Business Law

Published by the Business Law Section of the Washington State Bar Association Volume 38, Number 2 • Fall 2017

Report from the Communications Committee Chair

Dear Business Law Section Members,

As Chair of the Communications Committee, I'm pleased to report on a few events and a CLE which took place this fall. Also, I am excited to introduce the first ever Business Law Section newsletter edition focused entirely on issues of sustainability and climate change tailored to the interests of Washington business attorneys.

Events: On September 26, the Corporate Counsel Section and Business Law Section of the WSBA gathered for a special networking event in Tacoma, with beverages and snacks generously sponsored by Vandeberg Johnson & Gandara. Continuing with the themes of partnering programs with other sections and outreach to geographic areas around the state, the Business Law and Corporate Counsel Sections held a joint CLE on Trade Secrets, and time afterwards for networking, in Spokane on November 9.

CLE on Advising Emerging Companies: Last month's *WSBA Presents* CLE program was in partnership with the Business Law Section, providing an informative afternoon CLE on Advising Emerging Companies – A Series of Panel Discussions, co-chaired by past section chair, Rodger Kohn, and Madhu Singh. The program was notable because of the format – the chairs confidently led three panels of experts through a series of questions and engaged the audience in a highly interactive way. On the topic of incorporation and financing, panelists agreed that clients are often unprepared to answer the key question "what is your exit event or strategy"? There was active debate on the pros and cons of incorporating in Delaware versus Washington, and how Washington's Limited Liability Company Act supplies a valuable framework for emerging businesses. Turning to the subject of hiring for new business, the presenters elaborated on the tests (and the consequences of misclassification) to determine whether a worker is an employee or an independent contractor, an issue which is especially acute when workers operate remotely. There was also lively discussion around non-competition agreements and ownership of intellectual property, which start-ups are typically not thinking about in the early stages of business. The final set of panelists offered the well-informed perspectives of two business advisors, and a representative of the City of Seattle, Office of Economic Development, and integrated growth modelling into the discussion of advising entrepreneurs. If you are interested in the CLE, the recording of the program will be available for on-demand viewing. Please contact *orders@wsba.org* to be notified once the product is available.

And Now, Going Green: For this fall's newsletter, we solicited contributions from private attorneys, the WSBA, businesses, municipalities, educators, non-profits, consultants, and organizations which work exclusively in the areas of lobbying and educating business and public sector leaders on issues of sustainability. We asked writers to focus on environmental-related topics which business lawyers would (or should) be interested in – showcasing green businesses, sustainable building practices, advocating change at the political level, what businesses can do to reduce their carbon footprint, addressing polluters with trading credits, and a fresh view into the world of farming and animal production. We also sponsored a writing contest for law students on the subject of "Achieving Reduction of our Carbon Footprint: An Action Plan for Washington State Business Lawyers."[1]

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Table of Contents

Report from the Chair *continued*

The investment of energy (you might say it was wind-powered) in seeking out quality contributions was substantial but so worthwhile. Every writer represents a sector of our community which is urgently trying to get us to expand our collective consciousness, dedicate more attention to the issues and to actively move each one of us to make greener choices in our law practice within the confines of good business practices.

In the course of compiling this newsletter, I have gained a profound sense of urgency about climate change. The proverb, "if you're not part of the solution, you're part of the problem," applies to our actions and choices. Legal professionals have a unique role to model forward-looking change. Oregon's leadership is an example worth reviewing – and adopting: see Six Tools for the Law Office at www.sustainablelawyers.org. I welcome members of our section to take the lead and collaborate with me on implementing a comparable set of objectives in our state.

Besides role modelling change, we need to *effect* and *facilitate* change. It is up to us to advise, counsel and provide resources, and even incentivize, such as by offering pro bono or modified rates for entrepreneurs who need our skills in forming and financing green businesses, and showcasing established business clients who take significant steps toward carbon reduction and implementing sustainable practices. Risks, in this context, deserve to be rewarded.

My deepest gratitude to all the contributors, and congratulations to Greg Simpson, the winner of the law school writing contest, whose original work is featured in this newsletter.

I welcome your comments and feedback.

Go Green, Now,

Deirdre Glynn Levin
WSBA Business Law Section
Communications Committee Chair

1 Lack of space precluded coverage of other pressing concerns including Washington's response to the Paris Climate Agreement and transportation, which we hope to address in a forthcoming newsletter.

The Communications Committee of the Business Law Section encourages section members to contact the chair about article proposals, suggestions, or submissions. Inquiries may be directed to :

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Local Climate Action: Beyond the Hype, When Does it Get Real?

By Mike McGinn

In 2005, Seattle Mayor Greg Nickels announced that Seattle would abide by the Kyoto Protocols on global warming that had been rejected by President George Bush. Mayors across the country rushed to join the Mayors Climate Protection Initiative, each pledging to reduce their emissions.

In 2017, President Donald Trump has made clear he intends to reject the Paris Accord on global warming. Once again, mayors across the country rushed to signal that they are prepared to do what it takes to rein in global warming.

So, can cities really lead on climate? What's actually possible at the local level? And what has changed since 2005?

Having been a climate advocate during Mayor Nickels' term, a member of the Green Ribbon Commission that wrote the city's first climate plan, and subsequently mayor myself, I've seen how the issue has evolved. The following narrative probably oversimplifies a complex topic, but I hope it's instructive.

First we focused on individual and corporate responsibility at the local level, while working for systemic change at the national or state level. Systemic change proved elusive. Individual responsibility was not enough. So, the climate movement moved to direct action against fossil fuel companies, as well as ramping up the fossil fuel divestment movement. While all this made a difference, it has been far from sufficient for the scale of change required to avert climate catastrophe. And locally, advocates still question whether we will see truly systemic *local* change that reduces our own emissions.

Let's walk through all this history with some additional detail.

To reiterate, in 2005, the focus appeared to be mainly on individual and corporate responsibility. City government would reduce its own emissions, with leadership in particular from our City Light utility. Corporations would identify how to reduce their emissions and individuals would be encouraged to replace light bulbs, drive less and reduce energy use in their homes.

Of course, none of these things are bad – indeed they are all great. And they had a real effect. Seattle City Light is now carbon neutral. Building energy efficiency continues to increase, not just for climate reasons but because it saves money. Per capita emissions in Seattle are declining.

The city's climate plans did not focus solely on behavioral change. They also took aim at systemic issues like expanding transit, making biking easier, and encouraging walkable mixed-use communities. These changes were particularly important as the transportation sector at the time comprised 50 percent of all local emissions.

But, in retrospect, it seems as if the focus on behavioral change is more memorable than the systemic changes. In part I think this is because it was easier, politically, to encourage people to behave better than it was to take on deeply entrenched transportation and land use systems.

There was also a sense, 12 years ago, that the real action on systems change was at the state or federal level, specifically federal or state cap-and-trade or carbon tax systems. Advocates hoped that the cascading effects of a price on carbon would change behavior faster than attempting to change local transportation or land use laws.

That holy grail has eluded climate advocates. And progress on local transportation and land use issues remains elusive as well. Indeed, in the decade since Seattle, and Washington state, adopted climate reduction goals, new investments in transit have been accompanied by massive new investments in highways. Every step forward has been accompanied by a step backwards. Need proof? The Puget Sound Regional Council ("PSRC") adopted a transportation plan, which, if fully enacted, would not reduce emissions from transportation by 2040. That's a far cry from the deep cuts called for in the Paris Accord. And light rail isn't a savior here – the PSRC analysis includes a fully built-out Sound Transit system.

