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**Perspectives on Rights of Nature in Santa Monica, California**

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**Perspectives on Rights of Nature in Santa Monica, California**

**by**

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**Report**

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## **Abstract**

### **Perspectives on Rights of Nature in Santa Monica, California**

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The University of Texas at Austin, 2016

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In 2013, the Santa Monica City Council adopted a Sustainability Rights Ordinance that affirms: “Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City Of Santa Monica. To effectuate those rights on behalf of the environment, residents of the City may bring actions to protect these natural communities and ecosystems.” This is an example of an emerging environmental legal framework known as Rights of Nature, which is characterized by its recognition of ecosystems and natural communities as rights bearing entities, not rights-less property. In the United States, the philosophical implications of Rights of Nature may not concur with mainstream environmental discourses, although they do with less common discourses. Due to their professions, policy makers, city staff, and others in Santa Monica have had to come to terms with Rights of Nature, regardless of the environmental discourses they tend to use. For this report, six Santa Monica policy makers, staff, and advocates were interviewed about Santa Monica’s Sustainability Rights Ordinance. Discourse analysis was used to identify the most prominent environmental discourses used by the interview subjects. Connections were drawn between subjects’ thoughts and feelings regarding the

practical and philosophical implications of Rights of Nature and the environmental discourses that those subjects appear to use to think and communicate about environmental issues.

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# Chapter 1: The Legal and Cultural Problems Addressed by Rights of Nature

## ANTHROPOCENTRICISM AND DISREGARD FOR A GLOBAL CRISIS

Biologist Rachel Carson's revered book *Silent Spring*<sup>1</sup> was a warning to industrial society that humanity's introduction of toxic chemicals and other pollutants into natural environments on an industrial scale would have unexpected devastating impacts on a wide range of the earth's species. More recent studies<sup>2</sup> have concluded that human activities have caused the earth's sixth mass extinction, currently underway. That the environmental destruction continues unabated, is evidence that the planet's industrial societies have not adequately heeded these warnings.

The meaning of the sixth mass extinction is that the earth's vertebrate species are going extinct nearly 100 times more quickly than our typical rate of extinction<sup>3</sup>. According to the geologic record, the last period with a comparable extinction rate was the time of the dinosaurs' extinction, caused by a great asteroid striking the earth. This time, we humans are the asteroid causing the destruction. As sad and scary as that is, it is even more frightening when we consider that, as the planet's dominant species of our time, we are also the dinosaurs. *Silent Spring* was widely read, in fact, it is sometimes cited as a key catalyst in the advent of the modern environmental movement<sup>4</sup>. More recently, news of the sixth mass extinction has been widely reported in major

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<sup>1</sup> Rachel Carson, *Silent Spring* (Boston: Houghton Mifflin, 1962).

<sup>2</sup> Gerardo Ceballos, Paul R. Ehrlich, Anthony D. Barnosky, Andres Garcia, Robert M. Pringle, and Todd M. Palmer, "Accelerated modern human-induced species losses: Entering the sixth mass extinction," *Science Advances* 5 (2015): accessed August 21<sup>st</sup>, 2016, doi: 10.1126/sciadv.1400253.

<sup>3</sup> Ibid.

<sup>4</sup> Eliza Grisold, "How 'Silent Spring' Ignited the Environmental Movement," *The New York Times Magazine*, September 21, 2012, accessed on August 21<sup>st</sup>, 2016, <http://www.nytimes.com/2012/09/23/magazine/how-silent-spring-ignited-the-environmental-movement.html>.

newspapers<sup>5</sup>, on television<sup>6</sup>, and on social media. It cannot reasonably be argued, therefore, that if only more people were aware of the destruction that industrial activities are causing, industrial societies would pull together to collectively address the problem. The information is easily accessible.

The proximate causes of the mass extinction are habitat destruction; spread of exotic invasive species by humans, both intentionally and incidentally; pollution; over-harvesting of wild animals; and climate change resulting from the release of greenhouse gasses into the atmosphere as a byproduct of industrial agriculture, transportation, electricity generation, and deforestation<sup>7</sup>. These practices persist despite the destruction they cause, not because of ignorance to that destruction among the general public or among society's most powerful decision makers, but, I contend, because of widely held anthropocentrism and the laws that govern the world's dominant economies in the United States and elsewhere.

Anthropocentrism, the belief that humanity is at the center of existence, is pervasive in the United States and much of the world. It is the belief that the earth is humanity's to do with what we want, that humanity is the central figure on the planet or in the cosmos, and that the planet's other living creatures and systems are scenery to our story or resources for our use. Within an anthropocentric framework, those other living creatures and systems are considered primarily in utilitarian terms; the threat of harming or extirpating them is measured in terms of costs and benefits to human beings.

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<sup>5</sup> Jeremy Hance, "How Humans are Driving the Sixth Mass Extinction," *The Guardian*, October 20, 2015, accessed on August 21<sup>st</sup>, 2016, <https://www.theguardian.com/environment/radical-conservation/2015/oct/20/the-four-horsemen-of-the-sixth-mass-extinction>.

<sup>6</sup> "The Daily Show, Elizabeth Kolbert," accessed on August 21<sup>st</sup>, 2016, <http://www.cc.com/video-clips/zj9x9i/the-daily-show-with-jon-stewart-elizabeth-kolbert>

<sup>7</sup> "The Extinction Crisis," Center for Biological Diversity, accessed August 21<sup>st</sup>, 2016, [http://www.biologicaldiversity.org/programs/biodiversity/elements\\_of\\_biodiversity/extinction\\_crisis/](http://www.biologicaldiversity.org/programs/biodiversity/elements_of_biodiversity/extinction_crisis/).

## THE PERPETUATION OF ANTHROPOCENTRICISM THROUGH LAW AND ECONOMY

Anthropocentrism is not innate or inevitable in human society. There are many examples of cultures that have regarded the earth's other living creatures and systems as kin, worthy of respect, valued for their contributions to the community of creatures, and entitled to a healthy and clean habitat<sup>8</sup>. Anthropocentrism, like all cultural constructs, is taught and learned from generation to generation.

Anthropocentrism is a core value of society in the United States and much of the world. It is found in the Abrahamic religions' teaching that man is made in the image of God<sup>9</sup>. As Lynn White argued in his famous 1967 essay, "The Historical Roots of Our Ecological Crisis": "Especially in its Western form, Christianity is the most anthropocentric religion the world has seen<sup>10,11</sup>." It is also an implicit message conveyed through our material economy to our children as they learn about the world. Our cities make few if any concessions to the earth's other creatures or natural living systems. In metropolitan areas, where most children in the United States grow up, wild animals, if they are present, are regarded as nuisances, squatters, stowaways, or exotic oddities that would ideally not be present. Although all of our food and most of our clothing come from plants and animals and could therefore be recognized as artifacts of our interdependence with the earth's other creatures, neither supermarkets nor clothing stores

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<sup>8</sup> Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice*, (White River Junction, Vermont: Chelsea Green, 2011).

<sup>9</sup> *The Holy Bible, New International Version*, (Grand Rapids: Zondervon Publishing House, 1984), Genesis 1:27.

<sup>10</sup> Lynn White, "The Historical Roots of Our Ecological Crisis," *Science*, 1967, 155, pp. 1203-1207, doi: 10.1126/science.155.3767.1203.

<sup>11</sup> There are also counter currents, expressions within the Abrahamic traditions that are not so anthropocentric or problematic from an ecological perspective. White offers the theology and practices of St. Francis of Assisi as an important example of an "alternative Christian view." For a broader analysis on the opportunities within religious traditions to deemphasize anthropocentrism, see Robert F. Young, "The biophilic city and the quest for paradise," *Smart and Sustainable Built Environment*, 2016, 1, pp. 1-22, doi: 10.1108/SASBE-07-2015-0016.

celebrate these vital relationships, generally speaking. Certainly, industrial production practices of food and clothing do not.

It is worth noting that there are exceptions and counter currents to the general thrust of anthropocentrism in society. Celebration of the wonder of photosynthesis and our dependence on plants is sometimes present in our cities' gardens and wildlife occasionally appreciated and respected in some city parks<sup>12</sup>. In rural communities, there are people who revere the land and its creatures and respect humanity's dependence on them as well. The National Park system in the United States is an example of the institutionalization of protecting living creatures and systems for their own sake—as long as people are allowed to be present to enjoy it—but, on the other hand, the existence of the park system carries the implication that outside of those parks, living creatures and systems are not safe, not entitled to their habitats by the very fact of their existence<sup>13</sup>.

The world's economies, many of them following in the footsteps of the US economy, are responsible for the habitat destruction, the spread of invasive species, the pollution, the over-harvesting, and the greenhouse gas emissions that are so harmful to the planet's living creatures and ecosystems. Yet, the destruction resultant of our economic activities is not sufficiently addressed because of the prevalence of anthropocentrism, because many people believe that humanity is entitled to do to the planet and its other inhabitants whatever we choose to do. Meanwhile, those of us who would like to stop the destruction are faced with the overwhelming challenge of reconstituting the prevailing (destructive) processes of our economy, a difficult feat made

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<sup>12</sup> This tradition within urbanism was emphasized and enhanced by Patrick Geddes, a founding visionary of the urban planning field, who, in his farewell lecture at Dundee University, extolled “by leaves we live.” See Amelia Defries, *The Interpreter Geddes: The Man and His Gospel*, New York: Boni & Liveright, 1928.

<sup>13</sup> “National Park Service History,” National Park Service, accessed on August 21<sup>st</sup>, 2016, <https://www.nps.gov/aboutus/history.htm>.

more difficult by the fact that the economy itself perpetuates anthropocentrism in the minds of each generation.

The prevailing material economic processes of our economy—the ways we produce goods and get them to people—are destructive. They are also preserved and protected by laws.

State and federal laws permit pollution, habitat destruction, greenhouse gas emissions, and in some cases the spread of exotic invasive species and overharvesting of wild animals<sup>14</sup>. Laws protect the production processes that are so damaging to natural systems and determine how our cities are designed and built. When less destructive, non-destructive, or even restorative alternatives exist, it is difficult for them to compete in the market and nearly impossible for them to have an impact on mainstream practices to the point of significantly reducing the destructive nature of our economy, without first changing the laws. It was, after all, the eventual effect that *The Silent Spring* had on US federal laws including the Clean Air and Clean Water Acts that solidified that book's historical importance<sup>15</sup>.

For the most part, by design, our federal and state environmental laws permit harmful activities and, just as important, evaluate the degree of permitted harm by anthropocentric standards. A stream is allowed to be polluted as long as it is still clean enough, by government standards, for humans to use recreationally. Rivers can be damned with little care for the impact on other living creatures or systems if, according to the government, the benefits to humans outweigh the costs<sup>16</sup>.

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<sup>14</sup> Community Environmental Legal Defense Fund, *On Community Civil Disobedience in the Name of Sustainability*, (Oakland: PM Press, 2015).

<sup>15</sup> Grisold, "How 'Silent Spring' Ignited the Environmental Movement."

<sup>16</sup> "Guidelines for Preparing Economic Analyses," United States Environmental Protection Agency, accessed on September 15<sup>th</sup>, 2016, <https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses>.

