



## Executive Committee Welcome

The Executive Committee welcomes you to the first edition of *The Long View*, the quarterly newsletter of the Sustainable Future Section.

The Sustainable Future Section is the first state bar association section devoted to the relationship between sustainability and law. As summarized in several of the articles you will find in this issue of the newsletter, the Section's creation in late 2009 resulted from the convergence of many factors, including (i) the pioneering efforts of Oregon Lawyers for a Sustainable Future and the Environmental and Natural Resources Section, (ii) the recognition by Oregon law firms of the importance of sustainability in internal operations, marketing and client work, (iii) the creation of robust sustainability programs and curricular activities at Oregon's three law schools, (iv) the adoption of state and municipal policies to promote sustainability, (v) the evolving commitment of the Oregon State Bar to sustainability, and (vi) the widespread interest in sustainability throughout the state.

The mission of the Sustainable Future Section is "to support sustainability by providing institutional expertise to the Oregon State Bar and its members, by educating attorneys and other legal professionals on sustainability and its integration into the law and on best practices, and by promoting dialogue on how law interfaces with the needs and interests of future generations." In 2010, the Executive Committee's objectives include quarterly publication of *The Long View*, the creation of CLE programs and brown bag luncheon meetings on sustainability topics, the establishment of a Web site to provide information and resources on sustainability, creation of OSB Sustainability Leadership Awards, implementation of recognition on the OSB Web site for law offices that adopt specified sustainable practices, and collaboration with the Bar on its implementation of sustainable practices.

In furtherance of the Section's educational mission, *The Long View* will focus on exploring the connection between sustainability and law. As a matter of jurisprudence, principles of sustainability are important to lawyers in resolving competing economic, social and environmental priorities that impact future generations.

In *The Long View* and other Section programs, the Section will explore the appropriate role, if any, of law and the legal profession in protecting the rights and opportunities of future generations. Unlike our profession's role in some social movements, lawyers generally have not yet played a significant role in the sustainability movement and its growing impact on social goals and behaviors. However, lawyers will very likely have a meaningful role in creating new legal frameworks around sustainability and the rights of future generations, and around the daunting challenges of climate change. Lawyers will inevitably have a role in addressing the myriad of rights, obligations and interests that may be affected by those changes. We hope *The Long View* offers a forum for a constructive dialogue about these and related issues.

### Inside this issue:

**Sustainability and the Oregon Legal Profession** ..... 2

**Oregon State Bar: Carbon Report** ..... 2

**Making Oregon the Delaware of Green Business** ..... 4

**Sustainability and Environmental Justice** ..... 5

**Biomimicry—Life's Principles: Applying the Laws of Nature**..... 6

**Consider This** ..... 8

**Announcements** ... 8

### Calendar

April 29, 2010, Noon to 1:15pm  
**CLE: Sustainability and the Legal Profession**

May 21, 2010, 8:00 to 9:30am  
**Constitutional Law Debate: The Rights of Future Generations**

## Sustainability and the Oregon Legal Profession

By Dick Roy

As we approach the 40th anniversary of Earth Day, it is valuable to explore what role the Oregon legal profession plays in advancing the societal goal of sustainable development, and why it has been so difficult to define a meaningful role.

The impetus for the sustainability movement is the widespread degradation of the natural world. Although humans have been altering nature for thousands of years, economic development since World War II has greatly accelerated human impact. By the late 1950s an alarmed Congress enacted early legislation to rein in widespread use of persistent toxics and to begin to draw the curtain on the “golden age of pesticides.” In 1962, *Silent Spring* by Rachel Carson was a “wake-up call” to the American public about the pernicious im-

pact of toxics, and the modern environmental movement was born. Emerging under the more visible civil-rights and anti-war movements of the 1960s, the environmental movement sprang dramatically to life with the original Earth Day—April 22, 1970.

In response to federal and state environmental legislation, the discipline of environmental law emerged in the 1970s. By the early 1980s law firms were organizing practice groups for compliance and litigation related to the environment and the increasing concern about hazardous waste.