That lack of progress on systemic change wasn't just local, it was national as well. While individuals were encouraged to improve their behavior, the fossil fuel industry continued to deny the existence of global warming, yet fought to retain their deep federal subsidies. Given this corporate power, national advocates decided to make fossil fuel companies the target, much as anti-smoking advocates had moved from changing individual's smoking behavior to taking on the tobacco companies themselves.

In 2013, we invited leading climate writer and advocate Bill McKibben to address the group tasked with updating Seattle's Climate Action Plan. He described his new campaign to change climate politics which was led by a group he founded called *350.org*. It would call on universities nationwide to divest from fossil fuels. It had also launched a "Keep it in the Ground" movement - because the inexorable math of climate required keeping 80 percent of known reserves untouched. The movement would oppose pipelines, drilling and digging of fossil fuels.

The City of Seattle jumped in with both feet. The very day that we met Bill McKibben, I announced the city's intent to divest any of its holding from fossil fuel companies, giving the nascent campaign a shot in the arm. We had already launched a broad coalition of municipal governments and tribes to stop coal trains and coal export facilities. Local advocates opposed fossil fuel infrastructure, wherever it was found locally.

The divestment campaign took off internationally, with trillions of dollars under management by cities, individuals, colleges, foundations, even nations, now divested. Pipeline opposition became national news, as did Seattle's opposition to serving as the home port of Arctic bound drilling rigs.

The objective of these campaigns was two-fold. First was just creating new costs for fossil fuel companies, the hope

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Local Climate Action: Beyond the Hype, When Does it Get Real? continued

being that the storm of opposition would make extraction and transport more costly. But the second, deeper, reason was to change the narrative about fossil fuel companies – to remove their social license to operate, making way for broad new policies to rein in fossil fuel use.

I think it is fair to say that the new tactics are working. Christiana Figueres, the U.N. leader tasked with overseeing the Paris Climate Talks, specifically called out its impact, stating "The global DivestInvest movement was a primary driver of success at the Paris Climate Talks in 2015."

But the inexorable timeline of climate change tells us that climate treaties only work if accompanied by real action. And Trump's withdrawal from the Paris Accord, and his appointment of climate deniers to head environmental agencies, means that the federal government won't act.

Which brings us back to the local level … we've encouraged people, government, and companies to change behavior, with some success. We've tackled the biggest polluters, like coal plants. We've made important symbolic statements, such as divesting from banks that invest in pipelines.

But sadly, we are still falling woefully short of our own local emission targets.

With 60 percent of local emissions from the transportation sector, will Seattle work up the political resolve to tackle car-dependent culture? A big piece will be electric vehicles, which are rapidly overtaking gas-powered vehicles in cost and effectiveness. Unfortunately, there are still a lot of carbon emissions to build such vehicles. Getting to carbon neutrality (which is what the Paris goals require) means we will need to create places where people can live by relying on walking, biking and transit. That means a revolution, not just in transportation, but in land use. Such a future only works where what you need is close by, with neighborhoods that have the population to support transit.

Watching the current political debates over bike lanes, up zones, backyard cottages and development might lead one to believe that those changes remain far off.

But the climate imperative for change is now being accompanied by the need to address the deep inequity of high housing costs. The millennial generation, currently locked out of homeownership and more inclined to car-free living, is rightfully not happy with the status quo.

My prediction (and I may be a little ahead of myself here) is that the next big arena for climate advocacy will be local land use and transportation decisions. It will be a different kind of land use politics than we have seen before, and it just might change the curve on local emissions too.

Mike McGinn was mayor of Seattle from 2010-13. Before that he was a shareholder at Stokes Lawrence, a volunteer leader in the Sierra Club, and founder of the sustainability non-profit Great City. He remains active in the fossil fuel divestment movement locally and nationally.

Sustainable Packaging Solutions – The Mission of Cascadia Packaging Group

By Doug Hehn

Packaging is a $185 billion business in North America resulting in the generation of over 76 million tons of packaging waste in the U.S., or approximately 1.3 pounds per person daily. With the growth of eCommerce, packaging has a significant impact on our personal and professional lives. It also has a bottom line impact on business operations and financials. The demand for sustainable packaging solutions for consumers is also on the rise.

The Mission of Sustainable Packaging

Cascadia Packaging Group was founded with the mission to deliver innovative packaging consulting services to industrial and consumer goods manufacturers. The goal is to deliver cost-effective packaging solutions that have a positive impact on the bottom line as well as leaving a positive impression with our clients' customers. Cascadia Packaging leverages experience in sales, consulting, program management, logistics, and packaging engineering to eliminate waste and enhance profitability. It translates requirements into environmentally and economically sustainable packaging solutions that benefit people, the planet, and the bottom line.

A Short History of Packaging

Historically, it was an uphill battle to incorporate green, sustainable practices into manufacturing and supply chain operations. The prevailing thought was to "over pack" a product to minimize any opportunity for product damage and customer dissatisfaction. Packaging was considered a necessary cost of doing business and majority of companies did not have an understanding of the impact of over packaging within the supply chain. However, with a focus on cost data and results, companies began to proactively review their packaging and supply chain strategies to drive savings to the bottom line and profitability. Fast forward to 2017: companies have embraced sustainability and focus on the Triple Bottom Line: Profit, People, and Planet.

Green Packaging: Profitability and Branding

Sustainability is no longer just a fad. Initially, green packaging was adopted by premium customer brands such as Patagonia and Paul Mitchell as part of branding strategy in line with their customers and product branding. Recent years have seen bottom-line successes from corporations such as Wal-Mart, Ford, and Dell Computers as they drive out inefficiencies in their operations resulting in significant cost and waste reductions. These firms focused initially on bottom-line results, but now also benefit from a "green" brand. Locally, Amazon and Microsoft are industry leaders driving sustainable packaging strategies in their product lines and

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Sustainable Packaging Solutions ... continued

operations. PACCAR is also a leader in the manufacturing industry delivering sustainability and bottom line results into its operations via returnable packaging systems and optimized supply chain solutions.

Packaging Regulations

Packaging bans on plastic packaging materials are in place in the U.S. and Canada as well. With an increased focus on the environment, packaging waste, and recycling, there is a trend toward the adoption of Extended Producer Responsibility (EPR) regulations. Generally, EPR extends the responsibility of products and packaging throughout their lifecycle, including consumer use and end of life. Environmental packaging regulations, which include rates, dates, fines, and/or fees ,have been in place in Europe since the 1990s.

Challenging Clients

One of the primary challenges our clients face is viewing packaging as a stand-alone, line-item cost, and not looking at the total cost picture. Many times, they will also accept their current practices without taking a step back and challenging the status quo.

We ask two questions: first, how can we challenge clients to take a look at the bigger picture to determine the best overall solution? After all, clients seek to deliver innovative packaging solutions while adding value to their bottom line and streamlining their supply chain operations. A secondary benefit has been to be in a position to align good business practices with a Triple Bottom Line approach.

Second, what does your packaging communicate to your customers? As consumers, we interact with packaging on a daily basis in our lives. Done correctly, it can leave a powerful lasting impression and create a loyal customer base. Conversely, we also understand the negative impression left by poor packaging.[1]

Get Sustainable

Adopting a strategy to eliminate waste in operations is not a new business idea but we now understand that embracing sustainability and a zero waste strategy has a positive impact on the the environment as well. This is a practical approach that has become increasingly mainstream. Not only good business, it also aligns with the shift in customer demographics as well as the future workforce. Increasingly, businesses that do not give consideration to these strategies might not be viable in the near future.

Doug Hehn is founder of Cascadia Packaging Group, providing strategic consulting services to industrial and consumer goods manufactures. Cascadia Packaging is focused on delivering bottom line results while enhancing customer experience and sustainability. He holds a Bachelor of Science degree from the School of Packaging at Michigan State University and is a member of the Center for Advanced Manufacturing Puget Sound.