The Endangered Species Act (ESA) is an important partial exception to the general anthropocentrism of US environmental law, even if it is only a partial exception. It is unlike other environmental laws because it recognizes that species need habitats, so if the law is to protect species then it must also protect habitat. As a result, it has been successfully used in some cases to protect ecosystems that would otherwise likely be destroyed. At the same time, it is similar to other environmental laws in that its stated purpose is to protect a feature of the environment, in this case species near extinction and by extension their habitats, for their use value to “our Nation and its *people*”. Although the law states that it is intended to “protect the esthetic, ecological, educational, recreational, and scientific value” of species, it does not require that that value be demonstrated when invoking the law; it recognizes the potential value of any living animal or plant, even if we do not yet know that value. Still, the ESA only protects plants and animals from extinction, not from gross harm or decimation, which are absolutely allowed under US and state laws.

In short, the anthropocentrism in US law is expressed in the fact that neither species nor ecosystems have rights in our legal system. They are property owned by individuals, corporations, or by the State<sup>17</sup>.

Rights of Nature laws, discussed in Chapter 2, address anthropocentrism in our legal system and in doing so provide an opportunity to decrease the effects of anthropocentrism in our economy and potentially, to diminish its cultural prevalence in the US and elsewhere.

This report examines how individuals, each of whom sees the world through an anthropocentric lens in different ways and to varying degrees, react to Rights of Nature,

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<sup>17</sup> Christopher D. Stone, *Should Trees Have Standing?*, New York: Oxford University Press, 2010, 5-7.

both as a concept and as public policy. The observations in this report can be used to communicate more effectively about Rights of Nature to different audiences and, potentially, to assess the challenges and sticking points to both building support for Rights of Nature and applying effectively towards the end of undoing anthropocentrism in our law and culture.

Chapter 3 discusses Santa Monica's Rights of Nature law specifically, as it is the specific focus of this study.

Chapter 4 reviews the concept of "environmental discourses" and the various discourses identified by John Dryzek in book *Politics of the Earth*. These discourses are used in subsequent chapters for the analysis of this study.

Chapter 5 describes the methods used in this study.

Chapter 6 conveys the results of the study, supplemented with some analysis and interpretation.

Chapter 7 Draws final observations from the study and identifies questions for further consideration and research.

## Chapter 2: Rights of Nature History and Background

### SHOULD TREES HAVE STANDING?

In the Western legal traditions, the idea of recognizing other species or ecosystems as having rights was first proposed by Christopher Stone in his 1972 essay *Should Trees Have Standing?*, which was published as a book that same year<sup>18</sup>. As Stone explains in a 2010 edition of the book, the idea came to him unexpectedly during a property law lecture he was giving to a class of law students. While illustrating the evolution of legal systems over time, he pointed to the fact that in property law the answers to certain questions—what can be owned, who is capable of ownership, and the powers and privileges conveyed by ownership—have all changed significantly over time with profound effects in society. Looking back into the British legal tradition from which US law was borne, and in some cases US law itself, one finds, for example, that black people were once ownable; unmarried women were incapable of ownership; and ownership did include a power to deny the State’s prerogative to search property without a warrant<sup>19</sup>. Stone pointed out that each change in these basic parameters of property law represented a shift in legal consciousness and were accompanied by—both causing and caused by—a shift in the consciousness of the society at large, the way people understood themselves, their society, and the world. At this point in the lecture, Stone asked his class, “What would a radically different law-driven consciousness look like?” He quickly answered his own question, “One in which nature had rights...Yes, rivers, lakes...trees...animals...How would such a posture in law affect a community’s view of itself?”<sup>20</sup>.

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<sup>18</sup> Stone, *Trees*.

<sup>19</sup> *Ibid.*, xi.

<sup>20</sup> *Ibid.*

The uproar that this idea created in his class motivated Stone to explore the idea further through an essay to “demonstrate that, whatever other criticisms might be leveled at the idea of Nature having legal rights, it was not incoherent”<sup>21</sup>.

He quickly looked for a pending case for which the notion of nature having rights might make a substantive difference, to give his idea and essay relevance. The case he found, *Sierra Club v. Hickel*, later renamed *Sierra Club v. Morton* after a new Secretary of the Interior was installed, was about the future of Mineral King, a wilderness area under the care of the U.S. Forest Service, who had granted a permit to Walt Disney Enterprises, Inc. to build a resort there. The Sierra Club had sued and won an injunction to protect the area’s aesthetic and ecological integrity but the Ninth Circuit of the Federal Court of Appeals reversed the decision before reaching the merits of the case, finding that the Sierra Club did not have standing to bring the suit, as they had not argued that they would suffer adverse affects from the development. The US Supreme Court had decided to hear the case and, although there wouldn’t be enough time for Stone to publish an essay before the case was argued at the highest court, there would be enough time to get an advanced manuscript to Justice William O. Douglas before the case was decided, due to the coincidental fact that Justice Douglas was scheduled to write a guest preface to the *Southern California Law Review* a few months later. He raced to finish the article and get it to the journal which then forwarded it to Justice Douglas.

In the introduction to *Should Trees Have Standing?*, Stone illustrates with historical evidence that, gradually over the centuries and not without occasional reversals, the law has expanded the category of rights-bearing entities and that these expansions often precede shifts in the society’s widely-held beliefs about what or who *should* be

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<sup>21</sup> Ibid., xii.

recognized as rights-bearing. As noted above, there were times when many classes of human beings (almost all human beings that were not propertied white men), corporate entities, and governmental institutions, were not recognized as having rights in law. Prior to each expansion (and sometimes after), the idea seems absurd.

The fact is, each time there is a movement to confer rights onto some new “entity,” the proposal is bound to sound odd or frightening or laughable. This is partly because until the rightless thing receives its rights, we cannot see it as anything but a *thing* for the use of “us”—those who are holding rights at the time...There is something of a seamless web involved: there will be resistance to giving the thing “rights” until it can be seen and valued for itself; yet, it is hard to see it and value it for itself until we can bring ourselves to give it “rights”—which is almost inevitably going to sound inconceivable to a large group of people.<sup>22</sup>

Stone goes on to explain and elaborate what it means to have rights in our legal system. He identifies three important criteria to having rights under the law. First, an entity with rights is able to bring a lawsuit to enforce those rights. (When necessary, this is done through a guardian or trustee acting in the name of the rights-bearer). In the case of the Mineral King Valley, this would mean that a guardian of the valley could bring suit, in the name of the valley itself, to protect whatever rights valleys were recognized as having. It would not be necessary for a group like the Sierra Club to explain why it had standing in the case because the valley itself would be the plaintiff.

Second, injury and damages assessed in the case would be those of the rights-bearing entity bringing the suit. The pollution of a plaintiff river, for instance, would be assessed and considered regardless of the associated impacts felt by any human being, or a complete lack of thereof.

Third, judgment would be for the benefit of the rights-bearing entities. In the case of rights-bearing natural non-human entities like ecosystems or non-human species,

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<sup>22</sup> Ibid., 3.

damages would be entrusted to a guardian with fiduciary responsibility to dedicate any money awarded in the case to the restoration and protection of the natural entity.

Stone summarizes these three criteria:

[For] a thing to count judicially—to have a legally recognized worth and dignity in its own right, and not merely to serve as a means to benefit “us” (whoever the contemporary groups of rights-holders may be) [three criteria must be met]. They are, first, that the thing can institute legal actions at its behest; second that in determining the granting of legal relief, the court must take injury to it in account; and, third, that relief must run to the benefit of it.<sup>23</sup>

The Supreme Court decided against the Sierra Club in *The Sierra Club v. Morton*, finding that the Sierra Club did not have sufficient standing to bring the case. Justice Douglas, however, wrote a dissent endorsing the legal theories and arguments Stone made in *Trees*. Justice Douglas wrote:

The critical question of ‘standing’ would be simplified and also put neatly in focus if we...allowed environmental issues to be litigated...in the name of the inanimate object about to be despoiled, defaced, or invaded... Contemporary public concern for protecting nature’s ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation...This suit would therefore be more properly labeled as *Mineral King v. Morton*.<sup>24</sup>

## **THE ONSET OF RIGHTS OF NATURE IN LAW IN THE US**

A second edition of *Should Trees Have Standing?* was published in 1996, on the occasion of the essay’s 25<sup>th</sup> anniversary. It remained an interesting subject of conversation for those interested in creative legal approaches to environmental protection, but it was not pursued in law in any significant way.

In 1997, a pro-bono environmental law firm in Pennsylvania, the Community Environmental Legal Defense Fund (CELDF), then in its third year, observed that no

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<sup>23</sup> *Ibid.*, 14.

<sup>24</sup> *Ibid.*, xiv.

matter how many cases they won, the communities that hired them almost always ended up losing. Their clients tended to be grass-roots groups of rural citizens seeking to keep an unwanted polluting operation—a factory farm, a quarry, a toxic waste incinerator, or a landfill, for example—from coming to their town. The attorneys at CELDF, realizing that these are all legal, permitted land uses, did what they were trained to do: fight the would-be polluters in the permitting process. They would identify the parts of the permit application that were inadequately executed and, quite often, they would win; permits were frequently overturned. Then, months later, the would-be polluters tended to return, this time with an adequately executed permit application. CELDF would have to explain to their clients that there is nothing left that they can do to keep these land uses from their communities. After all, they are legal, permitted uses, and these operators have permits from the state.<sup>25</sup>

The attorneys of CELDF observed that, although they had created their firm to

protect and preserve this planet and communities that depend on the planet to survive...what we were really doing was working for the corporations, making their job a little easier in helping to administer an environmental regulatory system, which we came to understand after 1997 was nothing but an energy sink. An energy sink of resources and of time because when you regulate something you automatically allow it to come in...In essence we've given up our sovereign right to veto or determine what our community is going to look like in 40, 50, 60 years, and we've settled for a right to regulate.<sup>26</sup>

Instead, CELDF began to work with municipal governments in rural Pennsylvania that wanted to avert in-coming factory hog farms. The state had already passed a law that preempted municipalities' prerogative to regulate hog waste and other pollution coming from the farms, so CELDF wrote ordinances that banned corporate farming. As a result,

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<sup>25</sup> Thomas Linzey, "Challenging Corporations" (Public lecture, February 10, 2005). Accessed August 28<sup>th</sup>, 2016, <https://www.youtube.com/watch?v=HowKoNmODNY>.

<sup>26</sup> Ibid.

the municipalities were sued by the factory farming corporations, arguing that municipalities had no authority to prohibit corporate farming because such a ban amounted to a violation of the 14<sup>th</sup> Amendment of the US Constitution’s promise of equality under the law—that as legal “persons”, the corporations had all the rights that humans had to own and operate farms. In short, the corporations’ rights superseded those of the municipalities or the human beings that acted through their elected municipal governments. Although, under existing law the corporations were correct, the attorneys at CELDF were energized by the fact that more fundamental conflicts, between the rights of communities and those of corporations, were beginning to surface in their work and that there were municipalities in Pennsylvania willing to take on the fundamental issues.<sup>27</sup> Thus began CELDF’s work in rights-based organizing and law making.

Communities continued to contact CELDF, wanting to stop existing or in-coming environmentally destructive corporate practices. In conversation with the elected officials and other leaders within these communities, CELDF continued to develop its analysis and approach to environmental protection. In 2006, leaders in one such community, Tamaqua Borough in rural Pennsylvania, were very concerned about the land application of sewage sludge from urban and industrial areas in their rural community. In the 1990’s, shortly after exposure to land-applied sewage sludge, two adolescent boys had died from staph infections—a recognized risk of such exposure<sup>28</sup>. When the community leaders in Tamaqua contacted CELDF, the CELDF attorneys—Thomas Linzey and Mari Margil—explained CELDF’s rights-based approach, that Tamaqua Borough would have to adopt an ordinance that, in effect, stripped corporations of their legal personhood within the

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<sup>27</sup> Ibid.