But reliance on environmental regulation lost its allure in the 1980s, a decade when the industry mantra of “no more command and control” took hold, even as ecological degradation was marching relentlessly on and assuming a global dimension. By late in that decade, it was clear that climate change and fresh

water shortages were on the horizon. The oceans were threatened by pollution and overharvesting. Biodiversity and topsoil were being lost. The trends and momentum of ecological degradation did not bode well for our children and yet unborn grandchildren.

To rekindle public passion about environmental protection, Dennis Hayes, the student organizer of Earth Day 1970, took the lead to organize Earth Day International 1990—purported to be the largest worldwide demonstration ever held. The tremendous energy from that event gave birth to the modern sustainability movement, with a focus on voluntary actions to adopt personal and business practices to protect the Earth. At the same time, federal legislation took a sharp turn in the direction of deregulation, reversing the regulatory climate of the late 1960s and 1970s.

Because the goal of sustainability

*Sustainable development is meeting the needs of the present without compromising the ability of future generations to meet their own needs.*

— *Our Common Future (1987)*

lacked a legal regulatory hook, our profession was caught off guard with no apparent role to play as the sustainability movement took hold in the 1990s. In Oregon, privately held businesses with progressive senior management, like The Collins Companies and Norm Thompson, took the lead to weave sustainability deeply into the cultures of their organizations. Following their leadership, the State of Oregon and many municipalities, such as the City of Portland, followed. With the introduction of LEED certification for green buildings and the growing public passion for locally grown and organic food, the goal of sustainability became woven deeply into the fabric of our state and major city.

In late 2005, I was concerned that our profession was standing at the sidelines of a vibrant sustainability movement. To explore this concern, in early 2006 I hosted three focus groups with over 40 lawyers participating. With their enthusiastic support, ten of us formed Oregon Lawyers for a Sustainable Future (OLSF) as a project of the Center for Earth Leadership—a nonprofit that my wife Jeanne and I formed. As an early initiative, in the fall of 2006, I organized a lunch with the Board of Governors (BOG) to discuss what role the Oregon State Bar might play in the arena of sustainability. At that time the

## Oregon State Bar: Carbon Report

By Diane Henkels

The Oregon State Bar has taken significant and important steps toward more sustainable practices, demonstrating a recent and heightened awareness of sustainability issues. In October 2009, the Board of Governors approved an amendment to the Bar's by-laws that provides, among other things, that “the Bar will be cognizant of sustainability in its internal operating practices,” and “the Executive Director will designate a sustainability coordinator for Bar operations, will encourage continuous sustainability improvements in Bar operations, and will report to the Board of Governors at least annually on progress and impediments.”

In 2008, at the request of the Environmental and Natural Resources Section, the Bar agreed to

analyze its “carbon footprint.” The term “carbon footprint” is typically used to describe the amount of greenhouse gases (GHG) that are emitted into the atmosphere each year by an “entity” (person, household, building, organization, company), usually measured in units of carbon dioxide equivalents (“pounds of CO<sub>2</sub>e”).

Bar staff, with the support of the Environmental and Natural Resources Section, collected baseline data for the new, approximately 60,000-square-foot Bar building from Opus, Inc., the building manager. The baseline data is a “starting point” to measure reductions in emissions and use of resources. When provided to the Environmental Protection Agency Energy Star Portfolio Manager program, the Bar's new building earned a high enough score to qualify for EPA Energy Star status.



In addition, because the Bar is serviced by both Portland General Electric and Northwest Natural Gas, it was eligible for an Energy Trust of Oregon energy use survey, which was performed in August 2009. The survey identified capital and non-capital improvements that might be made to increase energy conservation in the building.

The Bar also used the baseline data and the U.S. EPA Personal Emissions Calculator to calculate its

*Continued on page 3*

*Continued on page 3*



## Sustainability and the Oregon Legal Profession (continued)

BOG did not see an appropriate role for it to play.

To advance sustainability, OLSF conducted 20 CLE programs, organized more intensive Earth Leadership seminars for groups of 12 lawyers, created sustainable law office policies, drafted legislation to amend the Oregon Business Corporation Act, and conducted a statewide study on the interface between sustainability and the



Dick and Jeanne Roy, co-founders of the Center for Earth Leadership.