1 Examples of successful cases studies may be found at *www.cascadiapackaging.com*.

Businesses' Responsibility in Public Policy to Address Climate Change and the Role of the American Sustainable Business Council

By David Brodwin

The damage from this year's storms in Texas, Florida, and Puerto Rico is only the most recent and high-profile example of the dangers posed by extreme weather. Most business people, like voters as a whole, understand the issues of extreme weather and other impacts of greenhouse gas emissions. For most, the question is what to do about it. They want government to help solve the problem in a way that aligns with their political leanings, the way they see the world and problems that matter most to them.

Many business people see the risks of extreme weather in their own business. Severe storms, rising sea levels, and multi-year droughts ruin businesses and disrupt supply chains. The damage that results ripples across the national economy. Changing rainfall patterns increase food prices and reduce consumer spending. The rise in extreme weather leads to higher taxes to cover the huge costs to repair and rebuild damaged infrastructure and to address new public health challenges.

A Bipartisan Solution

Of all the potential solutions, one is emerging that can pass muster with both conservatives and liberals: putting a price on carbon. For conservatives (including libertarians), the best way to achieve a social and environmental goal in the economy is with a tax rather than through regulations. Taxes preserve market incentives they are simple and hard to game.

Setting a meaningful price on carbon would send a clear market signal that the United States is moving towards a clean energy future. It would spur more investment in the renewable energy sources we need to power our economy going forward. Revenues from a carbon tax could also be used in a variety of ways: to support heavily affected industries and populations, including coal miners and coal-dependent communities; and/or to improve the nation's aging infrastructure. Increased energy costs for heating and gasoline can be offset by tax credits for middle- and low-income households, while still encouraging industries to reduce greenhouse gas emissions.

Will Bipartisanship Prevail?

Behind the scenes, members of Congress from both sides of the aisle are working on solutions like this. Most important is the Climate Solutions Caucus, which now has 58 members, evenly split between Republicans and Democrats. It's serious and pragmatic about trying to address differences

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Businesses' Responsibility in Public Policy to Address Climate Change and the Role of the American Sustainable Business Council continued

– even within parties – to find a solution that works for all constituents. This is an exciting development, especially at a time when it seems that politicians are just trying to score political points and pander to their base. This pragmatism is what most business people want.

Many Republicans now quietly acknowledge the reality of climate change and the fact that it is caused by human activity. They're not yet ready to speak out for fear of primary opponents funded by the fossil fuel industry. But behind the scenes, they continue to work on solutions with roles for limited government and strong markets.

As these Republicans find their way toward a more public position, a framework all sides can live with, Democrats will need to compromise as well. For example, if Republicans accept a new tax in the form of carbon pricing, will Democrats accept an approach that doesn't increase taxes overall? Will Democrats relax their demands for stricter carbon regulations? Pragmatic policymakers can find such solutions through the political process.

But success is far from inevitable. Lawmakers are under intense pressure to preserve the status quo for the fossil fuel industry lobby and their fellow travelers.

And as Washington state discovered last year, other constituents can block an effort if their goals aren't sufficiently met. Initiative 732 would have made Washington the first state to establish a tax on carbon. It encouraged families and businesses to reduce fossil fuel consumption without increasing taxes overall. It sought to accomplish this by reducing the state sales tax and increasing the Working Families Tax Credit, both of which had bipartisan support. Unfortunately, its defeat in part at the hands of Koch-led opposition removed the chance for Washington state to lead the nation on carbon pricing. But the spirit of compromise to find practical, market-based solutions is an example that should be applied again in Washington state – and for the first time at the national level.

Business Needs to Provide Political Support

Lawmakers need to hear from business leaders who will back them on finding a solution. For many Republicans, only if they know that business leaders and small business owners want a solution, can they buck the fossil fuel lobbies and push for compromises that will be a net win for the environment.

While most business people do want the government to address this issue, many are novices when it comes to advocating in their state houses or on Capitol Hill. A large part of our work at American Sustainable Business Council is to provide support for business people in ownership, and senior management positions in companies of all sizes, to boldly step into the arena. ASBC represents more than 250,000 executives and investors, including over 400 in Washington state. Prior to joining ASBC, many lacked experience meeting with policymakers. We provide our members with training and support to make them successful advocates.

For example, we recently facilitated groups of CEOs and business owners to confer with members of Congress and their staff in Washington, D.C. We prepared background materials and talking points, and carefully reviewed them with the participants beforehand. We also explained how these meetings typically go – including cultural nuances such as how business cards are handled.

These behind-the-scenes meetings are important for reminding policymakers that the traditional business lobbies don't speak for most businesses. Because members of Congress and their staff hear so frequently from the traditional business lobbies, hearing directly from business people who support finding green solutions is often extremely powerful.

As is apparent in a state as aware of environmental issues as Washington, finding the right solution can be difficult. Support from the business community could make the difference, whether you are situated in Washington State or Washington, D.C.

David Brodwin is the Vice President and Co-founder of the American Sustainable Business Council, which advocates for policy change and informs business owners and the public about the need and opportunities for building a vibrant, sustainable economy. For more information, visit www.asbcouncil.org.

Sustainability and Real Estate – A Research Summary

By James Young

One of the key issues that comes up in product marketing is sustainability. You have sustainable eggs, milk and food products. You have sustainable packaging materials and take-out containers. You have recycling bins and composting bins popping up everywhere. But one area where sustainability has proven to be more problematic is in the marketing of real estate. Why?

Defining Sustainability in Real Estate

The biggest problem is that sustainability means different things to different property users and different people. If someone lives in the desert, then sustainability might come down to water usage and efficient use of electricity and insulation for indoor climate control. Alternatively, if someone lives in a wet climate, such as Seattle, they may care more about controlling runoff and drainage rather than the ability to use solar panels for electric generation.

While all real estate markets are local and local brokers will know what features are likely to enhance marketability, the lack of hardand-fast rules on defining sustainable property creates a minefield for any broker investigating how sustainability might impact the ability to sell a property. What are the

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Sustainability and Real Estate – A Research Summary *continued*

guidelines for what is sustainable? What are the definitions and how are they used? In this respect, some of the latest research provides a guide on whether sustainable real estate provides a benefit to sellers, buyers, owners, and occupiers.

Research in Commercial Real Estate

Sustainable real estate in the commercial real estate sphere has been an important topic of investigation for some time. Many corporate occupiers have sustainability as a part of their company mission statements as well as making it a part of their corporate image. In short, a sustainable image is thought to enhance the value of their businesses and brands. As a result, they want to occupy properties that fit into that image.

Fortunately, several groups have developed ways to identify and outline the extent to which a building meets sustainability objectives. In the US, the LEED Rating system developed by the U.S. Green Building Council provides a way of determining whether a building meets sustainability objectives. (http://www.usgbc.org/leed) By measuring several different criteria, such as materials used and building performance in key areas like electricity consumption and water efficiency, the LEED Ratings system is meant to promote sustainable design by developing objective methodologies for evaluation. This also holds true for several other measures of commercial real estate sustainability used throughout the world (NABERS in Australia and BREEAM in the U.K., for example)

In other words, these rating systems provide consistency in how green is measured in buildings and provide an opportunity to test whether they are effective in marketing real estate. More importantly to brokers and agents, these systems have presented opportunities for researchers to investigate key issues in whether sustainable real estate pays dividends to owners and/or occupiers using verifiable and consistent ratings on the importance of green features in a building.