<sup>28</sup> Tamaqua Borough, Pennsylvania, Ordinance No. 612 of 2006, available at <http://www.harmonywithnatureun.org/content/documents/205Ordinance-Tamaqua--.pdf>

Borough and denied the State of Pennsylvania its prerogative to preempt or otherwise overrule the Township's ability to protect its residents' health and safety.<sup>29</sup>

The community leaders questioned CELDF about why existing environmental laws do not adequately protect the environment or communities from environmental harm. CELDF explained that existing laws recognize the environment only as property to be used by humans. When the US Constitution and the first state constitutions were written, those writing them felt an urgent need to “develop” the continent's vast undeveloped lands quickly so that the new country could participate on the world stage or, at least, defend itself from invasion. The constitutions were designed with this purpose in mind, recognizing land only as property. The nation's environmental laws, therefore, frame the environment as property, balancing the protection of the health of that property against the privileges recognized with ownership—including the privilege of property destruction by the owner. The leaders of Tamaqua Borough asked CELDF to help them create an ordinance that would recognize the environment not as property, but as legal persons, just as it stripped such personhood from corporations. CELDF agreed and in 2006 Tamaqua Borough, Pennsylvania became the first place in the world to recognize rights of nature in law:

Section 7.6: It shall be unlawful for any corporation or its directors, officers, owners, or managers to interfere with the existence and flourishing of natural communities or ecosystems, or to cause damage to those natural communities and ecosystems. The Borough of Tamaqua, along with any resident of the Borough, shall have standing to seek declaratory, injunctive, and compensatory relief for damages caused to natural communities and ecosystems within the Borough, regardless of the relation of those natural communities and ecosystems to Borough residents or the Borough itself. Borough residents, natural communities, and ecosystems shall be considered to be "persons" for purposes of the

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<sup>29</sup> Mari Margil, “Who Speaks for the Trees?” presentation to Bioneers Conference, 2009. Accessed August 28<sup>th</sup> 2016, <https://www.youtube.com/watch?v=qxUHoo6bJvk>.

enforcement of the civil rights of those residents, natural communities, and ecosystems.<sup>30</sup>

Today, there are at least 27 municipalities and counties in eleven states (California, Maine, Maryland, New Hampshire, New Mexico, New York, Ohio, Pennsylvania, Vermont, Virginia, Wisconsin) that have worked with CELDF to adopt laws recognizing the rights of nature and authorizing local residents to bring suit in the name of local ecosystems<sup>31-32-33</sup>. The largest of these communities is Pittsburgh, Pennsylvania<sup>34</sup>. There are nearly two hundred communities in the US that have worked with CELDF to adopt local bills of rights that strip corporate personhood, ban practices that are permitted by the state to protect locally recognized rights, and deny the State and Federal governments their abilities to override the ordinance, but that stop short of recognizing the rights of nature itself<sup>35</sup>.

Of course, local laws like these are not constitutionally sound under either State or Federal Constitutions. CELDF and the communities they work with call it “community civil disobedience” to adopt laws like these, which affirm the rights of nature and the rights of local communities to use the municipal apparatus to recognize and protect additional rights—not recognized by the Federal or State Constitutions. They see it as a necessary step towards eventually driving these changes into state constitutions and then, finally, in to the US Constitution (citation “On Community Civil Disobedience in the Name of Sustainability”). In several states—Colorado, New Hampshire, New Mexico,

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<sup>30</sup> Tamaqua Borough, Pennsylvania, Ordinance No. 612 of 2006.

<sup>31</sup> “Rights of Nature: Timeline,” Community Environmental Legal Defense Fund, accessed August 28<sup>th</sup>, 2016, <http://celdf.org/rights/rights-of-nature/rights-nature-timeline/>

<sup>32</sup> “Earth Community,” Earth Law Center, accessed August 28<sup>th</sup> 2016, <http://www.earthlawcenter.org/earth-community/>

<sup>33</sup> Table 1 is a list of communities known to have Rights of Nature laws in the United States.

<sup>34</sup> Pittsburgh, Pennsylvania, Municipal Code Chapter 618.07 People’s Right to Self Government, accessed August 28<sup>th</sup>, 2016, [http://www.foodandwaterwatch.org/sites/default/files/frack\\_actions\\_pittsburghpa.pdf](http://www.foodandwaterwatch.org/sites/default/files/frack_actions_pittsburghpa.pdf).

<sup>35</sup> “Community Rights,” Community Environmental Legal Defense Fund, accessed August 28<sup>th</sup>, 2016, <http://celdf.org/community-rights/>.

Ohio, Oregon, Pennsylvania, and Washington—statewide networks have begun to form, proposing constitutional amendments that would allow local communities to recognize and protect rights not recognized by the states, including the rights of nature. In New Hampshire in 2015, for instance, at the request of the New Hampshire Community Rights Network, Republican State Representative Susan Emerson introduced a constitutional amendment to the legislature:

All government of right originates from the people, is founded in their consent, and instituted for the general good; the people have the right and the duty to reform governments when those governments manifestly endanger public liberty; and sustainable environmental and economic development can be achieved only when the people affected by governing decisions are the ones who make them; therefore, the people of New Hampshire have an inherent and inalienable right of local, community self-government in each county, municipality, city and town.

That right shall include the power of the people, and of their governments, to enact local laws that protect health, safety, and welfare by recognizing or establishing rights of natural persons, their local communities, and nature; and by securing those rights using prohibitions and other means deemed necessary by the community, including measures to establish, define, alter, or eliminate competing rights, powers, privileges, immunities, or duties of corporations and other business entities operating, or seeking to operate, in the community.

Local laws adopted pursuant to this article shall not be subject to preemption or nullification by international law, federal law, or state law if such local laws do not restrict fundamental rights of natural persons, their local communities, or nature secured by local, state, or federal constitutions, or by international law; and if such local laws do not weaken protections for natural persons, their local communities, or nature provided by state, federal, or international law.<sup>36</sup>

In some states like Colorado, where communities are using local rights-based law making to fight rapidly increasing fracking activity, statewide Community Rights

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<sup>36</sup> “State Constitutional Change,” New Hampshire Community Rights Network, accessed August 28<sup>th</sup>, 2016, <http://www.nhcommunityrights.org/state-constitutional-change.html>.

Networks are organizing to similarly amend state constitutions through the citizen initiative processes.<sup>37</sup>

California	Mendocino County Santa Monica
Maine	Newfield Shaleigh
Maryland	Mountain Lake Park
New Hampshire	Barnstead Nottingham
New Mexico	Las Vegas Mora County
New York	Wales
Ohio	Yellow Springs
Pennsylvania	Baldwin Blaine East Brunswick Forest Hills Licking Mahanoy Packer Pittsburgh State College Tamaqua West Homestead Wilksburg
Vermont	Norwich Strafford
Virginia	Halifax
Wisconsin	Ho-Chunk Nation

Table 1: U.S. communities known to have Rights of Nature laws.<sup>38</sup>

<sup>37</sup> “The Colorado Community Rights Amendment,” Coloradans for Community Rights, accessed August 28<sup>th</sup>, 2016, <http://www.coloradansforcommunityrights.org/ccr-amendment/>.

<sup>38</sup> “Earth Community,” Earth Law Center, accessed August 28<sup>th</sup> 2016, <http://www.earthlawcenter.org/earth-community/>.

### Chapter 3: Santa Monica's Rights of Nature Law

Santa Monica's Rights of Nature law is a provision within the city's Sustainability Rights Ordinance, or Sustainability Bill of Rights (SBR), adopted unanimously by City Council on April 9<sup>th</sup>, 2013.<sup>39</sup>

The initial idea for the ordinance was raised by Mark Gold in 2010. Mark was the the Chair of the Santa Monica Task Force on the Environment (TFE), an appointed panel of experts that gives policy advice to City Council. He had learned about CELDF's Community Rights and Rights of Nature approaches to environmental protection from Linda Sheehan, an accomplished environmental attorney in California who had recently decided to make Rights of Nature a focus of her work. They brought CELDF to Santa Monica for a training on rights-based environmental protections and CELDF's underlying political, legal, and historical analyses.<sup>40</sup>

Unlike every other community in the U.S. that has adopted Rights of Nature law, Santa Monica was not reacting to any specific incoming or existing environmentally destructive activity within the city. Rather, the motivation to explore Rights of Nature in Santa Monica was proactive, in keeping with a tradition of pioneering approaches to sustainability there. The TFE was formed in 1991, with Marc Gold as its Chair. In 1992, the TFE proposed the creation of the Santa Monica Sustainability Program to "address the [city's] piecemeal response to environmental issues".<sup>41</sup> The TFE and city staff developed the Sustainability Program together over 18 months and City Council adopted

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<sup>39</sup> Santa Monica, California, Municipal Code chapter 4.75 Sustainability Rights Ordinance, available at [http://www.smgov.net/departments/council/agendas/2013/20130409/s20130409\\_07A1.htm](http://www.smgov.net/departments/council/agendas/2013/20130409/s20130409_07A1.htm).

<sup>40</sup> Shannon Biggs, "Legalizing Sustainability? Santa Monica Recognizes Rights of Nature," *Alternet*, April 12, 2013, accessed August 28<sup>th</sup>, 2016 <http://www.alternet.org/speakeasy/tara-lohan/legalizing-sustainability-santa-monica-recognizes-rights-nature>.

<sup>41</sup> Dean Kubani, "Santa Monica Sustainability Plan: Measuring Progress Towards Sustainability," accessed September 12<sup>th</sup>, 2016 <http://www.sustainabilityindicators.org/about/Meetings/TorontoMeeting/Dean%20Kubani.pdf>.

it in 1994. The Sustainability Program, later renamed the Santa Monica Sustainability Plan, was among the earliest Sustainability Plans adopted by any city in the United States. In its efforts to meet the targets laid out in the plan and in the 2006 revision to the plan, the City of Santa Monica positioned itself at the cutting edge of municipal sustainability in several issue areas, from the use of alternative fuel in its vehicle fleet, to development of a storm water capture and treatment system that decreases urban runoff into the ocean and decreases municipal demand on drinkable water for irrigation.<sup>42</sup> The city also became a leader in the International Council for Local Environmental Initiatives.<sup>43</sup>

Recognizing that, despite these policy pursuits and the existing state and federal environmental laws, both the local and global environments were continuing to deteriorate, Gold and the TFE were motivated to try a new approach to environmental law within the city. After attending CELDF's training, the TFE worked with Sheehan to draft a Sustainability Bill of Rights ordinance that enumerates several rights that Santa Monica residents possess, and that track with principles laid out in the Sustainable City Plan: A right to sustainable water sources; sustainable energy; clean air water and soil; a sustainable food system; sustainable waste disposal systems; and a sustainable climate. To these, the ordinance adds the rights of "natural communities and ecosystems within the city of Santa Monica...to exist, persist, maintain themselves, and regenerate their own vital cycles, structures, functions, and evolutionary processes". To enforce these rights, each was accompanied by several policy directives the city was to pursue. Furthermore,

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<sup>42</sup> "Partner Spotlight: City of Santa Monica: An Interview with Dean Kubani, Manager, Office of Sustainability and the Environment," Water Take 1, accessed on September 12<sup>th</sup>, 2016 <http://www.watertake1.com/p/partner-spotlight-city-of-santa-monica-an-interview-with-dean-kubani-manager-office-of-sustainability-and-the-environment/>.