Oregon legal profession. At the same time, larger law firms in Portland were adopting sustainability policies, the three law schools were organizing curriculum and programs around sustainability, and the Environment and Natural Resources Section was working with the Bar office to assess the Bar's carbon footprint. And, in 2008, the OSB Leadership College added a sustainability section to the curriculum.

In 2009, the BOG took steps to weave sustainability into the structure of the Bar, commissioning the "Task Force on Sustainability" to make recommendations relating to sustainability. The Task Force, made up of 15 bar members, bar staff, and a BOG member, met several times and prepared a comprehensive report, which contained five recommendations, including creating a new bar section, drafting and adopting a sustainability bylaw, and adopting a sustainability policy. The report was presented

in October 2009, and the BOG immediately adopted the bylaw and authorized formation of the Sustainable Future Section: <http://www.osbar.org/docs/rulesregs/bylaws.pdf> (Article 26).

Looking ahead, the Oregon legal profession is clearly at the front of the emerging national movement for the legal profession to find a meaningful role to play. We have the most educated and concerned Bar in the nation on sustainability, law offices that are nationally recognized for sustainability policies and practices, three law schools actively focused in different ways on sustainability, a bar association with a commitment to sustainability, and the new Sustainable Future Section to advance understanding of this important societal goal.

Having said that, our ultimate role in the sustainability movement is not yet defined, and opportunities abound for individual lawyers, law offices, and groups of lawyers to be pioneers in crafting meaningful ways to contribute. Because lawyers are industrious and creative, we have a much greater role to play in the societal

After practicing corporate law at Stoel Rives for 23 years, in 1993 Dick Roy left his firm to join his wife Jeanne as a full-time volunteer in the emergent sustainability movement. Together they have founded the Center for Earth Leadership, the Natural Step Network, and the Northwest Earth Institute—three Portland-based nonprofits.

## Oregon State Bar: Carbon Report (continued)

carbon footprint. The results showed that the Bar spent \$76,094 on electricity in 2008-2009, for a total of 893,000 kWh. Under the methodology used, this equates to a carbon footprint of approximately 822,550 pounds of CO<sub>2</sub>e per year. Though imperfect, this footprint nevertheless provides a baseline for comparison. For example, the Bar observed that it used essentially the same amount of electricity in the first quarter of 2009 as it had used in the first quarter of 2008, even though the Bar took actions in 2008 to reduce its energy use. This information can be used by Bar staff to understand what conservation tools and available Oregon incentives may be useful in reducing its electricity use, which is the Bar's highest utility expense.

As a reflection of the Bar's growing commitment to sustainability, the Bar recently created a Sustainability Team, which plans to meet at least quarterly to evaluate current Bar practices, determine priorities in carrying out the Bar's sustainability policy, and develop educational and motivational activities for internal use. The OSB Sustainability Coordinator and the new Sustainable Future Section regularly share information and ideas about sustainability and its implications in the legal profession and business practices. In addition, the Executive Director's annual report to the Board of Governors on the Bar's sustainability initiatives required by the new bylaw will include the standards and measures used, an annual evaluation and fiscal impact statement, and a summary of the costs incurred or saved by implementing the policy.

*Diane Henkels is a private practice attorney with over ten years of experience advising clients on legal issues and incentives related to sustainability, increasing energy conservation and renewable energy production, and representing clients in tribal courts.*

## Office Practice Tip

The easiest way to reduce energy consumption is to use only as much energy as you need. Work to build energy awareness in your firm.

- Turn off computers and other office equipment when not needed (at night and on the weekends)
- Turn off monitors if they will not be used for 15 minutes or more, and turn off all computers when idle for more than two hours

For questions regarding the Bar's sustainability efforts, contact:

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## Making Oregon the Delaware of Green Business

By Judd F. Sneirson

Corporate law permits, but does not require, businesses to act sustainably or to adopt sustainable business practices. The business judgment rule protects corporate executives and directors when they make decisions, including sustainable business decisions, provided that the decision-maker is fully informed and disinterested, and the decision is made in good faith and believed to be in the best interests of the company. Put another way, corporate decision-makers have no legal duty to cater exclusively to shareholders, and may direct company efforts more broadly, benefiting all of the firm's constituencies—its shareholders, to be sure, but also its employees, customers, creditors, suppliers, the environment, and the communities in which the firm does business.

