, or biologic, carbon sequestration is the process by which trees and plants absorb carbon dioxide, release the oxygen, and store the carbon. Geologic sequestration is one step in the process of carbon capture and sequestration (CCS), and involves injecting carbon dioxide deep underground where it stays permanently.

COP21: The 21st annual Conference of the Parties. The 2015 United Nations Climate Change Conference was held in Paris from November 30 to December 11, 2015.

Greenhouse Gas: Any gas that absorbs infrared radiation in the atmosphere. Greenhouse gases include carbon dioxide, methane, nitrous oxide, ozone, chlorofluorocarbons, hydrochlorofluorocarbons, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride.

Greenwashing: When an organization or company acts in ways that are publically environmentally sustainable, but make no real impact. Environmentalism done purely for publicity.

Intergovernmental Panel on Climate Change (IPCC): The IPCC was established jointly by the United Nations Environment Programme and the World Meteorological Organization in 1988. The purpose of the IPCC is to assess information in the scientific and technical literature related to all significant components of the issue of climate change. The IPCC draws upon hundreds of the world's expert scientists as authors and thousands as expert reviewers. Leading experts on climate change and environmental, social, and economic sciences from some 60 nations have helped the IPCC to prepare

periodic assessments of the scientific underpinnings for understanding global climate change and its consequences. With its capacity for reporting on climate change, its consequences, and the viability of adaptation and mitigation measures, the IPCC is also looked to as the official advisory body to the world's governments on the state of the science of the climate change issue. For example, the IPCC organized the development of internationally accepted methods for conducting national greenhouse gas emission inventories.

Mitigation: A human intervention to reduce the human impact on the climate system; it includes strategies to reduce greenhouse gas sources and emissions and enhancing greenhouse gas sinks.

United Nations Framework Convention on Climate Change (UNFCCC): The Convention on Climate Change sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. It recognizes that the climate system is a shared resource whose stability can be affected by industrial and other emissions of carbon dioxide and other greenhouse gases. The Convention enjoys near universal membership, with 189 countries having ratified.

Under the Convention, governments:

- gather and share information on greenhouse gas emissions, national policies and best practices
- launch national strategies for addressing greenhouse gas emissions and adapting to expected impacts, including the provision of financial and technological support to developing countries
- cooperate in preparing for adaptation to the impacts of climate change

The Convention entered into force on 21 March 1994.