<sup>43</sup> Anonymous interview with Subject 5, May 30<sup>th</sup>, 2015.

like ordinances authored by CELDF, this original SBR stripped corporations of their personhood and directly rejected the legitimacy of constitutional doctrines and theories that are typically used to assert state supremacy over local governments in court, including the interstate commerce clause of the US Constitution and Dillon's Rule<sup>44</sup>. Before the ordinance went to Council, however, Marsha Moutrie, the City Attorney, led a significant rewrite of the ordinance, tempering some of its most controversial aspects.<sup>45</sup>

The rewritten SBR, which was finally adopted by Council in 2013, is exceptional relative to the other laws containing Rights of Nature provisions within the US in several ways. First, because it was not prompted by a specific environmentally destructive practice, it does not ban any activities to protect the rights enumerated within the ordinance. Second, as noted above, it does not explicitly reject any of the constitutional doctrines that are used to assert state and federal authority over municipalities. Third, Santa Monica's SBR is tied to the city's Sustainable City Plan, which was updated in 2014 to include Rights of Natural Communities and Ecosystems among its guiding principles. The SBR grounds the rights it enumerates in the principles of the Plan and requires the city to report its progress on achieving the Plan's goals on a biennial basis. Fourth, it lists specific ecosystems and components of the environment that are recognized as having rights. And fifth, the SBR is framed within the ordinance itself as an attempt to address anthropocentrism in existing legal structures:

WHEREAS, the inadequacy of [existing state and federal environmental laws] results, in part, from the underlying legal assumption that the natural world is "property", which may be used by its owners -- be they individuals, corporations, or other entities -- for their own, private, short-term economic benefit, generally with minimal regard for the health of the environment; and

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<sup>44</sup> A copy of this early draft of the Sustainability Bill of Rights ordinance, dated November 8<sup>th</sup>, 2011, was shared by Subject 3 for the purposes of this study.

<sup>45</sup> Biggs, "Legalizing Sustainability?".

WHEREAS, numerous specific examples show that this underlying assumption has proven destructive to the environment upon which all living things ultimately depend; and

WHEREAS, in response to the evils of treating the natural world as mere property, the world-wide, national and local environmental communities are urging governments to adopt a new paradigm based upon recognition that both individual human beings and natural communities or ecosystems have fundamental environmental rights which should be recognized by the law, that the health of the world's populations and ecosystems depends on the full protection of these rights, and that asserted corporate rights can no longer be allowed to take precedence over these rights to human and environmental health and well-being.<sup>46</sup>

The SBR ordinance goes on to say:

(b) Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City Of Santa Monica. To effectuate those rights on behalf of the environment, residents of the City may bring actions to protect these natural communities and ecosystems, defined as: groundwater aquifers, atmospheric systems, marine waters, and native species within the boundaries of the City.<sup>47</sup>

See the Appendix for the full Sustainability Bill of Rights Ordinance.

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<sup>46</sup> In keeping with the City of Santa Monica's standard practice, the "Whereas" statements quoted above are not included in the official Code of Ordinances, although they were included in the language adopted by City Council. They were accessed on September 12<sup>th</sup>, 2016, [http://www.smgov.net/departments/council/agendas/2013/20130409/s20130409\\_07A1.htm](http://www.smgov.net/departments/council/agendas/2013/20130409/s20130409_07A1.htm).

<sup>47</sup> Santa Monica, California, Municipal Code, 4.75.040.

## Chapter 4: Environmental Discourses

For the purposes of this report, the concept of “environmental discourse” is borrowed from John S. Dryzek’s book *The Politics of the Earth*<sup>48</sup>. Dryzek is a Centenary Professor in the Centre for Deliberative Democracy and Global Governance at the Institute for Governance and Policy Analysis at University of Canberra.

According to Dryzek,

A discourse is a shared way of apprehending the world. Embedded in language, it enables those who subscribe to it to interpret bits of information and put them together into coherent stories or accounts. Discourses construct meanings and relationships, helping define common sense and legitimate knowledge. Each discourse rests on assumptions, judgments, and contentions that provide the basic terms for analysis, debates, agreements, and disagreements.<sup>49</sup>

A discourse is a story that we (people) use to make sense of the world when communicating with one another and, often, when processing our own thoughts. The world is a place of overwhelming complexity and significant mystery; discourses provide a scaffolding for our ideas that give us some place to start and often resolve open questions. That is because, as Dryzk notes, they rest upon assumptions, judgments, and contentions. Although we are sometimes unaware of the discourses scaffolding our thoughts and the assumptions, judgments, and contentions underlying those discourses, they are perceptible through reflection and analysis.

Dryzek proposes four key analytical questions to assist in the identification of assumptions, judgments, and contentions, when analyzing a text for the discourses at work within it. These are:

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<sup>48</sup> John D. Dryzek, *Politics of the Earth* (Oxford: Oxford University Press, 2013).

<sup>49</sup> *Ibid.*, 9.

- What and who are the basic entities whose existence is recognized or constructed?
- What are the assumptions about natural relationships?
- What or who are the agents and what are their motives?
- What are the key metaphors and other rhetorical devices?

For Dryzek, an environmental discourse is one that helps us make sense of modern humanity's relationship to our environment, the other creatures in our environment, and to the planet itself. Based on his analysis of academic and policy documents of importance in the second half of the 20<sup>th</sup> century and the early years of the 21<sup>st</sup> century, Dryzek enumerates nine environmental discourses in use today.<sup>50</sup> These, he groups into four categories: *Limits and their Denial*, *Environmental Problem Solving*, the *Quest for Sustainability*, and *Green Radicalism*. The categories, titles, and summaries of each of the nine environmental discourses are as follows:

- *Limits and their Denial*
  - Limits, Boundaries, and Survival: Earth is a finite planet with a limited carrying capacity. We are headed towards that limit at an alarming rate and, if reached, the results for humans could be catastrophic.
  - The Promethian Response: Neither the earth nor human ingenuity, have limits. Whenever one resource appears to be running out, humans find a good substitute for it. It has always been that way and always will be.

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<sup>50</sup> As Dryzek states on page 11, his analysis emphasizes “Europe, North American, Australia, and the global arena: but occasionally [looks] to China, Japan, and developing countries”. It is clearly not comprehensive of all environmental discourses present on the planet, but it is sufficient for this report focused on Santa Monica, California with wider applicability in the United States.

- *Environmental Problem Solving*
  - Administrative Rationalism: Human activity generates problems in the environment and these problems can be solved. They are best solved by bureaucracies.
  - Democratic Pragmatism: Human activity generates problems in the environment and these problems can be solved. They are best solved through democratic decision making.
  - Economic Rationalism: Human activity generates problems in the environment and these problems can be solved. They are best solved by markets.
- *Quest for Sustainability:*
  - Sustainable Development: Economic growth, environmental integrity, social justice, and intergenerational equity can all be successfully pursued at once, locally and globally.
  - Ecological Modernization: Industrial capitalism does not need to be environmentally destructive. With new technologies it can be restructured to secure the environment without upsetting the economic power structure.
- *Green Radicalism:*
  - Green Consciousness: The way people think about one another and the world in which we live, and the ways we behave individually and with our neighbors, reflect our consciousnesses and are the keys to green change.

Once consciousness has changed, larger systems and structures will fall into place.

- Green Politics: Political, social, and economic systems must be changed before consciousness will progress.

Each of these environmental discourses is associated with a loose set of answers to Dryzek’s key analytical questions. The analytical questions, with a sample of answers to each question for each individual environmental discourse, are given in Tables 2, 3, 4, and 5.

<i>Limits and their Denial</i>		
<b>Key Analytical Questions</b>	<b>Limits, Boundaries, and Survival</b>	<b>The Promethean Response</b>
<b>What are the basic entities recognized or constructed?</b>	Finite stocks of resources; carrying capacity of ecosystems; planetary boundaries/safe operating space; population; elites	Nature as only brute matter; markets; prices; energy; technology; people
<b>What assumptions are made about natural relationships?</b>	Conflict; hierarchy and control	Hierarchy of humans over everything else; competition
<b>What or who are the agents and what are their motives?</b>	Elites (older expressions of discourse); greater variety (newer expressions of discourse)	Everyone; motivated by material self-interest
<b>What key metaphors and other rhetorical devices are frequently or powerfully used?</b>	Overshoot and collapse; commons; Spaceship Earth; Lily pond; cancer; virus; images of doom and redemption	Mechanistic; trends

Table 2: Limits and their Denial: Key Analytical Questions and Example Answers. From Dryzek, 2013.

Key Analytical Questions	<i>Environmental Problem Solving</i>		
	Administrative Rationalism	Democratic Pragmatism	Economic Rationalism
<b>What are the basic entities recognized or constructed?</b>	Liberal capitalism; administrative state; experts; managers	Liberal capitalism; citizens	<i>Homo economicus</i> ; markets; prices; property; governments (not citizens)
<b>What assumptions are made about natural relationships?</b>	Nature subordinate to human problem solving; people subordinate to state; experts and managers control state	Equality among citizens; interactive political relationships, mixing competition and cooperation	Competition; hierarchy based on expertise; subordination of nature
<b>What or who are the agents and what are their motives?</b>	Experts and managers; motivated by public interest, defined in unitary terms	Many different agents but citizens central; motivation a mix of material self-interest and multiple conceptions of public interest	<i>Homo economicus</i> ; self interested; some government officials must be motivated by public interest
<b>What key metaphors and other rhetorical devices are frequently or powerfully used?</b>	The administrative mind; navigating and steering	Public policy as a resultant of forces; policy like scientific experimentation; thermostat; network	Mechanistic; stigmatizing regulation as "command and control"; connection with freedom; horror stories

Table 3: Environmental Problem Solving: Key Analytical Questions and Example Answers. From Dryzek, 2013.

<i>Quest for Sustainability</i>		
Key Analytical Questions	Sustainable Development	Ecological Modernization
<b>What are the basic entities recognized or constructed?</b>	Nested and networked social and ecological systems; capitalist economy; ambiguity concerning limits	Complex systems; nature as waste treatment plant; capitalist economy; the state
<b>What assumptions are made about natural relationships?</b>	Cooperation; nature subordinate; economic growth, environmental protection, distributive justice, and long-term sustainability go together	Partnership encompassing government, business, environmentalists, and scientists; subordination of nature; environmental protection and economic prosperity go together
<b>What or who are the agents and what are their motives?</b>	Many agents at different levels, transnational and local as well as the state; motivated by the public good	Partners; motivated by public good
<b>What key metaphors and other rhetorical devices are frequently or powerfully used?</b>	Organic growth; nature as natural capital; connection to progress; reassurance	Tidy household; connection to progress; reassurance

Table 4: Quest for Sustainability: Key Analytical Questions and Example Answers. From Dryzek, 2013.

<i>Green Radicalism</i>		
Key Analytical Questions	Green Consciousness	Green Politics
<b>What are the basic entities recognized or constructed?</b>	Global limits; nature; unnatural practices; ideas	Global limits; nature as complex ecosystems; humans with broad capacities; social, economic, and political structures
<b>What assumptions are made about natural relationships?</b>	Natural relationships between humans and nature have been violated; equality across people and nature	Equality among people; complex interconnections between humans and nature
<b>What or who are the agents and what are their motives?</b>	Human subjects, some more ecologically aware than others; agency can exist in nature too	Many individual and collective actors, multidimensional motivation; agency in nature downplayed though not necessarily denied
<b>What key metaphors and other rhetorical devices are frequently or powerfully used?</b>	Wide range of biological and organic metaphors; passion; appeals to emotions, intuitions	Organic metaphors; appeals to social learning; link to progress

Table 5: Green Radicalism: Key Analytical Questions and Example Answers. From Dryzek, 2013.