The corporate governance workgroup of Oregon Lawyers for a Sustainable Future begins with this premise and aims to make Oregon corporate law more amenable to sustainable businesses and sustainable business practices. The group's first law-reform effort amended ORS 60.047 in 2007 to permit Oregon corporations to include in their articles of incorporation a provision authorizing or directing company decision-makers to manage their businesses sustainably.<sup>1</sup> To the extent Oregon corporate law already permits and protects sustainable business decisions, such a charter provision is arguably unnecessary. Including such a provision would, however, offer additional protection for sustainable business decisions beyond Oregon's business judgment rule, which some believe is not reliably and evenly applied.<sup>2</sup>

The workgroup's current effort would amend Oregon's "other constituency statute," which, since 1989, has expressly permitted corporate directors to take non-shareholder considerations into account when weighing the merits of a proposal to take over an Oregon corporation.<sup>3</sup> Thirty-three states have similar statutes, although most of them are not lim-

ited, like Oregon's, to the takeover context.<sup>4</sup> These statutes in effect codify the principle noted above, that corporate directors may consider more than just shareholders' interests in determining the best interests of the company. Legislation expected to be proposed in the 2011 legislative session would (a) remove the takeover limitation, making Oregon's other-constituency statute generally applicable, (b) add sustainability language to the list of permissible considerations, and (c) offer an additional measure of protection for business decisions made by directors of Oregon corporations.

By building on these efforts, Oregon can lay claim to having the greenest corporate laws of any American jurisdiction. This niche is a natural fit for the state—Oregon is already a leader in sustainable products, services, and practices; its legal community boasts expertise in these areas; and sustainability lies at the heart of the Oregon Business Plan. In this spirit, I have developed a set of additional provisions designed to further green Oregon's corporate statute and establish the state as "the Delaware of green business."<sup>5</sup> Like the reforms discussed above, the additional provisions are optional and would only apply to corporations wishing to be governed according to a stricter, greener model of corporate governance. A company must affirmatively elect "green corporation" status for the provisions to apply.<sup>6</sup>

To qualify as an Oregon green corporation, a firm must include in its charter a statement that the company is an Oregon green corporation and a provision directing that it be managed in an environmentally and socially responsible manner. By doing so, the firm publicly commits itself to sustainability in its core corporate document, and also puts potential investors on notice of how the company is to be run.

The second qualification for "green corporation" status is that two important non-shareholder

constituencies, the company's non-management employees and the community in which the company conducts its business, must be represented on the board of directors. The directors representing those stakeholders' interests would add diverse perspectives to the decision-making process and thereby, in theory, improve it.

And last, the provisions require periodic triple-bottom-line disclosures accounting for the company's recent financial, environmental, and social activities.<sup>7</sup> This transparency should encourage managers to minimize activities that shareholders might view negatively and do more to improve the lives of employees, the communities in which the company does business, and the environment. Sustainability reporting would also aid socially responsible investors in screening appropriate investments and help disseminate information on sustainable business practices, allowing other firms to learn from, adopt, and perhaps improve upon them.<sup>8</sup>

The mere adoption of these re-

forms, together with any attendant publicity, may be enough to attract businesses to incorporate or reincorporate as an "Oregon green corporation."<sup>9</sup> Firms may also seek green corporation status to curry favor with consumers, who, according to several studies, prefer green businesses and will pay more for their products and services. Oregon could enhance this benefit by creating a green corporation mark, like the "USDA Organic" symbol, and licensing Oregon green corporations to use it. The state could also offer financial incentives to firms electing green corporation status; any foregone revenues might be more than offset by new green businesses and jobs in Oregon and by the intangible good that new green corporations will do both inside and outside the state.

By establishing Oregon as a leader in green business, these reforms may be just the thing to lift the state out of its current economic difficulties, advancing sustainable business and sustainability in the process. Time will tell whether the state legislature has the wherewithal to pursue such an agenda.