For example, if it costs more for an investor to incorporate sustainable features into a new building, is the tenant willing to pay more for it? If not, then what are the benefits in developing green real estate? Using these ratings systems, recent research in Australia has shown that commercial occupiers may not be willing to pay much more in rent for a green building (Gabe and Rehm, 2013). This means that on a triple net lease, all of the cost savings and energy efficiencies accrue to the tenant while the developer or investor may face higher development costs. However, it has also been found that these occupiers are going to be less likely to move in the near future and are also more likely to occupy their premises for longer, creating what might be called an occupancy premium. Findings in the U.S. have been similar (Appraisal Institute, 2013), but with the additional finding that many larger investors and REITs are willing to invest in sustainable features with the idea that it will assist in longer term cash flows (through lower vacancies).

Is There A Green Premium for Housing?

The simple answer to this question is, it depends! While almost every broker can agree that new homes incorporating green features will likely sell for more than a house that does not have them, the question then becomes which features sell and which features are a waste of spending?

Unfortunately, there are no set sustainability measures for residential housing in the U.S. However, evidence from other markets suggests that a green premium might exist for both new homes and existing residential properties. For example, the European Union began mandating home energy ratings for all residential property transactions starting in 2009. Fuerst, McAlister, Nanda, and Wyatt (2015) found that existing homes in the U.K. with the best energy ratings tended to achieve significantly higher prices than those properties that had average or lower ratings.

One of the few studies to investigate these issues in a U.S. context is Kok and Kahn (2012), who investigated whether there was an observable premium for properties certified and labeled by the USGBC, the EPA and other agencies on an ad hoc basis in Berkeley, CA. While they found a 9 percent premium for sustainable houses, the lack of a nationwide system for defining sustainability has proven a problem for generalizing these findings.

So while a green premium is thought to exist for residential homes, the lack of a consistent measurement or ratings system, such as the ones that exist in Europe, Australia, and elsewhere prevent anyone from actually estimating what effect the incorporation of sustainable features into existing homes might mean for sale prices.

The Challenge

Probably the biggest challenge for residential brokers in advising clients on incorporating sustainable features in an existing property is the lack of a standard benchmark for measuring how "sustainable" a property might be. In some cases, it may mean replacing the climate control system and in others it might include replacing a gas hot water system with a solar one. For most brokers, this may seem like common sense. But where homeowners cannot afford the time or expense of incorporating some of these features, the lack of a coherent system for measuring sustainability comes down to the knowledge of the local broker in terms of what will add most to a property value. Until a more systemic approach to rating the sustainability and energy usage of residential properties is developed, such as the ones that exist for commercial real estate, brokers should be mindful of the current trends in their area and whether or not sustainability sells.

James Young is the Research Director at the Runstad Center for Real Estate and the Director of the Washington Center for Real Estate Research at the University of Washington. He has over 25 years of real estate industry and academic experience in all 50 states as well as in several countries including the United Kingdom, Ireland, and New Zealand.

The Paper Chase: Going Green in the Legal Field

By Greg Simpson

We are all aware of the major effects our actions have on the environment. Worldwide, there are major pushes to transition to renewable energy, drive electric cars, and recycle everything under the sun. But how often do we stop and think about the impact our work lives have on the world? A constant stream of papers coming across the desk, lights on in the office for 12 hours a day, and daily commutes have larger effects than making us ready to head home at 6 p.m. As licensed legal professionals (and future attorneys), we should strive to be forward-looking not only in dealing with legal issues, but in helping the environment as well.


WSBA Business Chair Drew Steen Congratulates Law School Writing Contest Winner Greg Simpson

Last year, I was asked to print some records for discovery review by a senior attorney at the firm where I worked. This seemed like a normal task at first, until I found out that the records totaled over 3,000 pages. I went back to the attorney to double check that he was aware of the file size. He responded that yes, he was aware, but he preferred to review hard copies of records. Being in no position to question the attorney, I proceeded to fill bankers' boxes with the records and place the boxes in his office. The records sat in his office for a couple of weeks, until the case settled and I was asked to place the records in a bin to be shredded. In the end, the 3,000 pages were wasted, all within a firm that was regarded as a mostly "paperless" office.

Increased capabilities of case management and other legal software were supposed to lead to truly paperless legal offices. However, a truly paperless legal office may not be possible at this point. Many courts require hard copies for filings, clients need hard copies of documents, and there truly is a difference between reading something on a screen and holding it in your hand. However, small changes can add up fast. What if you didn't print a document until you believed it was ready to send? What if you stopped printing out emails altogether? These changes might only save a couple of pages per day, but if every attorney in Washington was conscious of their paper use, millions of sheets (and trees) would be saved.

In addition to saving paper, attorneys can save energy with small changes throughout the day. For example, turning the lights off when leaving the office could add up throughout the year. For those who forget to flip the switch, motion sensors are extremely cost-effective and easy solutions. Setting computers to sleep after a short period of idling decreases power consumption as well. As winter approaches, many will break out their space heaters for the office. These machines use a significant amount of power even on their lowest setting. Using a space heater sparingly is an easy way to save energy and save the environment.

The commute is another place where attorneys can make a big change to help the environment. Fuel emissions are one of the most widely discussed environmental issues, and we all know why: every day, we drive machines that emit chemicals that are harmful to the planet. For some it's a necessity. For others, it's a matter of convenience. The least we can do as attorneys is consider whether there are other viable options for our daily commute. Public transit is an option for many who live in the greater Seattle area. Between the trains and buses, the transit system is easy to use and rapidly expanding. Other options include carpooling, biking, or working remotely when possible. It may be that these options don't work for everyone, but it's important to remember that driving to and from work every day affects more people than just yourself.

As attorneys, we owe it to ourselves and our profession to be on the forefront of making change for the greater good. The work day presents challenges that can distract us from the bigger picture. The important thing is to be conscious about the effects our decisions have on the world around us. The changes I've suggested may seem insignificant, but if everyone makes a small change, it can add up into something much bigger than any one of us.

Greg Simpson grew up in Fresno, CA and moved to Seattle in 2014 to attend Seattle University. He is currently in his final year of the JD/MBA program. After graduation, Greg hopes to stay in Seattle and practice corporate law. He can be reached at simpso21@seattleu.edu.

Compliance Cost Reduction through Effluent Trading Under the Clean Water Act – The Boise River Case Study

By Mark A. Ryan

The Clean Water Act (CWA) has been in place now for 45 years, and it has successfully remedied many of the nation's water pollution problems. Rivers no longer catch fire as the Cuyahoga River did in 1968, and the beach closures that were common prior the passage of the Act in 1972 are largely a thing of the past. Problem areas remain, but fish and other aquatic organisms generally enjoy a healthy environment in which to grow.

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Compliance Cost Reduction through Effluent Trading Under the Clean Water Act – The Boise River Case Study continued

All of this, of course, comes at a price, and the costs to dischargers who must obtain wastewater discharge permits from the Washington State Department of Ecology can run into the many millions of dollars. Trading, if done correctly, has the potential to reduce costs while continuing to protect the environment.

Constraints on Trading

Effluent trading allows a national pollutant discharge elimination system (NPDES) permit holder to discharge more pollutants than it otherwise would be allowed in exchange for cleaning up the same pollutant at a different location in the same watershed. If done correctly, it has the potential to reduce costs while continuing to protect the environment. While the CWA does not prohibit trading, it also does not specifically allow for it, and many of the statutory and regulatory requirements of the CWA make trading difficult.