## **Chapter 5: Methods**

The purpose of this study is to explore how individuals who make use of various environmental discourses react to Rights of Nature as a concept and as public policy for their city.

I selected Santa Monica, California as the site of this study for several reasons. As discussed earlier, in the United States there are approximately 30 local governments, municipalities and counties, that have adopted some form of Rights of Nature into local law. Of these, Santa Monica stands out for its history of progressive policies for sustainability and because its Rights of Nature law, contained within its Sustainability Bill of Rights ordinance, is framed within the ordinance as an attempt to address the misguided “legal assumption that the natural world is ‘property’” (citation). Because the Sustainability Bill of Rights and its Rights of Nature provisions were policy ideas that moved from the Task Force on the Environment, through city staff and eventually to City Council, I expected to find several different kinds of people in Santa Monica that would be familiar enough with Rights of Nature to be interviewed about it.

Before arriving in Santa Monica, I contacted three individuals who agreed to be interviewed for this study. One was a member of the Task Force for the Environment; one, city staff in the Office of Sustainability; and one an attorney in the City Attorney’s Office. These were all people I contacted because I thought they would be knowledgeable about Santa Monica’s Rights of Nature law based on their official positions in the City. Each of these subjects confirmed that they had some kind of professional connection to Rights of Nature and that they were willing to be interviewed. Through these subjects, I

also acquired a few additional names and email addresses for potential subjects, but I was not able to arrange for interviews with those people before I traveled to Santa Monica.

During the first interviews in Santa Monica, my subjects made additional suggestions of people I should interview. They also helped me get in touch with those people.

In total, I interviewed six subjects while in Santa Monica between May 26<sup>th</sup> and June 3<sup>rd</sup>, 2015. The following is a list of the interview subjects with brief descriptions and the date of our interview:

- Subject 1: A pastor who was involved in grassroots activism connected to the Sustainability Bill of Rights; interviewed on May 27<sup>th</sup>, 2015
- Subject 2: A member of the Task Force for the Environment; interviewed on May 29<sup>th</sup>, 2015
- Subject 3: A second member of the Task Force for the Environment; interviewed on May 29<sup>th</sup>, 2015
- Subject 4: Staff from the Office of the City Attorney; interviewed on May 30<sup>th</sup>, 2015
- Subject 5: City Staff at the Office of Sustainability; interviewed on May 30<sup>th</sup>, 2015
- Subject 6: A former member of City Council who was on Council during the adoption of the Sustainability Bill of Rights; interviewed on June 2<sup>nd</sup>, 2015

Each interview lasted between 45 and 90 minutes and was digitally recorded. The interviews were semi-structured, with a few questions that were consistently put to each interview subject. I began each interview by asking the subject to describe Santa Monica's Rights of Nature law, to the best of their understanding. I also asked subjects to describe their involvement leading up to and during the time of Santa Monica's adoption of the Sustainability Bill of Rights. I asked subjects how they felt about Rights of Nature at the time of adoption and what they think of it now. I asked them how they would know if the Sustainability Bill of Rights and its Rights of Nature provisions were successful and why we need environmental protections in the first place. Besides these topics, which were covered in each interview, the topics covered in the interviews ranged according to the interests of the subject. I tried to give the subjects opportunities to speak authentically about their feelings and thoughts concerning the environment, environmental problems, modern humanity's relationship to the environment, and their own personal stories in the context of these larger issues.

After each interview, I took notes about what had occurred, what topics covered in the interview seemed to interest the subjects most, and what questions had prompted the most interesting responses.

After leaving Santa Monica, I transcribed each interview and began an iterative process of discourse analysis, using the transcriptions as text.

Reading through the text the first time, I simply highlighted sections that were interesting to me either because they seemed revelatory of an environmental discourse being used by the subject; because they described the subjects thoughts and feelings

about Rights of Nature; or because they explained something about the history of Rights of Nature and the Sustainability Bill of Rights in Santa Monica. On a second pass through the text, I took note specifically of passages where subjects were discussing their ideas about humanity's relationship with nature. On a third pass, I noted where the subjects revealed their thinking as it pertains to Dryzek's four key analytical questions. Some interview subjects spoke in terms that were more easily analyzed using Dryzek's key questions than others, so opening the analysis to both longer and shorter units of meaning was helpful. On the fourth pass through the text, I focused specifically on those places where the subjects revealed their thoughts and feelings about Santa Monica's Rights of Nature law and how they would evaluate the success of the law.

Finally, I read through the text, excerpting portions that spoke most directly to my study question: How do the environmental discourses used by these subjects relate to their thoughts and feelings about Santa Monica's Rights of Nature law. I labeled the excerpts from the text with the most closely matching discourse titles. In some cases, as will be discussed in Chapter 6, subjects drew on more than one environmental discourse to explain their thoughts about environmental issues, sometimes drawing on multiple discourses within the same passage. In these cases, I noted the use of each environmental discourse.

For each subject, I separated out her references to Rights of Nature, listed them, and summarized what she had said. This allowed me to study what each subject had said about Rights of Nature in relationship to the environmental discourses that she used to scaffold her thinking about the variety of topics we covered in our interviews.

## Chapter 6: Results and Analysis

### INTERVIEW SUBJECT 1

Interview Subject 1 is the pastor at a church in Santa Monica. She described her involvement with the Sustainability Bill of Rights as follows:

[An activist involved] told me there was a meeting about it, so I went to the meeting at a library and learned about it there. I probably wasn't as involved as I should have been, but I learned about it and then I preached about it in my church...I spoke more about the connection part of it, but [an activist who presented at the church] could tell them more about what it actually says and what it means and when we're going to go to City Council and the process... She did that before I preached on it. And I guess the other way I was involved was sending an email to the church people saying when the City Council was meeting about it and then getting people to show up.

Her understanding of the Sustainability Bill of Rights ordinance and its Rights of Nature provisions, as she expressed it, was as much a statement about her own understanding of humanity's place in the environment as it was a description of the law itself:

[The Sustainability Bill of Rights] is about the fact that the earth and everything on it has rights just like humans do. And since I'm a theologian, clergy, I think of it more that way. That the earth is sacred just like people are sacred so we need to treat the earth with respect. It's a living organism and we're connected to it in ways that we don't have any idea. And so we are not supposed to subdue it; we're supposed to be nurturing. It nurtures us and we're supposed to nurture it—back and forth. I'm not saying the ordinance how it is written. That's how it interprets into my being. So I know it doesn't say exactly that, but that's what it means to me.

It is fairly clear from the above quote, especially “It nurtures us and we're supposed to nurture it—back and forth,” that Subject 1 does not make very much use of a discourse in the *Environmental Problem Solving* or the *Quest for Sustainability* categories. The discourses in the *Environmental Problem Solving* category all assume

that environmental problems are an inevitable byproduct of our collective economic activities and that we can resolve them or mitigate their impacts on us either through bureaucratic expertise, democratic decision-making, or market forces. Each assumes that the natural relationship between humans and the earth is one of mutual disturbance, not the mutual nurturing described by Subject 1.

The two discourses in the *Quest for Sustainability* category each assume that nature is subordinate to humans, not “sacred just like people are sacred,” as Subject 1 says. Both of these discourses—Sustainable Development and Ecological Modernization—take an instrumental view of nature, nature as a resource generation system that can be sustainably managed. As Subject 1 told me, from her perspective, “creation, Mother Nature, is a part of our being, who we are,” not a resource generation system external to us.

Subject 1 also does not appear to be making use of the discourses in the *Limits and their Denial* category. The Promethean Response discourse has humanity’s inherent dominance over nature at its center, in contrast to the relationship of mutual nurturing described by Subject 1. The Limits, Boundaries, and Survival discourse tends to regard humanity like a cancer to earth’s living system, in contrast to the sacredness of humanity that Subject 1, a pastor, identifies as part of her belief system.

The discourses in the remaining category described by Dryzek, the *Green Radicalism* category are more in tune with the stated beliefs of Subject 1. According to Dryzek (2013, 185) both discourses in this category, Green Consciousness and Green Politics, allow for a variety of beliefs regarding humanity’s relationship to nature, from

the spiritual to the post-modern, to the scientific. Both of these discourses allow for a wide range of imagination and departure from the discourses that most effectively scaffold current economic, political, and cultural systems. Subject 1's depiction of humanity's relationship with nature as one of mutual nourishment and sacredness is not at all contrary to the *Green Radicalism* discourses.

Where Green Consciousness and Green Politics differ is in their theories of change. Green Consciousness contends that when people think and behave differently, our major institutions and systems will change; Green Politics contends that our institutions and systems must transform first, if people's behavior and thinking are to change. As Dryzek acknowledges (2013, 185), many people hold a theory of change that straddles the line between Green Politics and Green Consciousness; discourses are, after all, theoretical archetypes of ideas that people use fluidly and often unknowingly.

In our interview, Subject 1 suggested a theory of change that draws on both of the *Green Radicalism* discourses. Her work as a pastor, as she describes it, is to engage in both consciousness development and structural change in society simultaneously with her congregation. Although she agrees with the ideas reflected in Santa Monica's Rights of Nature law, however, she has not leveraged the law in her work because she does not know what the next step would be:

I always talk about connection [between people and with the earth]. So always in my sermon, it's in there... I wouldn't talk about the ordinance—well I just haven't thought about it for a while...I don't know if there's a plan for going forward and if there's not something to do, then the only way to bring it up is in a general concept. The other things I talk about are things we're actually working on, there's a general action plan.

Although Subject 1's work is, in part, about helping people transcend anthropocentrism, she does not make use of the Rights of Nature law in Santa Monica to help with that work because she depends on practical subjects to talk about and practical, achievable goals to work towards with her constituents. At least thus far, these practical applications have not followed the adoption of the Rights of Nature law in Santa Monica.

## **INTERVIEW SUBJECT 2**

Interview Subject 2 is a long-time environmental policy professional with more than 25 years of experience in Santa Monica. He serves on the Task Force on the Environment. According to him, he and others had

Been very successful in the clean water and coastal resource protection arena. And yet, at the same time, we had...come to a realization that even though we had won as many or more battles as anyone else in California on these issues, that we weren't really making as big a difference as we needed to.

For decades, he had worked in the realm of *Environmental Problem Solving*, believing that bureaucratic experts like him and a strong democratic decision making system could adequately address environmental problems in his state and elsewhere. Overtime, however, he began to see that the traditional policy approaches to environmental protection were not sufficiently addressing the issues. Part of the problem, he believed, was that the public was not sufficiently engaged:

To try and get the public really engaged on Total Maximum Daily Loads and understanding what that is, I was realizing that it just wasn't working. Somehow, somewhere along the way, we had lost our way from the standpoint of what really resonated with the general public on the environment, which is basic rights, in essence. We have the right to clean water and ample water supply. We have the right to clean air that isn't going to make us sick. We have a right to a climate that

isn't going to put our health at risk. We have a right to enjoy thriving nature. All those other various simple concepts I felt like we had completely lost our path on.

Subject 2 saw a rights-based approach to environmental protection as potentially more useful for engaging the public. This may represent a transition for Subject 2 from making primary use of an Administrative Rationalism discourse to an increasing use of Democratic Pragmatism, which, according to Dryzek (2013, 118), conceives of “policy like scientific experimentation.” Both of these discourses are in the *Environmental Problem Solving* category.