*Judd F. Sneirson is a professor at the University of Oregon School of Law and writes about sustainability and corporate governance. His papers can be downloaded from his social science research network site: <http://ssrn.com/author=432039>.*

### Endnotes

<sup>1</sup>ORS 60.047(2) now provides that an Oregon corporation's "articles of incorporation

# Sustainability and Environmental Justice: Why Race and Class (Still) Matter to Sustainability

By Robin Morris Collin

The principles of sustainability force us to recognize the limits that our ecosystems impose on economic activities and on human lives. When one recognizes those limits, one must also recognize controversial and unavoidable distributional issues—the question of 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, or environmental justice. This is the definition of environmental justice adopted by the Oregon Environmental Justice Taskforce.

[http://www.oregon.gov/Gov/GNRO/environmental\\_justice.shtml](http://www.oregon.gov/Gov/GNRO/environmental_justice.shtml)

Approaching sustainability in tandem with environmental justice forces one to acknowledge the current, inequitable distributions of environmental harms and benefits that create, for example, toxic hotspots, sacrifice zones, and sinks around communities of color and poverty. Sadly, the best predictor of the location of a toxic or hazardous waste site is the race of the community, not the location's property values, hydrological features, or geology. The darker the community, the more likely that hazardous substances will be located there.

<http://www.ejrc.cau.edu/TWARTFinal.htm>

It is no surprise, then, that “environmental justice communities” include minority and low-income communities, tribal communities, and other communities traditionally underrepresented in public processes.

The concept of equity is included in every international formulation of sustainability, and it is the answer to these distributional issues. It is often overlooked in United States sustainability policies and organizations, however. Sometimes equity is excluded intentionally in the United States by those who would reject social justice as an integral part of sustainability. And yet, sustainability requires inclusion of the community as an integral part of every decision.

The currently living generations have inherited a very unbalanced distribution of benefits and burdens in local and global systems as a result of deliberate human policy choices. Those policy choices have shaped our institutions and systematically affected the way that we treat the Earth and the ecosystems on which all life depends. The problem with history is that it isn't over yet. Past acts continue to affect present conditions.

Powerful systems of industrial energy generation, industrial food production, and mass transportation cumulatively poison vital natural systems and threaten environmental justice. For example, industrial agriculture significantly contributes to the toxicity of our freshwater supplies from toxic chemicals and additives, soil erosion, salinity of soils, and the greenhouse gas inventories. Beyond the environmental footprint and trajectory of food production, the people who work in

this industrial sector bear the greatest burden of exposure to toxins in the workplace, including the cumulative effects of long-term, multiple exposures of workers and their families, whether in the fields or at home. Sustainability and environmental justice demand that we reexamine these systems and their impacts.

Areas of concentrated toxicity threaten all of us, eventually. Our ecosystems do not respect the lines of class and race. Many toxic areas have not been regulated at all, and even when regulated, environmental enforcement has been lacking. That is especially true for communities of color. *Unequal Protection: The Racial Divide in Environmental Law*, Nat'l L.J., Sept. 21, 1992, at S1-12. The toxic impacts that accumulate in lands and in human bodies are growing ever larger. Toxicity migrates, ultimately threatening us all because Earth is an interconnected system—only as strong as its weakest links. On a local level, the record of inequities has been made painfully clear in the 2009 report of Portland's Urban League: *The State of Black Oregon*. <http://www.ulpdx.org/StateofBlackOregon.html>

The environmental justice movement and the sustainability movement are inseparable. Sustainability focuses on radical transformation of the policies and practices that lead us to injure the Earth's living systems. Environmental justice focuses on allocations of environmental benefits and burdens. Together, they require us to repair and restore injured places and communities. That work is unfinished and will remain unsuccessful as long as we leave toxic hotspots and sacrifice zones unaddressed.

Currently, in the US and in Oregon, there is a color line between the sustainability and environmental justice movements—and it's not green. Equity and environmental justice require us to reconcile ourselves to the paradigm of community, transcending our issues of racial oppression and privilege in the interests of all.