Given the limitations of the law, EPA has given lukewarm endorsement to trading, although that may change under the Trump administration. Some environmental groups have embraced it while others oppose.[1] The states are not unanimous in their support for trading. They, too, are limited by the CWA and its implementing regulations. Washington state counts as one of the states that remains somewhat cool to the idea. No trades have yet been approved in Washington, primarily for lack of an interested buyer of credits.[2]

There are also regulatory hurdles to overcome with trading. For example, to permissibly discharge pollutants to a water of the state, the CWA requires Ecology to issue an NPDES permit to the discharger. Permits require compliance either at the end of the discharge pipe or at the edge of the mixing zone. It is illegal for a discharge to "cause or contribute" to a violation of state water quality standards in the receiving waters. The "cause or contribute" restriction, among others, creates problems for trading.

The Dixie Drain Project

I was an EPA water attorney for 24 years. Before leaving the agency in 2014, I helped negotiate one of the first effluent trades in the Pacific Northwest under the CWA.

The City of Boise approached EPA in 2010 with the idea to remove phosphorus from an unregulated agricultural drain that discharged to the Boise River downstream of the City's Publicly-Owned Treatment Works (POTW). In exchange, the City sought offset credits at the POTW for the phosphorus removed from the drain. The idea was simple. The ag drain was rich with phosphorus from farm-field runoff and was thus relatively easy to treat. At the time, a total maximum daily load (TMDL) for phosphorous was planned for the Boise River and that TMDL was expected to result in very stringent phosphorous limits in the City's future discharge permits. The City was anticipating having to spend many millions of dollars to achieve the new effluent limits. The plan was to treat the ag drain water to remove more phosphorus from the river at a lower cost to the taxpayer.

The Dixie Drain Project, as it came to be known, had its challenges despite the simple principle upon which it was based. For example, if the trade is with a source downstream of the permitted facility, water quality standards in the river may be violated between the point of discharge and the trading source. In the case of the Dixie Drain, the City of Boise built the ag drain treatment system 20 miles downstream of the POTW. The POTW discharges more phosphorus to the river than it otherwise could in exchange for removing even more phosphorus twenty miles downstream. That trade results in less phosphorus in the river, but for the intervening 20 miles, the Boise POTW has the potential to cause or contribute to a violation of water quality standards. The net environmental benefit to the river downstream of the Dixie Drain is positive, but the CWA regulations do not allow for *any* in-stream water quality violations, which includes that 20-mile stretch.

Even if the trade were with an upstream source, it could run into problems because the POTW may still cause or contribute to an exceedence of water quality standards, even though there is a net reduction in pollutants loading to the river. Water quality modeling must be done correctly to demonstrate that no section of the river will be adversely affected by the trade.

Trade or Offset?

Under some trading policies, one may not be able to trade with oneself. Since the City of Boise owns the POTW and the Dixie Drain treatment system, the project is technically an offset. If the offset is permitted, does it receive a second, independent NPDES permit, or is it considered another outfall under the POTW permit? There are several other permitting considerations which flow from this determination.

Discretionary Approval Held by Regulators: A Cost-Benefit Analysis

Given the legal limitations on trading, how does one go about getting a project approved, and is it worth the effort? These types of projects are often discretionary on the part of the regulators. Nothing requires Ecology to approve a trade, and it will be unlikely to do so unless you present an appealing project.

In my opinion, there are two critical components to an approvable project. First, the proponent must show the regulators that the trade is worth the effort. If it will generate only marginal environmental benefit, it may not be worth the substantial financial and time commitments by both the traders and the regulators necessary to gain regulatory approval.

Second, the proponent ideally should be able to show that the environmental benefit is quantifiable and enforceable. The key advantage to the approval of the Dixie Drain project was the enforceability of the offset. Because the City is able to accurately measure how much phosphorus it removes from the Dixie Drain, the EPA (Idaho is not yet authorized to issue permits) can be assured that the credits it gives at the

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Compliance Cost Reduction through Effluent Trading Under the Clean Water Act – The Boise River Case Study continued

POTW are actually being offset. Many proposed trades are not based on measurable discharges like the Dixie Drain, but on best management practices (BMPs), which are difficult to quantify and therefore challenging to enforce. For example, if a trade requires contracting with farmers to install buffer strips, how do we know how much sediment and/or nutrient runoff from the fields is actually happening? BMP trades are based on modeling, modeling is not always accurate, and enforcement of BMPs is resource intensive.

The ability to accurately quantify the amount of pollutants removed from the Dixie Drain made the trade enforceable. If you can show Ecology that any failure to remove the required amounts of pollutants will result in either an enforcement action or a reduction in the offset at the original point source, the project is more likely to be approved. This is not to say that a BMP-based trade should not be undertaken. But the level of proof to show that the BMPs actually work may make it more difficult to win approval from Ecology.

Citizen Involvement

It is not enough to win over the regulators. You have to ensure that there are no angry neighbors or citizen groups. Given the lack of clear authority for trading in the CWA regulations, the potential exists for legal challenges to the approval of any project. For this reason, on the Dixie Drain project, we sat down early with the main citizen groups in the area, and got them on board with the idea of cleaning up an otherwise unregulated ag drain and the net benefit it would provide to the Boise River. To their credit, the Idaho Conservation League and Idaho Rivers United did not challenge the project. It has since been constructed, and is now operational.

Net Benefit of a Well-Planned Trade

In the end, one cannot lose sight of the gain made in water quality in the Boise River. The City of Boise is now removing 10 tons of phosphorus a year from a section of the river that is heavily impacted by ag runoff. Despite its best efforts, the City ultimately spent as much on the Dixie Drain as it would have spent on an upgrade to the POTW, but it has achieved a much better environmental result, and it has also proved that trades can be done responsibly and can be approved by the regulators. Future projects could learn much from the City's pioneering efforts, and achieve the same environmental benefits, but hopefully at a lower cost than traditional compliance strategies might produce.

Mark A. Ryan is with Ryan & Kuehler PLLC in Winthrop, where he represents clients in water, property and land-use issues. He is the long-standing editor of the ABA's Clean Water Act Handbook *and author of numerous articles on the CWA. He can be reached at mr@ryankuehler.com.*

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1 *See e.g.*, Zach Corrigan, "The Case Against Water Quality Trading," 30 Natural Resources & Environment, No. 2 at 15 (Fall 2015). *But see* Brooks Smith et al., "Water Quality Trading: Setting the Record Straight," 31 Natural Resources & Environment, No. 3 at 53 (Winter 2017).

2 www.ecy.wa.gov/programs/wq/tmdl/wqtrading.html.

Food is Good, Right? A Local School of Farming Creates a New Generation in the Business of Farming

By Judy Feldman

If you've picked up this newsletter at breakfast, you might have just had cereal or eggs, a cup of coffee or tea, mixed with some variety of white protein beverage (whether from cow, almonds, coconuts, or soybeans). After a few hours of work, you probably met with a client or colleague, and enjoyed a salad with mixed greens, or a sandwich with cold cuts and onion and a bread of your choosing.

No matter what you have chosen, it all comes to you because of a farmer. And very few wonder what life would be like without access to all of those choices. Even fewer wonder where the next generation of farmers will learn, be inspired, develop relationships and get training on where to source seeds, equipment, and even labor.

The Organic Farm School (OFS), located in Whidbey Island's beautiful Maxwelton Valley, trains new farmers to develop and manage small farms focused on ecological, economic and social sustainability. It was formed in 2009 under the umbrella of what was then the Greenbank Farm Management Group. 2017 marks the school's first year as a free-standing farmer training program in its current location.

Every year a new crop of approximately 10-12 students attend OFS for eight months. Students learn more than skills in the field – they practice the critical thinking and adaptive management skills that will help them get through the challenges of a rapidly changing physical, political, and cultural landscape. Spreading their time between classes and field work, they learn how to manage a farm business by doing it under the watchful eye of experienced farmers.