Subject 2 reports that the idea of Rights of Nature was “immediately appealing” when he learned about it, not necessarily because it reflected a deeper truth about humanity's relationship to nature, but because he believed it may be more effective than current policy approaches, partly because of its potential to reach the public. He believed that the potential appeal and general approach that Rights of Nature takes to environmental protection made it worth a try:

[In] my experience in trying to protect natural resources, there are very limited tools... [Rights of Nature] is a much broader approach to do it, and much simpler and something the public would understand. I'd been struggling with this issue about the complexity of environmental law and regulation for the general public for quite some time. I'd been involved in the regulatory field since 1986. I saw the last reauthorizations to the Clean Water Act and Clean Air Act in 1990. I saw rule making that occurred...But for the protection of nature your tools are just so limited...My feeling was this is a broader tool that was critical and when you're trying to protect an aquatic resource with an impairment designation and then trying to come up with a Total Maximum Daily Load to limit a specific pollutant which may or may not be the cause of the impairment, it's tough. So to me this was another more broad scale comprehensive approach to try to protect natural resources.

For Subject 2, Rights of Nature law was potentially a more effective policy than existing environmental policies and was therefore worth a try. It was not necessarily the opportunity to address anthropocentrism in societal consciousness that motivated his

support for Rights of Nature; he emphasized the on-the-ground results he hoped to achieve:

Here we are in California, ground zero from the standpoint of water management with our fourth year of the most severe drought in the last century or more, and you have... the near collapse of numerous salmon populations...but we don't have a minimum flow requirement. I can't get that done within the existing legal mechanisms. So it shows you where the Rights of Nature are absolutely critical, which is nature should have the ability to thrive.

Although the way he speaks about pursuing on-the-ground environmental protection was one of *Environmental Problem Solving*, Subject 2's personal beliefs also lean towards *Green Radicalism* discourses:

To me the environment was here and for us to actually eliminate habitats or degrade ecosystems severely, I don't feel that we as humanity have that right. Now don't take that to the extreme to say that everything should return to how things were pre-humanity. But what I mean by that is the outright elimination of habitats and ecosystems or such severe degradation that they don't even remotely resemble what they were previously; I don't think that we have that right.

His emphasis on the limits of humanity's "rights" to destroy the earth are contrary to the discourses of *Limits and their Denial*, which focus on the ramifications of environmental destruction; contrary to the discourses of *Environmental Problem Solving*, which do not take a moral or ethical position regarding environmental destruction and focus instead on how to address the practical problems associated with the fact of such destruction; and contrary to the discourses of the *Quest for Sustainability*, which do make ethical claims about our responsibilities to future generations of humanity, but not to our need to respect the boundaries of our rights vis-à-vis nature itself.

Subject 2 holds a belief that humanity does not have a right to destroy ecosystems, but his desire for Santa Monica to adopt a Rights of Nature law was

primarily motivated by his thinking as an *Environmental Problem Solver*. Therefore, he evaluates the ultimate usefulness of Rights of Nature in its ability to address or prevent actual environmental harms in the near term. Describing a conversation he had with Thomas Linzey of the Community Environmental Legal Defense Fund, Subject 2 reported asking him,

Have you actually used [Rights of Nature] to sue anybody? And has it worked? And that [hasn't] happened yet. Until that happens, whether it's the Santa Monica ordinance or something else, that to me is where the proof comes in... It's hard to know...how effective it could be, versus is it just whimsical? I don't mean to say it really is just whimsical, but I think, San Francisco...adopted [an ordinance binding it to] the precautionary principle many years ago. And it's one of those things that is really cool and you would like to think it can apply very well, but as you can imagine it's quite subjective on how you would actually use it. The end result is it's really more of a policy statement and a philosophy than something that's truly applicable on a day to day basis and making a huge difference. And that's my fear about the Sustainability Bill of Rights. Unless someone really uses it for something...then it's tough [to know if it is effective].

### **INTERVIEW SUBJECT 3**

Like Interview Subject 2, Interview Subject 3 is a long time environmental policy professional serving on the Task Force on the Environment. Unlike Subject 2, Subject 3 opposed the Rights of Nature law, although he otherwise supported the Sustainability Bill of Rights ordinance.

The overall ordinance is good. I like that. I have misgivings about the Rights of Nature part...I have problems with it in terms of both effectiveness and overall strategy. I think it is a retreat into a narrow space as opposed to a broadening of progressive politics. I think in this country the Right sort of grabs the banner of freedom in a way that is totally at odds with what they espouse, which they do by having a very particular narrow view of what freedom entails and I think that trying to expand the notion of rights to non-humans is a retreat from a broad-based progressive reclaiming of freedom and human dignity from people who pretend to be interested in that and in fact may be interested but don't do anything to promote it. It...is a retreat from what I think would be a pretty powerful

critique... Discussing rights of humans, human dignity, human spirituality, human health and quality of life. I think those are pretty powerful positions to have. Human freedom.

Subject 3 is comfortable with anthropocentrism in society, he thinks attempts to address it will fail to connect with people and are not necessary from a principled standpoint. Nor does he himself question anthropocentrism.

Subject 3 also does not see the need to recognize Rights of Nature in law in order to institutionalize good stewardship of the environment or convey that value to future generations. As he puts it “you don’t need to ascribe rights to your dog to feel you have a duty to take care of your pet.” In fact, he focuses on the notion of rights accompanied by responsibilities and he sees Rights of Nature as at-odds with that principle:

Rights go with responsibilities...To extend rights to nature, you can’t have responsibility because we don’t regard animals as moral agents, and certainly not ecosystems. You don’t punish your dog for killing an animal. Humans are moral agents, so it just degrades this whole notion of rights with responsibilities and that we ought to be focused on human dignity, human rights, and freedom, and human duty. If society were better organized around that I don’t think we’d have any trouble protecting our environment.

Subject 3’s focus on humanity and our institutions as the only meaningful agents on earth suggests the use of environmental discourses other than those of *Green Radicalism*.

In our discussion of climate change, Subject 3 revealed significant use of the discourses in the *Quest for Sustainability* category, especially the Ecological Modernization discourse.

France when it went nuclear decarbonized by about 4% per year for about two decades. Their electric system is pretty much zero carbon, but they still drive cars. The fastest ever a society has decarbonized while growing economically is about

4% per year. To hit temperature targets, we need to decarbonize nearly that fast globally, which is pretty aggressive. It's not clear we can do that...But the pots are stirring. India is wildly lacking in lots of energy services but you've got the example of how much of the world skipped land lines and went right to cell phones. With the right technologies, the right institutions, and the right level of concern, we might surprise ourselves by how fast we can go...The values [we need to emphasize] are stewardship of the environment and our obligations to future generations to leave them a world that they can live in and that they find enriching.

Subject 3 emphasizes the technological and institutional dimensions of our environmental crises and recognizes the potential for an ideal connection between environmental protection and economic development of a sort that is in keeping with current industrial ideals of progress. This all fits within the Ecological Modernization discourse, as characterized by Dryzek. His emphasis on our obligations to future generations is also in keeping with the *Quest for Sustainability* category of environmental discourses.

As one who believes in the attainability of Sustainability's trifold ideal—social and intergenerational equity, economic growth, and ecological health—and believes that technological advances within the existing industrial framework can carry us to the achievement of those ideals, Subject 3 sees Rights of Nature as a distraction from the urgent work that needs to be done. He is not concerned with addressing anthropocentrism in society and in fact he sees it as at odds with humanistic values that he believes will propel society towards the achievement of Sustainability.

#### INTERVIEW SUBJECT 4

Interview Subject 4 works in the City Attorney's Office for the City of Santa Monica. From her perspective, the Sustainability Bill of Rights ordinance and its Rights of Nature provision

is not really a set of rules. It's really a declaration of policy and values. From which, of course, rules might or might not flow... My understanding of what the Council and the environmental community wanted was kind of a law that was a declaration of policy that was a start on a different way of viewing things. Not different for everyone because some people already view the earth as the earth is presented in the ordinance. But...most people, at least most people in this culture, do not view the relationship of man to earth the way that the ordinance suggests it should be viewed... I think most people, at least in the culture I've spent my whole life in, [believe that] the species with rights is man...Generally speaking, when we think of rights we think of human rights. We don't think of the rights of natural communities, other species, or mother earth as a whole. We don't think of those entities, beings, as having rights. And my understanding of the ordinance was, it was intended to shift that way of thinking...for the purpose of helping people realize, the way I think of it, is we're kind of all in this together. And it's...hubris, maybe...to think that we aren't. So that's my understanding of what the ordinance is intended to do. I think of it as a big bight to try to change the way people think of themselves, as a group, as individuals, in their planet, their relationship to nature. It's so major.

In explaining her own views, Subject 4 confirmed that they were similar to those presented in the Rights of Nature law:

That is my personal feeling, which I believe I probably share with the proponents of this [law]. I don't see how we couldn't be in this together, frankly...Our species evolved on this planet. To think we can separate ourselves from what's here and what evolved around us and with us is an idea that would be very difficult for me to understand, and I don't even know why a person would want to work that way. I don't think the earth is here for us to exploit. I think it's part of us and we're part of it. So exploiting it would be like exploiting part of my family, for me.

Like Subject 1, Subject 4 sees and is inspired by an interconnectedness between humanity and the earth, in keeping with a *Green Radicalism* discourse. In her

professional capacity as an attorney for the City of Santa Monica, she is unclear about the practicality of Rights of Nature law: “I told them it’s not really a traditional law. It’s not clear to me how [it] would work or how it would be effectuated.” Furthermore, it was not apparent to her what natural communities of species and ecosystems still existed in Santa Monica, due to its high concentration of developed land. However, that “proved to be a moot point since, to whatever degree we allow it to survive, nature is still here and recognizing its right is perhaps a different matter than identifying exactly what natural communities within Santa Monica itself we are trying to protect.”

Subject 4’s preexisting proclivity to Green Radicalism discourses allowed her to appreciate Santa Monica’s Rights of Nature law, even when her principles and analysis as an attorney left her slightly dumbfounded:

As I said, it’s a very atypical law and I was uncertain what its adoption would mean or how it would work once adopted...But...I think it’s really good that there are laws [like Rights of Nature] that attempt to effectuate environmental values. I think it’s really hard to make it work, but that doesn’t mean it’s not worth trying. In fact, maybe it’s more worth trying than almost anything else that the legal community’s doing... it does seem to me that the persons promoting this approach are working on sort of a fundamental truth and so I like to believe that at the end of the day fundamental truths matter.

Recall that Subject 2, also a supporter of the Rights of Nature law, but one whose primary mode of thinking about environmental issues fits best within an *Environmental Problem Solving* framework, finds it difficult to assess the ultimate usefulness of the law in terms of its long-term impact on societal ideas. In contrast, Subject 4, whose self-described personal view of humanity’s connection to nature is in keeping with *Green Radicalism*, finds it much easier to assess Rights of Nature in Santa Monica in those

terms. She is prepared to consider the symbolic value of Santa Monica's adoption of Rights of Nature and the message it sends to other communities and future generations, even if that message does not immediately spur action in others. Subject 2, an original proponent of Rights of Nature in Santa Monica asks, with frustration, "Has [anyone] actually used [Rights of Nature] to sue anybody? And has it worked?..Until that happens, whether it's the Santa Monica ordinance or something else, that to me is where the proof [of Rights of Nature's worth] comes." Meanwhile, Subject 4 is able to appreciate Rights of Nature as a "declaration of values" for which the practical implementation is unclear.