These words are often attributed to Chief Seattle:

**“Whatever befalls the earth befalls the sons of the earth. Man did not weave the web of life; he is merely a strand in it. Whatever he does to the web he does to himself.”**

Some say this is just a bit of Hollywood scriptwriting, and in this spirit, I would rewrite it a bit: “Whatever he does to the Earth *and other Beings*, he does to himself.” The same idea is found in Meditation 17 of John Donne:

**“No man is an island, entire of itself . . . any man's death diminishes me [emphasis added], because I am involved in mankind; and therefore never send to know for whom the bell tolls; it tolls for thee.”**

*Robin Morris Collin is a professor of law at Willamette University. She is the co-author (with Robert William Collin) of The Encyclopedia of Sustainability (three volumes: Environment and Ecology, Economics and Business, Equity and Fairness), Greenwood Press, 2009. She has also been teaching sustainability since 1994.*

**“Powerful systems of industrial energy generation, industrial food production, and mass transportation cumulatively poison vital natural systems and threaten environmental justice.”**





## Biomimicry—Life's Principles: Applying the Laws of Nature

By Nicole Isle and Erin Leitch

For 3.85 billion years, the laws of nature have dictated how 30 million species of organisms have inhabited the Earth. But society's heat, beat and treat methods of manufacturing are not abiding by these laws. The production and release of synthetic compounds, the concentration of toxic substances and the accelerated movement of materials from one system to another (e.g. the burning of fossil fuels) are threatening the planet, according to the latest science from the Intergovernmental Panel on Climate Change (read IPCC's Fourth Assessment Report at [www.ipcc.ch/](http://www.ipcc.ch/)).

In late 2009, the Oregon State Bar took the historic steps of adopting a sustainability bylaw and creating a Sustainable Future Section. These steps create a context for the relationship of legal issues to sustainability issues. Such issues include provisions for clean air, water, fertile soil and other natural resources for future generations. As a further reference, the Climate Legacy Initiative published a 2009 paper exploring similar issues entitled "Recalibrating the Law of

Humans with the Laws of Nature: Climate Change, Human Rights, and Intergenerational Justice."

[http://www.vermontlaw.edu/Academics/Environmental\\_Law\\_Center/Institutes\\_and\\_Initiatives/Climate\\_Legacy\\_Initiative/Publications.html](http://www.vermontlaw.edu/Academics/Environmental_Law_Center/Institutes_and_Initiatives/Climate_Legacy_Initiative/Publications.html)

### Defining the Laws of Nature

As citizens of the planet, we must abide by the laws of nature. Past generations largely ignored these laws, and this behavior resulted in unanticipated environmental and social consequences. Now, our federal and local governments are working to remediate that harm as well as the degradation to which we contribute each day. So, what if we judged our actions against the laws of nature to accelerate the remediation of past harms and create an environment where future generations benefit from a life better than ours?

To confidently judge sustainability-related issues, a person should first understand the laws of nature. The laws of nature are embodied in Life's Principles, which were developed by Janine Benyus, an internationally rec-