OFS educates 21st-century farmers to run businesses fitting with what we believe are 21st-century values: as an enterprise, it defines success as profit generated in financial, social and ecological forms. Historically, farmers have carried the majority of financial risk when it comes to keeping food on our tables. Farmers faithfully plant, without knowing how the weather, politics, and cultural "taste buds de jour" will impact their best laid plans. Politicians may see the climate change debate from multiple perspectives; farmers look simply at the impact severe weather events are having on their crops.

And, not for the first time, climate change has added a new dimension of risk to farmers this year. Our record-breaking wet spring? Delayed planting for many Pacific Northwest farmers. Then consider the hurricane in Texas: cattle were standing in four feet of water and, ranchers had no way of moving them because roads were flooded. As one farmer reported, "I can't think of a crop that is designed to handle four feet of rain in a short period of time."[1]

Florida, thousands of miles and four time zones away from Washington, is a significant producer of the tomatoes, avocados, citrus fruit, and sweet peppers consumed in this state. Not only were crops in the ground severely damaged, but the state is still trying to evaluate just how much salt water came into the fields, and how much long-term damage that might cause. Unless you're a mangrove, you don't grow in salt water.

Fires in northern California? The impact to vineyards was intense. The region is also home to thousands of cattle, sheep, goats, and chickens. Moving livestock in the middle of rapidly developing fires is life and death for animals and ranchers alike.

A significant component of our training time at OFS is focused on planning for and managing the fluctuating work load throughout the growing cycle. Farming is a still labor-dependent operation, regardless of the reports of how big Yakima apple farms use robotics to inspect and grade fruit for size and color.[2] The same politicians skeptical of climate change may see immigration quite differently from farmers who rely heavily on workers for cultivation and harvest. Environmentalists may argue valiantly for stringent land use and water right issues, while farmers both acknowledge their importance *and* wait for some common sense that allows them to grow the food we wake up taking for granted.

In the midst of all this change and debate, graduates of the Organic Farm School strengthen our local communities and work toward resilient food systems for our future. After eight years, 78 percent of graduates remain active in ag. More than 10 percent of OFS grads have started their own small-scale farms (Whidbey Island, Michigan, New York, California and Germany among other locations), and another 10-15 percent have become farm managers. Some continue to work for established farmers, or have taken positions with school garden programs, while others have become organic certifiers or non-profit leaders.

OFS is keenly aware of the issues looming around food. We need those who *eat* to increase their awareness as well. Perhaps you are reading this over your dinner, and deciding between steak, or a bowl of soup, or some new dish you've been wanting to try at a neighborhood restaurant, perhaps with a nice glass of wine. Will you raise your glass and toast a farmer?

Judy Feldman, a graduate of the University of Washington and Antioch University Seattle, is the executive director for the Organic Farm School. Not a farmer of food, she sees herself as a cultivator of community and farmers. Her motto is that "control is an illusion" and her daily goal is to share gratitude for the food and water we share as well as to encourage curiosity about how to keep both plentiful.

1 https://foodtank.com/news/2017/09/hurricane-harveys-agricultural-impact

2 "Robots on the Move," Seattle Business, September 2017.

Don't Fear Commitment: Legal Regimes Overseeing Companies' Animal Welfare Promises

By Danny Lutz

In response to growing consumer demands for "humane" products, companies throughout the food industry have made announcements committing to better treatment of farm animals. For example, Nestlé recently announced that it is requiring changes that will give chickens used for meat in Nestlé food products better living environments on the factory farms where they are raised, as well as changes that will replace current chicken slaughter methods with more humane alternatives. Here in Washington, Costco proclaimed in late 2015: "At Costco, we're committed to going cage-free for our egg procurement, and we're steadily making progress. […] Please rest assured that we are still working thoughtfully and diligently with our suppliers toward a complete and sustainable transition to cage-free eggs."[1]

In the past few years, such company announcements have sent powerful reverberations throughout the food industry. The largest ripple occurred when McDonalds announced its plans in 2015 to sell only eggs laid by cage-free hens in the United States and Canada within 10 years—within months following the announcement, hundreds of restaurants, grocers, hospitality organizations and caterers made similar pledges. In short, animal welfare commitments have recently become commonplace across the food industry.

But many consumers ask, what effect do these announcements actually have? Who, or what, is holding these companies to their promises? Or, put another way, what legal regimes govern a company's public commitment to change its practices in favor of better animal welfare? As explained below in a non-exhaustive list, at least two general regimes oversee company promises to switch to more animal-friendly practices.

1. False Advertising Laws

Companies that publicly announce promises about the animal welfare processes underlying their products can be subject to a variety of false advertising actions. Competitors, private citizens, and federal and state regulatory agencies can prosecute violations of false advertising laws.

Under the Lanham Act, any competitor who is "likely to be damaged" by false or misleading description or representation of fact, may bring a civil action against the company making the misrepresentation.[2] Thus, a company advertising "humane" commitments that has not followed through on them could be subject to suit in federal court by two types of competitors – one who actually does engage in humane practices, and one who has not announced humane commitments.[3]

Private citizens can also bring civil consumer protection and false advertising lawsuits in state court against companies engaging in misleading animal welfare commitments.[4] Washington's Consumer Protection Act prohibits unfair or deceptive advertising that damages members of the general public.[5]

Similarly, several state attorneys general have the authority to prevent the deception of consumers.[6] And at the federal level, the Federal Trade Commission, among other agencies, has broad authority to investigate and pursue a suite of remedies against false advertisers, from cease and desist orders to monetary penalties to corrective advertising.[7] Private actors concerned about the truth of a company's animal welfare commitment can kick-start state attorneys general and FTC investigations by filing administrative complaints to each entity.[8]

2. The Securities and Exchange Commission

Failing to meet public commitments may also land publicly traded companies in hot water with their shareholders. A Securities and Exchange Commission ("SEC")-related reckoning can happen in at least two ways.

First, a company that does not follow through on animal welfare-related commitments would likely see its stock drop upon admitting to the public that it is falling short of its announcements. A drop in stock valuation raises the threat of securities fraud litigation. SEC Rule 10b-5 prohibits fraud, misrepresentation, and deceit in the sale and purchase of securities—and private citizens have the right to sue companies for Rule 10b-5 violations. For example, in 2016, investors filed a proposed class action against Exxon for providing materially false and misleading statements that failed to disclose the company's internal research about climate change.[9] Investors may consider actions against companies that provide animal welfare commitments and then fail to comply, by arguing that such commitments artificially inflate the company's stock.

Second, shareholders who do not believe that a company is properly adhering to an animal welfare commitment may seek a shareholder vote on a resolution to encourage such a commitment. In the past ten years, shareholders have proposed resolutions encouraging Wendy's, Chipotle, and Denny's, to name just a few, to commit to give purchasing preference to products from more humane sources. Companies that exclude such shareholder resolution votes risk enforcement by the SEC.[10]

Danny Lutz is a staff attorney at The Humane Society of the United States. He also serves on the executive board of the WSBA Animal Law Section. One can contact Danny at dlutz@humanesociety.org *or (202) 676-2386.*

1 Costco, "What is Costco's on Eggs?" *at* https://customerservice.costco.com/app/answers/detail/a_id/1197/kw/%22cage-free%22 (last visited Oct. 30, 2017).

2 15 U.S.C. § 1125.

3 *See, e.g., Animal Legal Def. Fund v. HVFG LLC*, 939 F. Supp. 2d 992 (N.D. Cal. 2013) (finding producer of non-meat, spreadable "Faux

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Don't Fear Commitment: Legal Regimes Overseeing Companies' Animal Welfare Promises *continued*

Gras" a competitor with the ability to sue foie gras producer for marketing product as "the humane choice").