#### **INTERVIEW SUBJECT 5**

Interview Subject 5 is a long-time staff member in the City of Santa Monica's Office of Sustainability and the Environment. He describes his background and motivation:

I actually started as an environmental geologist and I was cleaning up superfund sites. I got into environmental policy because I was really sick of trying to fix a problem that shouldn't have happened in the first place. I am incredibly concerned about environmental issues. I think the biggest issue facing the world right now is climate change. ... I've got kids and I'm concerned not for 2050, I'm concerned for 2020. I see ecosystems and environmental systems worldwide are breaking down. Fisheries, availability of drinking water, water quality, and climate are all—basically a series of crises converging all at once. They're huge.

He believes that economic power is perpetuating harmful systems of production:

There are a lot of forces that are effecting what we do. I think the biggest ones that have negative environmental impacts are economic forces. People have a lot of money invested in continuing to do things the way we are doing things. In other words, wasting resources and generating pollution. And so naturally the people that are invested in those things are going to resist changing. [For instance,] there's a struggle right now between coal fired power plants and the

people with coal and petroleum interests [on one side], and renewable power [on the other]. And there's a shift going on there but there's a big push and pull.

He views his department's task as "tip[ping] that [existing system] over to a more sustainable way" which is done by "finding the right leverage points."

Subject 5's general prognostication that a series of environmental crises may converge in the next years or decades and his assessment that economic power is keeping our society from remedying ongoing environmental harms are suggestive of the Limits, Boundaries, and Survival discourse. He recognizes a limit, for example, to the amount of carbon that the atmosphere can absorb before it hits an "inflection point," which he believes may be reached in the next 5 years, causing "huge shifts in ice [melt] and sea level rise." He does not, however, think there is necessarily an inherent limit to economic growth, as did many of the first scientists to articulate the "limits" discourse.<sup>51</sup>

Instead, Subject 5 believes that growth can continue, given the right systems of production and transportation, which can be achieved within existing industrial capitalist systems, given the proper interventions from government. This ideal, of the system functioning in "a more sustainable way," is reminiscent of a Sustainable Development discourse. He asks, "How do you balance living in the world today with the need to protect all the things that we have?" When I turned the question back to him, he pointed to the vision and strategies supported by the Sustainable City Plan:

Look at Santa Monica Bay. That's probably the biggest resource we have here in Santa Monica. It drives our economy by attracting tourists and providing recreation opportunities. Just the physical setting is attracting people to come here. That generates livelihoods for people and the need to protect that, if we want

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<sup>51</sup> Citation: *Limits of Growth*, Meadows.

to have livelihoods, has galvanized the community around quite a few issues to make sure we're not damaging it, not polluting it with storm water, trash, and these other things. So we've done a number of things on regulatory and policy sides of things to ensure that when we're building we don't do things in a way that won't negatively impact the beaches. We do have regulations, we've banned plastic bags and Styrofoam. And those things are aimed at trying to safeguard the bay. Again, we're a tiny little place so their effectiveness may be pretty limited. But I think what we're trying to do is, how do we live in a more sustainable way here than we have done in the past. So as we're building new buildings and tearing down old buildings, can we build a building that doesn't generate greenhouse gas emissions and fits into the environment but still provides everything its occupants need. We're doing a living building challenge here. So basically we're designing our laws in ways that guide people towards coexistence in an environment or ecosystem...Our green building ordinance stems from [the Sustainable City Plan]. Our fleet policy in the city. Electric vehicles and our electric vehicle infrastructure that we have. All of our water conservation, energy, climate change, all of that stuff comes from goals that were put in our Sustainable City Plan.

Subject 5's preferred strategy for achieving sustainability is to support shifts in the market by, for example, shifting the city's vehicle fleet to electric power and thus proving the viability and practicality of electric vehicles while creating a need for the fueling infrastructure that would be needed for a larger shift in the market itself. He explains that, when it comes to creating shifts in the market, he prefers not to put his energy into regulatory approaches:

I think that regulating something that's bad is one way to make it a little less bad and it's not always that effective. But changing the way we do things is a much more effective way of getting rapid change and solving the problems. So, for example you could reduce the amount of pollution that is allowed to come out of a factory, for instance, so you're getting a little bit less pollution, but you're still creating pollution. Or you can try and entirely change the system so you're not even doing it that way. I'd rather focus on the latter than the former.

He also does not "approach the environment from the legal side," which he said may explain the "fact that [he's] tepid on the [Rights of Nature] ordinance."

There are environmental activists that do that and there are environmental lawyers and those folks deal with that. I'm more of a policy person, so this may or may not be an effective tool to change things. Again, I tend to focus on ways to transform things. Move away from a bad system to a more effective system. And it seems there are a lot of positive ways to do that when you can show that it is – well, for instance, look at natural foods right now...Back in the 60's and 70's nobody sold organic, nobody grew organic, everything was very conventional, but there was a small niche that was promoting natural foods, and that has grown into the most dominant sector of the food market right now, because it's been proven to be profitable. And I think arguably that is a boon for the environment in that you have a huge sector now that is growing food in a better way than we used to, and it's actually shifted the food production system. So that's not to say that sure, everything's fixed now. There are a lot of corporations out there that are doing everything they can to make a buck on the worst quality stuff out there. And that happens and that's what rules and regulations are for, but I'm kind of on that policy shift side of things and I've never been focused on the legal side of things...I think the problem isn't that we don't have enough laws, it's just our ability to enforce those laws [we do have].

As Subject 5 anticipates a convergence of acute, major environmental crises in the next several years, addressing anthropocentrism in society through a potentially slow-working vehicle like Santa Monica's Sustainability Bill of Rights and its Rights of Nature provision seems like a distraction: "I think my...frustration with the Sustainability Rights Ordinance is there's a lot of time spent focusing on it and I don't know how effective it will be or can be, or how much use it will be." In terms of addressing environmental protection needs in the short term, he believes that practically speaking, the Rights of Nature law is likely redundant with other existing laws:

I'm not banking on this as something that's going to be saving Santa Monica. For instance, if there's ground water pollution, some company pollutes the ground water, we could try and use this to sue that company. However, there are plenty of other laws that are already in place that would allow us to do that already. And in fact, our ground water has been polluted and we successfully sued and restored our groundwater. So I don't know what additional thing this does.

Subject 5 frames his work within the *Quest for Sustainability* discourses, in the context environmental *Limits* that are currently being reached or will be in the near future. He does not see the value of Rights of Nature for his work, nor is he concerned about addressing anthropocentrism in society.

#### **INTERVIEW SUBJECT 6**

Interview Subject 6 was a member of the City Council when it adopted the Sustainability Bill of Rights and its Rights of Nature provision. Like all of the other Council members, he voted in favor of adopting the ordinance. He describes the Rights of Nature provision:

We do have the sense that clean air, clean water, clean earth isn't something that is just a right of human beings, but that it is something that should be. That it is a starting premise by itself. So it's not just something that we get the right to sue because we want clean air, but...we're part of interconnected species and ecosystems, [and] we're only one part of it. And therefore there are some inherent rights for the ecosystem to be healthy for all the life that lives in it, whether it's a mammal, or anything. And that starting premise is itself something the community has embraced.

Not only does Subject 6 see Rights of Nature as philosophically in keeping with his own view, but also he sees the importance of Rights of Nature as a matter of practical public policy:

For me, the interconnectedness of all life on this planet is a starting premise. And all of our social, economic, and political institutions should embody that interconnectedness, and this is one way that we're doing that in the municipal code to recognize that we're interconnected...When you look at an economic system, a true cost pricing system where you embody all of the cost, is a way of reflecting that interconnectedness, rather than externalizing costs on everybody else. And to me this is another step in that kind of philosophy.

For Subject 6, public policy founded on interconnectedness is good policy, and this goes beyond Rights of Nature:

When you look at water use in California...we've privatized a lot of the choices around water instead of treating it as a community resource and pricing it that way. We wouldn't have a lot of the issues that we have today if we had priced water according to its scarcity. That would have originated from the mental mindset that things of the earth are common of the earth.

Subject 6 makes clear use of the Green Politics discourse; he emphasizes the need for policy change to impact consciousness in society:

The Rights of Nature helps us to start rethinking our relationship with other animals. How much of the planet do we have a right to take? The old Christian [idea of human] dominion over all species and we can just keep growing all we want, isn't sustainable and I think after a few more decades, after we stop abusing animals and start realizing that we can't just have offspring endlessly, at a certain point—Earth First did a thing many years ago about wildlife corridors...eventually I see our species starting to go that way. We're several decades away from having that sort of consciousness of being able to think, no this isn't all just for our use. But as we get more sensitive I think we'll get that way.

When considering what success means for Santa Monica's Rights of Nature law, Subject 6 thinks about the long-term effects of Rights of Nature on public consciousness, not only in how it conceives of humanity's relationship to nature, but also in what it thinks about the possibilities of achievable public policy. He also acknowledges Santa Monica's place as a leading city in terms of sustainability policy and the knock-on effect that Santa Monica's pioneering approaches can have elsewhere:

The more we can increase the number of young people here who believe that that sort of concept [like Rights of Nature] is viable is one thing and... because [many believe that] at the federal level most of our government is bought and sold by the Koch brothers sort of mindset...The fact that we couldn't sign the Kyoto treaty, it's clear that that level of government is bought and sold. Yet, some confidence in government and legislation can happen if you can see that your local

government can do [something like Rights of Nature]. A second level of success is that Santa Monica in general does its Sustainable City program as a foreign ministry. We pass things here and the International Council for Local Environmental Initiatives that group, which is about 500 plus cities around the planet working on climate change and urban design and other [issues], we become a model city and export our model elsewhere...That is a part of a big consciousness change.

Yet, he is also practical in assessing liabilities associated with the law and in realizing that a law that is radically different from other laws in our system is not likely to endure:

Certainly with [judges that] Republicans and “blue dog” Democrats have appointed, have meant that the “takings” danger was there and we had to find a way to fight that and not get the tax-payers in this city into trouble...On the flip side, we really wanted to find something we could do that wasn’t just a feel good [action] and would actually be enforceable. And one of the things that we worked through is what the City Attorney actually felt we could win. Because if we had done it and then failed, that would actually be a step back for these sorts of ordinances.

Subject 6’s deeply held beliefs in the discourse of Green Politics allows him to actually revel in the potential for long-term changes to societal consciousness that Rights of Nature laws represent, while recognizing that it will be a challenge to defend the law within the existing legal system. He thinks strategically about how to ensure that the law is able to endure in the current environment and spread to other cities and he measures success in its endurance, spread, and ability to change the way people think about the possibilities of government, as well as its implications for tangible environmental outcomes in the near term.

## Chapter 7: Final Observations and Further Research

In this group of six interview subjects, Subjects 1, 4, and 6 were unabashed in expressing their beliefs that humanity is a part of nature and that nature is worthy of reverence for its own sake; Subjects 2, 3, and 5, articulated a more utilitarian relationship between humanity and nature. It is worth noting that Subject 2, 3, and 5, are all environmental policy professionals, while Subjects 1, 4, and 6, are not—although all three work with policy regularly in their professional capacities, it is not exclusively environmental policy. That the environmental policy professionals would tend towards utilitarian perspectives on nature is not surprising, it is a reflection of the guiding discourses of the environmental policy field today, those of *Environmental Problem Solving* and *Quest for Sustainability*<sup>52</sup>.