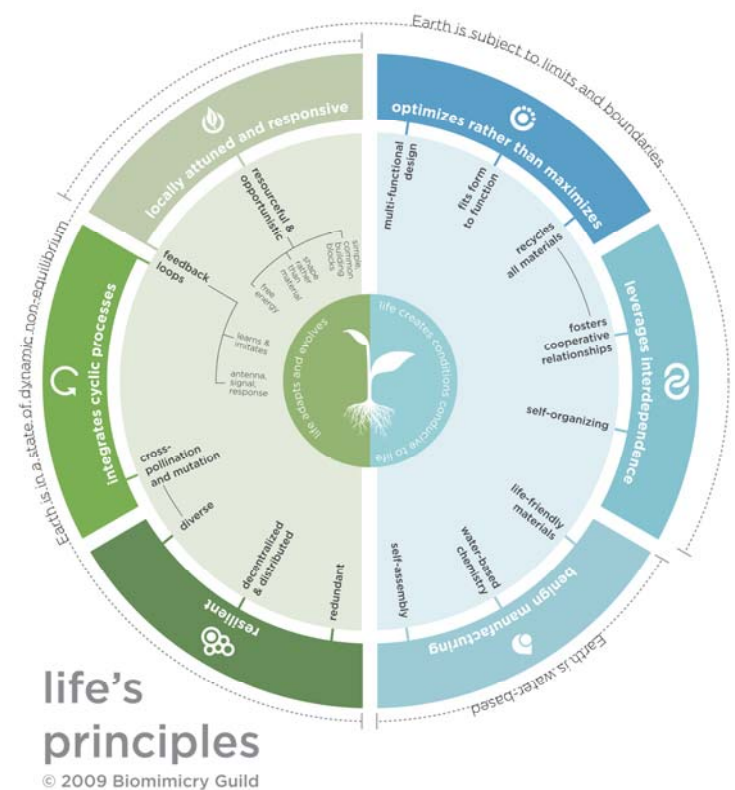


ognized thought leader in sustainability and winner of the 2009 United Nations prestigious Champion of the Earth award.

[www.biomimicryinstitute.org](http://www.biomimicryinstitute.org)

These principles establish the basic premises of global ecological systems and tell us that the Earth is in a state of dynamic non-equilibrium, subject to limits and boundaries, and water-based. In other words, our planet is con-

stantly in a state of motion, always shifting in response to changing conditions and evolving so that life can endure and regenerate. It's also not boundless in its resources—there is a limited supply of water, nutrients and atmosphere that comprises our life support system. Lastly, all chemistry on Earth happens in water. Water is nature's solvent and the medium in which chemical reactions occur.



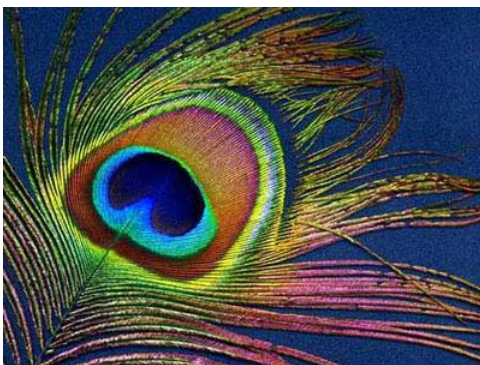
All life on Earth abides by operating conditions, often modifying activities with the changing seasons, taking advantage of microclimates and surviving with scarce resources. These behaviors all fall within the laws of nature and can be distilled into two simple principles:

**Life adapts and evolves, and Life creates conditions conducive to life.**

Life's Principles can provide parameters that help guide the design and construction of buildings and communities that abide by the laws of nature and, therefore, function more sustainably.

### Applying Biomimicry to Global Issues

One can witness these principles on every square inch of the planet in every moment of time. They comprise the mechanics of how organisms act on Earth. For example, nature maintains resiliency in the face of constant change. It does this by



fostering diversity, creating decentralized and distributed infrastructure and building in redundancy to ensure consistency and dependability. Nature also leverages the interdependence between its biological systems and physical infrastruc-

ture. It succeeds by fostering cooperative relationships and using simple, common building blocks and abundant resources in the most efficient and effective manner. Nature's manufacturing processes use simple designs and benign products. And feedback allows nature to monitor organisms and respond to inconsistent behaviors. By understanding and applying these principles to design challenges, engineers, product designers, architects, planners and business strategists have been able to develop solutions that are both innovative and sustainable in the context of Earth's operating conditions. Rather than learn *about* nature, these specialists are learning *from* nature and applying what is learned to real-world applications. This is called biomimicry.

To see biomimicry in practice, one need only look at the Qualcomm Mirasol Display, which creates bright colors by harvesting natural light. The screen employs reflective devices that open or close small gaps between a mirror and a glass plate in each pixel. This technology uses the same structural color function found in butterfly wings and peacock feathers.

Another example of designers incorporating biomimicry into their work is the Eastgate Centre in Harare, Zimbabwe, which uses a natural cooling system that pre-temperes the air and exhausts through chimneys. This is the same space conditioning strategy that termites use in the construction of their mounds. This locally attuned passive design strategy resulted in a 90% energy reduction for cooling loads.