4 *See generally*, Carter Dillard, *False Advertising, Animals, and Ethical Consumption*, 10 Animal L. 25, 39-45 (2004).

5 *See, e.g.*, *Fisher v. World-Wide Trophy Outfitters*, 15 Wash. App. 742, 748 (Wash. Ct. App. 1976) (construing RCW § 19.86.020).

6 *E.g.*, RCW § 19.86.080; N.Y. Gen. Bus. Law § 349(b).

7 15 U.S.C. §§ 45, 53.

8 *E.g.*, Food Safety News, "Humane Society says egg carton artwork is false advertising," Oct. 15, 2016, *at* http://www.foodsafetynews.com/2016/10/humane-society-says-egg-carton-artwork-is-false-advertising/#.WfiCB2eWzGg (last visited Oct. 31, 2017).

9 *See* Compl., *Ramirez v. Exxon Mobil Corp.*, No. 16-cv-3111 (N.D. Tex.) (filed Nov. 7, 2016). Exxon moved to dismiss the lawsuit in late September 2017, and briefing on that motion will not be complete until the end of 2017.

10 *See, e.g.*, *Wendy's Int'l Inc.* Staff Decision (avail. Feb. 19, 2008) (denying Wendy's request to exclude shareholder proposal to issue report on feasibility of purchasing a percentage of eggs from cage-free facilities); *Chipotle Mexican Grill, Inc.* Staff Decision (avail. Feb. 20, 2008) (denying Chipotle's request to exclude shareholder proposal encouraging purchasing preference to suppliers that adopt more humane slaughter practices); *Denny's Corp.* Staff Decision (avail. Mar. 17, 2009) (explaining that Denny's may not exclude a proposed resolution encouraging Denny's to commit to selling at least ten percent cage-free eggs by volume).

Coloring Shoreline "Deep Green"

By Miranda Redinger and Julie Ainsworth-Taylor

Since the 2008 adoption of the City of Shoreline's Environmental Sustainability Strategy,[1] Shoreline has positioned itself to be a regional and national leader on how local governments can work to develop sustainable practices both in Shoreline's own operations and in the development community.

While Shoreline has engaged in many collaborative initiatives that have focused on environmental sustainability and climate action, such as the King County-Cities Climate Collaboration,[2] Shoreline has also developed its own Climate Action Plan (2013)[3], which places a priority on sustainable land use and building practices. Shoreline's sustainable commitment is shown in the implementation of a ban on plastic carryout bags in 2013[4] and, more recently, when it created two transit-oriented subareas centered on Sound Transit's Lynnwood Link Light Rail Extension, which will site two stations within Shoreline.[5]

The development regulations implementing these subareas include transit-oriented zoning which is comprised of three mixed-used residential ("MUR") zoning districts ranging in height from 35 feet to 70 feet. Regardless of which MUR zoning district a project is located in, Four-Star Built Green™ construction is mandated for these projects. Built Green™ is a residential building program of the Master Builders Association developed in partnership with King and Snohomish Counties that quantifies environmentally preferable building practices.[6]

Just this year, Shoreline adopted its Deep Green Incentive Program.[7] This is an optional, incentive-based three-tier program that seeks to promote the most stringent standards for green building certification available from an array of organizations. Certification programs include the International Living Future Institute's Living Building Challenge™, Built Green Emerald Star™, and US Green Building Council's Leadership in Energy and Environmental Decision (LEED) Platinum™.

These programs generally provide for a project-by-project certification. The Living Building Challenge is an intense certification process by which a residential or commercial project must not only be sustainably built but must actually perform in a sustainable "net zero" manner based on a 12-month performance period. The Living Building Challenge currently has nearly 380 registered projects in 23 counties with 73 of those projects obtaining certification. Master Builder's Built Green program requires builders to follow a specific set of criteria to attach status as a "Built Green" home and earn star ratings as they move beyond these standards. Master Builders currently has 31 companies registered as Built Green members and states that almost 20,000 single family or multi-family homes have been certified Built Green. LEED is the most widely used green building rating system and available for all types of projects. LEED is a point-based system that has resulted in more than 2.2 million square feet being certified every day. LEED also offers professionals (architects, planners, builders) a LEED AP credential to demonstrate proficiency in sustainable design, construction, and operations standards; more than 200,000 individuals have taken advantage of this credential. All of the programs have varying fees for registration and certification. For example, LEED has a flat registration and per-building fee of $5,200 for its members, and certification is based on the gross floor area and rating starting at $0.057/square foot.

Specifically in regards to Shoreline's Deep Green Incentive Program, incentives vary based on the type of certification a project is seeking. For example:

Incentive[8]	Living Building	Built Green	LEED
Application Fees Waiver	100%	75%	50%
Parking Requirement Reduction	Up to 50%	Up to 35%	Up to 20%
Residential Density Bonus	Up to 100%	Up to 75%	Up to 50%

All types of projects, regardless of the certification they are seeking, may be eligible for such things as impact fee reductions, waiver of additional fees for expedited permit review, structure height bonus, and a variance in lot coverage standards. As noted above, the Deep Green Incentive Program is new this year so the city has not yet had experience

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Coloring Shoreline "Deep Green" continued

in administering this program, but qualifying projects will be entitled to thousands of dollars' worth of incentives for creating a project that they can seek a higher sales or rental value when it is marketed as "deep green."

These are just a few things that the City of Shoreline is doing to promote and encourage sustainable building practices within the community. The business community is welcome to contact Miranda Redinger, AICP at mredinger@shorelinewa.gov or 206-801-2513 for further information.

Miranda Redinger, as a long-range strategic planner, has taken the lead in promoting sustainable development in Shoreline. A graduate of Univ. of Virginia School of Architecture, she is Co-Chair of the City's Green Team and works collaboratively with other jurisdictions on sustainable development, include representing the City through the King County-Cities Climate Collaboration.

Julie Ainsworth-Taylor, Assistant City Attorney, has been practicing in the area of municipal, environmental and land use law since graduating from Seattle Univ. School of Law, starting her legal career as staff attorney for Washington State's Growth Management Hearings Board.

1 http://www.shorelinewa.gov/government/departments/public-works/environmental-services/environmental-sustainability/community-sustainability-support

2 http://kingcounty.gov/services/environment/climate/strategies/k4c.aspx

3 http://www.shorelinewa.gov/government/departments/public-works/environmental-services/environmental-sustainability/climate-protection

4 http://www.shorelinewa.gov/government/departments/public-works/environmental-services/environmental-sustainability/carryout-bag-regulations

5 http://www.shorelinewa.gov/government/departments/planning-community-development/light-rail-station-area-planning

6 http://www.builtgreen.net/index.cfm?/ABOUT-Built-Green/Government-Partnership

7 http://cityofshoreline.com/Home/ShowDocument?id=31411

8 Incentives have limitations based on the certification and the level of that certification. Residential density bonus is not available in the single-family R-4 and R-6 zones.

Going Green by Going Digital: How to Save Resources by Implementing a Paperless Office

By Destinee Evers

Most of us have heard it before: get rid of the paper in your office to save time, money and resources. In fact, it's been over 40 years since one of the first references to a "paperless" office,[1] so really it isn't a new concept.

The paperless office model is a good one—consider the costs of file folders, file accordions, printing, labels, paper, etc. But also think about the time and staff resources that go into typical tasks like tracking down a lost file, creating hardcopy file notebooks, producing discovery documents, or filing papers away. For example, if you're still forwarding a PDF document to your legal secretary to print out, so that you can sign the hardcopy, only to have it scanned back in as a PDF to be emailed out again … well, there's a better way.[2]

But what does it mean to go paperless? Well, for starters, it might not mean eradicating paper completely. Research still suggests that viewing documents in a printed form (instead of computer screen) is preferable for reading comprehension (although that is becomingly increasingly less so, and may be related more to preference than anything[3]). Regardless, the key is to focus on your needs and workflow, in order to find areas of flexibility.