Subject 2, finding that an approach to environmental protection grounded in *Environmental Problem Solving* has not been successful, embraced Rights of Nature as an attractive alternative to the status quo, a new policy to experiment with, but he judges its usefulness in terms of its impact on tangible environmental outcomes in the short term. Subject 3 finds Rights of Nature to be a distraction from more promising rhetorical strategies as they pertain to “rights” in society, and prefers to put his energy into working with existing political and financial systems to create the technologies and institutions needed to achieve sustainability. Subject 5 thinks Rights of Nature is redundant or otherwise not helpful when it comes to dealing with energy, climate, and water, which he

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<sup>52</sup> Dryzek, *Politics of the Earth*, 75.

regards as the most important issues to address in the face of emergent acute environmental crises.

If these three interviews are any indication, people who prefer environmental discourses that emphasize a utilitarian relationship between humanity and nature, discourses in the *Environmental Problem Solving* and *Quest for Sustainability* categories, may still support the pursuit of Rights of Nature law, but their motivation will likely be in achieving tangible protections for the environment in the near term. The effect that such a law can have over the long term on anthropocentrism in society is likely of little or no concern to these people.

Therefore, advocates of Rights of Nature who operate in places where influential stakeholders and potential allies tend to think in terms of *Environmental Problem Solving* or the *Quest for Sustainability* should work with these stakeholders to identify what realistic successes could look like for a Rights of Nature law in their community in the near term. In some cases, adoption of the law and a commitment to enforce it at the local level could be enough to dissuade would-be polluters. In other cases, would-be polluters may decide to challenge or ignore a Rights of Nature law. In those cases, the near-term value of such a law may be in raising awareness and framing local environmental issues such that enhanced grass-roots political pressure can be brought to bare.

Meanwhile, those who emphasize a sacred and deeply interconnected relationship between humanity and nature, who tend not to see humanity as the center of the world or the cosmos, may be more likely to see the value in Rights of Nature law. However, their support can wane if there are not practical opportunities to leverage the law in the

development of a Green Consciousness or Green policy achievements. Subject 1 was not very enthusiastic about Rights of Nature in Santa Monica because, although she is enthusiastic about the turn from anthropocentrism that it represents, she is not clear how to practically incorporate the new law into her work with congregants and other activists in Santa Monica.

This suggests that advocates of Rights of Nature working in places where there are influential stakeholders and potential allies that tend towards *Green Radicalist* thinking should work with those stakeholders after the adoption of such a law to create practical opportunities to leverage the law for consciousness change or systems change in the community. For example, after adoption of a Rights of Nature law (and even before), advocates should work with these potential allies to bring the Rights of Nature concept into local schools as a way to leverage the community's new law towards long-term consciousness change. Alternatively, advocates should include these potential allies in Rights of Nature advocacy efforts throughout the region or state, helping create the network of localities that will be required to drive Rights of Nature into state constitutions and achieve more fundamental changes to our legal system.

These observations warrant more scrutiny through more interviews, more studies, in more places. Nonetheless, it is not premature for advocates of Rights of Nature to consider the prevalent environmental discourses used by the communities, groups, and policy makers where they work and to adjust their advocacy in the ways described above.

Further research relevant to the Santa Monica case specifically would be helpful and could include: What opportunities for near-term and long-term impact were created

or lost by the changes made during the rewrite of Santa Monica's Sustainability Bill of Rights as they pertain to the applicability of Rights of Nature? What opportunities were created or lost by tying Rights of Nature law in Santa Monica to a Sustainable City Plan that is scaffolded by a *Quest for Sustainability* environmental discourse?

A final question for further consideration asks, can Rights of Nature law be used to address anthropocentrism in society, without first upending the widely-used discourses of the *Environmental Problem Solving* and *Quest for Sustainability* categories? Is there a place for Rights of Nature within a Democratic Pragmatism world view, and is there a place for nature's intrinsic rights alongside those of current and future generations of humans within the ubiquitous triple-bottom-line of Sustainable Development?

## Appendix

Council Meeting: April 9, 2013

Santa Monica, California

ORDINANCE NUMBER \_\_\_\_ (CCS)

(City Council Series)

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA ESTABLISHING SUSTAINABILITY RIGHTS

WHEREAS, as declared in Santa Monica's Sustainable City Plan, a healthy environment is integral to the City's long-term economic and societal interests and, accordingly, the City's decision-making is guided by the mandate to maximize environmental benefits and reduce or eliminate negative environmental impacts; and

WHEREAS, as further declared in the Sustainable City Plan, local environmental issues cannot be separated from their broader context; and therefore the City's programs and policies should be developed as models that can be emulated by other communities; and

WHEREAS, in furtherance of these commitments and goals, the City must regularly evaluate whether its plans, laws, and programs are sufficient to meet the growing environmental crisis and must explore all means of addressing the growing environmental crisis; and

WHEREAS, in the last fifty years, national and state governments have attempted to address the crisis by adopting specific environmental protection laws, such

as the Clean Water Act, Clean Air Act, National Environmental Policy Act and California Environmental Quality Act, that limit pollution and resource consumption; but those laws

also have proven inadequate to provide long-term protection of our rights to clean air, water, and soil, and sustainable food systems, and the rights of natural ecosystems; and

WHEREAS, the inadequacy of these laws results, in part, from the underlying legal assumption that the natural world is "property", which may be used by its owners - - be they individuals, corporations, or other entities -- for their own, private, short-term economic benefit, generally with minimal regard for the health of the environment; and

WHEREAS, numerous specific examples show that this underlying assumption has proven destructive to the environment upon which all living things ultimately depend; and

WHEREAS, in response to the evils of treating the natural world as mere property, the world-wide, national and local environmental communities are urging governments to adopt a new paradigm based upon recognition that both individual human beings and natural communities or ecosystems have fundamental environmental rights which should be recognized by the law, that the health of the world's populations and ecosystems depends on the full protection of these rights, and that asserted corporate rights can no longer be allowed to take precedence over these rights to human and environmental health and well-being; and

WHEREAS, there are numerous examples of policy statements and laws based on this new paradigm that recognize the rights of the natural world to exist, thrive and evolve; and

WHEREAS, Ecuador amended its constitution to include the rights of nature in 2008, with the first successful case applying that right concluding in March 2011; and

WHEREAS, in December 2010, the City of Pittsburgh became the first major city in the United States to adopt a Community Bill of Rights that bans corporations from drilling natural gas within its city limits and elevates the rights of people, the community, and nature over corporate rights; and

WHEREAS, other municipalities in Pennsylvania, Virginia, Maine, Maryland, New Hampshire, New Mexico, Ohio, and New York have adopted similar measures recognizing the rights of people and natural communities and including language that would subordinate the rights of corporations to local sustainability efforts; and

WHEREAS, Santa Monica's own Task Force on the Environment has studied this growing movement and recommended that the City support it as a means of effectuating the commitments and goals already established by the Sustainable City Plan, and of recognizing the inherent rights of the people and natural communities of the City of Santa Monica; and

WHEREAS, on January 24, 2012 the Santa Monica City Council adopted a resolution declaring the City's Commitment to Sustainable Rights; and

WHEREAS, the City is committed to fully implementing its Sustainable City Plan to further effectuate inherent rights of the people and natural communities of the City of Santa Monica.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 4.75 of the Santa Monica Municipal Code is hereby created to read as follows:

**Chapter 4.75 GENERAL PROVISIONS**

4.75.010 Title

This chapter shall be known as the City of Santa Monica Sustainability Rights Ordinance.

4.75.020 Findings

The City Council finds and declares:

(a) With the exponential growth in human population and its increasing per capita resource consumption, the planet cannot sustain our current way of life, which is destructive to the natural elements upon which all species depend -- the air, water, climate, soil and other fundamental elements of the world;

(b) Like all other communities, Santa Monica's welfare is inextricably bound to the welfare of the natural environment; and the City has therefore long been committed to protecting, preserving and restoring the natural environment and providing a model of environmental sustainability for other communities to utilize; and

(c) The City Council of Santa Monica has expressed this commitment through a multitude of enactments and actions, including recognizing both the rights of natural communities and ecosystems within Santa Monica to exist, thrive and evolve and the rights of the individual human beings that make up the City of Santa Monica to a clean, healthy and sustainable environment. The peoples' rights include, but are not limited to: the right to affordable and accessible water from sustainable water sources for human consumption, cooking, and sanitary purposes, as referenced in Calif. AB 685 (2012); the right to a sustainable energy future based on sustainable renewable energy sources; the right to a sustainable natural climate unaltered by fossil fuel emissions; the right to

sustainable, comprehensive waste disposal systems that do not degrade the environment; the right to clean indoor and outdoor air, clean water and clean soil that pose a negligible health risk to the public; and the right to a sustainable food system that provides healthy, locally grown food to the community; and

(d) These rights are not sufficiently safeguarded by the existing body of local, national and international environmental policies and laws, which are grossly inadequate to avert the mounting environmental crisis; and

(e) The inadequacy of the current framework of state, national and international policies and laws necessitates re-examination of the underlying societal and legal assumptions about our relationships with the environment and a renewed focus on effectuating these rights.

#### 4.75.030 Purpose

This Chapter is created and exists for the purpose of codifying Santa Monica's commitment to achieving sustainability by among other things: (1) restoring, protecting and preserving our natural environment and all of its components and communities including, but not limited to the air, water, soil, and climate upon which all living things depend; (2) creating and promoting sustainable systems of food production and distribution, energy production and distribution, transportation, waste disposal, and water supply; and (3) to the full extent legally possible, subordinating the short term, private, financial interests of corporations and others to the common, long-term interest of achieving environmental and economic sustainability.

#### 4.75.040 Rights of Santa Monica Residents and The Natural Environment

(a) All residents of Santa Monica possess fundamental and inalienable rights to: clean water from sustainable sources; marine waters safe for active and passive

recreation; clean indoor and outdoor air; a sustainable food system that provides healthy, locally grown food; a sustainable climate that supports thriving human life and a flourishing biodiverse environment; comprehensive waste disposal systems that do not degrade the environment; and a sustainable energy future based on renewable energy sources.

(b) Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City Of Santa Monica. To effectuate those rights on behalf of the environment, residents of the City may bring actions to protect these natural communities and ecosystems, defined as: groundwater aquifers, atmospheric systems, marine waters, and native species within the boundaries of the City.

(c) All residents of Santa Monica possess the right to self-governance and to a municipal government which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities, and their directors and managers, do not enjoy special privileges or powers under the law that subordinate the community's rights to their private interests.

#### 4.75.050 Biennial Report

At least once during every 24 month period, City staff shall prepare a written report to the community on the state of the local environment, the realization of the rights recognized in Chapter 4.75, and the City's progress in effectuating and enforcing the Sustainable City Plan and the policies and provisions of this Chapter. The report shall include recommendations for advancing and ensuring compliance with the Sustainable City Plan.

#### 4.75.060 Biennial Hearing

The City Council will bi-annually review the report, conduct a public hearing, assess the City's progress in effectuating and enforcing both the Sustainable

City Plan and the policies and provisions of this Chapter, and provide direction to staff to ensure compliance with the Plan's provisions and with the inherent rights of the people and natural communities of the City of Santa Monica described herein.

4.75.070 Compliance Assurance

The City or any City resident may bring an action to enforce any provision of the Santa Monica Municipal Code that advances the goals identified as enforceable in the Sustainable City Plan.

Section 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:

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MARSHA JONES MOUTRIE  
City Attorney

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## **Vita**

Clifford Kaplan received a Bachelor of Music with a second major in religious studies from New York University in 2006. Prior to graduate school, he lived and worked for three years in Rio de Janeiro, Brazil, where he was first introduced to the planning field. Today, he works in the field of large landscape conservation in the Texas Hill Country.

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This report was typed by Clifford Kaplan.