As unpredictable as nature can

seem, it is actually quite consistent in the rules by which it operates. We can learn from these rules to realign our behaviors to become more conscientious inhabitants of the planet. Humans can depend on the fact that the laws of nature will also apply to tomorrow's generations. To this end, one can look to biomimicry's Life's Principles as a dependable framework to judge sustainability issues involving the rights of people, future generations, and related social equity issues.



*Nicole Isle and Erin Leitch are sustainability advisors at Brightworks, a company that provides comprehensive sustainability planning and facilitation services and offers educational workshops on biomimicry and other sustainable practices.*

**Rather than learn *about* nature, these specialists are learning *from* nature and applying what is learned to real-world applications.**



### Green Business—Endnotes (continued)

may set forth . . . (e) [a] provision authorizing or directing the corporation to conduct the business of the corporation in a manner that is environmentally and socially responsible."

<sup>2</sup>See, e.g., *Naito v. Naito*, 35 P.3d 1068, 1083 (Or. Ct. App. 2001) (reciting but not following the business judgment rule); *Colvin v. Colvin*, No. 05-409-AA, 2007 WL 2248160, at \*11-15 (D. Or. Aug. 1, 2007) (same).

<sup>3</sup>The Oregon legislature enacted the provision in response to an out-of-state threat to take over Precision Castparts Corporation.

<sup>4</sup>Florida, Georgia, Hawaii, Illinois, Indiana, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Vermont, Virginia, Wisconsin, and Wyoming have generally applicable other-constituency statutes, whereas Arizona, Connecticut, Idaho, Iowa, Kentucky, Louisiana, Maryland, Missouri, Rhode Island, South Dakota, and Tennessee have limited statutes like Oregon's. Delaware—by far the dominant jurisdiction in American corporate law—has no other-constituency statute but has decisional law similar to a generally applicable other-constituency statute. See, e.g., *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 955 (Del. 1985); *Revlon, Inc. v. MacAndrews & Forbes Holdings Inc.*, 506 A.2d 173, 182 (Del. 1985).

<sup>5</sup>I set out this proposal in more detail in *Race to the Left: A Legislator's Guide to Greening a Corporate Code*, 88 Oregon Law Review (2009).

<sup>6</sup>E.g., Del. Code Ann. tit. 8 §§ 341-56 (2009) (the Delaware Code's subchapter on close corporations).

<sup>7</sup>Many corporations, including Nike, already voluntarily make such "green disclosures."

<sup>8</sup>Although it would seem counterintuitive, firms already share such information. See Mary Tripsas, *Everybody in the Pool of Green Innovation*, N.Y. Times, Nov. 1, 2009, at B5.

<sup>9</sup>To paraphrase the movie "Field of Dreams": "If you build it, they will come."



# The Long View

Photo: Michael Mattingly

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**Editor's Note:**

This is the only issue of *The Long View* that you will be receiving in the mail. Future quarterly issues will be available electronically on the Section's Web site.

Michelle Slater  
Miller Nash LLP  
Editor

## Announcements

**"How Sustainability Is Transforming the Practice of Law"**

Please join us on April 29, noon to 1:15pm, for a brown bag discussion with panelists Max Miller, Mark Morford, Dan Rohlf, and Dick Roy, at 900 SW Fifth Ave., 26th floor (Stoel Rives). CLE credit pending.

RSVP: rseifried@cablehuston.com  
(attendance by phone available)  
(limited space, priority to SFS members)

**Constitutional Law Debate**

Please join us on May 21, 8:00 to 9:30am, at UO's White Stag Block, 70 NW Couch Street in Portland, for a debate between Jim Westwood and Steve Griffith about whether the Oregon Constitution should be amended to protect the rights of future generations. The Honorable Jack Landau will moderate the panel. Details to come.

(limited space. Brochure and registration form to follow.)

We are on the Web!  
[www.osbar.org/sections/sustainable.html](http://www.osbar.org/sections/sustainable.html)

Congratulations to the Sustainable Future Section and editor Michelle Slater on the section's inaugural newsletter,  
*The Long View.*



**MILLER NASH**<sup>LLP</sup>  
ATTORNEYS AT LAW

## Consider This...

"I can't understand why people are frightened of new ideas. I'm frightened of the old ones."

- John Cage