Consider areas where you duplicate efforts, where you print documents only to shred them a short time later. Think about times you are dealing with high volumes of documents, such as trial. All of these instances could indicate opportunity for digital workflows. With that in mind, here are some steps toward a more efficient and greener office.

Practice Smart Document Management

Have a good document management system, and an even better internal workflow for handling documents. You should be able to answer questions like:

- What happens to a document that comes in through the mail or by messenger?
- What is the naming protocol or organizational approach for electronically filing documents?
- How do you differentiate between drafts, edits from a client, final versions, filed versions, etc.?
- When you really can't find a document, does your search tool provide a good backup?

If you need help identifying document management systems, check out the WSBA's practice management discount network,[4] or contact Practice Management Assistance for help at: pma@wsba.org.

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Going Green by Going Digital: How to Save Resources by Implementing a Paperless Office
continued

Equip Yourself with the Right Tools

There are lots of tools that you'll want at your disposal if you're going to go paperless:

- **Scanner**: This is an essential. If you don't have a good scanner already, you'll need one to be able to process documents quickly and efficiently. Most recommend the Fujitsu ScanSnap iX500, which scans 25 pages per minute.
- **Tablet**: Not an essential, but will take your paperless workflow to a new level. Using a tablet (such as an iPad or Windows Surface) with a stylus pen can help review documents more efficiently and write better notes. These days, there are a lot of apps that will help you turn those handwritten notes into type.
- **Smart Pen**: This is not exactly paperless, but worth mentioning. If you don't have a tablet and you're still taking notes on a legal pad, consider getting a "smartpen" that lets you write notes as usual, but allows you to then sync the notes electronically. This way your notes are stored with the rest of the client file electronically, and you avoid the nightmare of searching for lost notes from your last client meeting. A good (but maybe pricey) example is the Livescribe 3 smartpen selling for about $180.[5]

Be Security-Minded

There's a lot to think about when it comes to electronic file storage, but you should keep yourself up to date on security considerations[6] and should follow best practices for document storage and access. This may include:

- **Two-Factor Authorization**. If you or your staff access files from a mobile device, you should incorporate two-factor authentication (AKA "multi-factor authentication" or "two-step verification") which is basically using two different methods to verify that you are who you say you are. This usually works by sending a verification code to an email address or mobile device.
- **Encryption**. If you are storing or electronically transmitting sensitive information (that includes email) you should be adding a layer of security to those files through encryption. You should also be encrypting web traffic whenever you are using public Internet by utilizing a Virtual Private Network.
- **Secure File Transfer**. This goes along with encryption, but if you are dealing with a high volume of documents and data that need to go to the client or opposing counsel, you will probably have issues sending it. This is because large files sizes usually can't be transmitted through email. Fortunately, there are plenty of reasonably secure services to transmit files electronically.

Conclusion

Whether you've incorporated paperless office practices for some time, or are just starting out, it's worth evaluating your workflow to save time and resources. Even more importantly, a paperless office can result in a better client experience through greater communication, collaboration, and efficiency.

If you're interested in implementing some of these practices, but you're not sure how to start, feel free to contact WSBA's practice management assistance program at pma@wsba.org, or check out the additional resource list or these CLEs where I'll be presenting:

- November 13 | Crowne Plaza Seattle | Going Paperless and Beyond: Attorney's Guide to a Mobile Law Practice | https://goo.gl/o8D77X
- November 17 | Seattle University School of Law | Innovations for Building Your Online Legal Practice | https://goo.gl/jvLHXv

Destinee Evers is a practice management specialist with the Washington State Bar Association, providing education and consultations to legal professionals on law office management issues. Originally from Olympia, Washington, she received her B.A. degree, magna cum laude, from Seattle Pacific University and is a Washington State Scholar at Seattle University School of Law's evening program.

Additional Resources:

A. WSBA Practice Management Assistance. www.wsba.org/pma and http://www.wsba.org/Resources-and-Services/LOMAP/Firm-Launch-Guide/Legal-Technology

B. American Bar Association, "How a paperless law practice may be right for you," Apr 2017. http://www.abajournal.com/magazine/article/paperless_law_practice/

C. Neff, Donna and Blackford, Sheila, "Paperless in One Hour for Lawyers" | Available from the WSBA lending library at www.wsba.org/library

D. Law Practice Advisor, "Paperless Law Office Increases Efficiency and Saves Money," 8 Oct 2014. http://www.lawpracticeadvisor.com/paperless/

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1 "The Office of the Future," Business Week (2387), 30 June 1975: 48-70.

2 In that case you should be implementing electronic signatures: https://abovethelaw.com/2016/05/why-lawyers-need-to-understand-electronic-signatures/

3 Scientific American, "The Reading Brain in the Digital Age: The Science of Paper versus Screens," 11 Apr 2013. https://www.scientificamerican.com/article/reading-paper-screens/

4 Washington State Bar Association, "WSBA Practice Management Discounts." http://www.wsba.org/Resources-and-Services/Sponsored-Member-Benefits

5 https://store.livescribe.com/livescribe-3-smartpen-black-editionhtml

6 See the Ethics advisory opinion 2215: http://mcle.mywsba.org/IO/searchresult.aspx?year=&num=2215&rpc=&keywords=

Regional Thought Leaders Gather at GoGreen Conference – Seattle

By Noel Sandberg

In recent months we have witnessed the dramatic effects of climate change, with unusually powerful hurricanes along the coast, uncontrollable wild fires in the west, and record-breaking temperatures worldwide. These changes in our environment, coupled with the changes in our political landscape, have put the responsibility of mitigating the effects of climate change on business leaders, state and local governments, and individuals.

The current political climate has also put diversity, equity, and inclusion in the forefront of our national conversation. Increasingly, business and thought leaders are looking for ways to promote diversity in their organizations and are looking for ways to drive positive institutional change.

The GoGreen Conference, an annual sustainability learning experience in Seattle, empowers attendees with the sustainability strategies, tools, and connections to build resilient, profitable organizations while driving the development of sustainable cities and regions. Featuring regionally targeted content and recognized leaders from the Pacific Northwest community, GoGreen works across industry silos to foster peer-to-peer learning and collaborative solutions.

The 2018 GoGreen Conference in Seattle will take place April 4, and will feature Keynote addresses, plenaries, and workshops from the region's top business and public-sector leaders. Past speakers have included executives from King County, Port of Seattle, Weyerhauser, Microsoft, REI, and more. The goal of the event is to empower business decision-makers to drive sustainable change in their organizations while enriching business performance and increasing their bottom line.

Our full day of programming will focus on topics such as diversity and inclusion; energy; environment and water; leadership, engagement, and innovation; programs and policies; clean mobility and transportation; and housing. Attendees and stakeholders will discuss, collaborate, and strategize action items that will help stimulate growth, promote social equity and diversity in workplaces and protect the environment for future generations.

For tickets and more information on GoGreen Conference, visit *seattle.gogreenconference.net* or call Noel at 206-459-0595.

Noel Sandberg is the Communications Outreach Manager for Social Enterprises, a social cause event company committed to enhancing local communities with socially-driven, sustainability minded experiences. She is a proud Portland transplant, and holds a Bachelor of Arts in International Studies from the University of Utah. When she's not spreading the word about sustainability, she enjoys riding her bike and adventuring with her dog.