Preface

“We have to abandon the old standard of mere profitability, productivity, or efficiency and realize that—in the terms of the grant to us of the use of the world—we have other standards to meet. … We have the right to use—but not use up—the things that we need and are dependent upon.”

The major environmental problems that the world is facing—global climate change, deforestation, loss of biodiversity, ozone depletion, pollution, and generally unsustainable natural resource consumption rates—have fundamentally altered the legal and economic landscape for building and development. Although not unanimous, most scientists place the blame for global climate change squarely on human action. Thus, the logical manner for addressing climate change is by altering human behavior. With scientific evidence and popular support on their side, state and local lawmakers throughout the United States have taken it upon themselves to address climate change through policies that impact building and development, as a major source of greenhouse gas (GHG) emissions. In addition, as water and traditional energy sources become scarcer and consequently more expensive, the building and development industries have been exploring ways to make our built environment as efficient as possible to ensure adequate economic returns. Consumers of new development increasingly seek residential communities that preserve natural resources and promote quality of life, and commercial space that meets recognized standards for environmental responsibility.

All development professionals, including attorneys, must understand fully sustainable development and green building concepts, requirements, and policies to meet client expectations and to operate in tomorrow’s economic and regulatory environment. Although there is no universally accepted definition of “sustainable development,” three core principles infuse most sustainable development strategies: (1) developing in a targeted, compact, and balanced manner; (2) promoting energy and resource-efficient development and operations; and (3) preserving and protecting natural resources. Green building has been a growing and increasingly visible component of the sustainable development movement. Generally, “green buildings” are facilities designed, built, operated, renovated, and disposed of using ecological principles for the purpose of promoting occupant health and resource efficiency while minimizing the building’s impact on the natural environment.

Clients are establishing themselves as leaders in sustainable development and green building to meet growing consumer demand, enhance project marketing opportunities, take advantage of government incentive programs, and lower operating costs in anticipation of rising utility costs. As clients move toward building green, their attorneys must be knowledgeable about both the requirements of national and local green building programs and the related legal issues that these types of projects involve to draft appropriate provisions into construction contracts, leases, development agreements, and development formation documents. More importantly, attorneys must understand how sustainable development and green building principles are transforming their clients’ approach to development so that legal solutions can be crafted to carry out the clients’ objectives.

This guide provides attorneys with the information necessary to understand their clients’ green objectives, minimize the potential cost penalty of business-as-usual practices, identify the key regulatory issues impacting sustainable development, and craft legal solutions in line with sustainable development and green building principles. This guide covers all aspects of a development project—from site selection, to financing, to contract negotiation, to regulatory approvals—and provides practical guidance on legal issues that may arise with respect to green projects. The guide also provides advice on how attorneys can seek to green their own practices to practice what they preach.

This guide is organized to begin with an overview of several critical background principles, then walks through the key components of a development project, and finally discusses green building and sustainable development in the residential and governmental context.

Section I provides a historical perspective of the sustainable development and green building movement, as well as a discussion of current initiatives in both areas. In addition, Section I includes an in-depth discussion of climate change and its growing impact on the building and development industries.

Section II moves into the development process, beginning with the critical step of site selection. This section explores how integration of development with natural resources, brownfields redevelopment, and transit-oriented development all impact the legal issues and sustainability components of a development project.

Section III weighs the benefits of developing and operating green buildings against the risks and costs associated with moving away from conventional offerings. This section also addresses methods of mitigating the green-specific risks presented when developing green buildings.

Section IV addresses issues specific to the residential context. For residential developments, particular care must be paid to the legal tools used to ensure the sustainable aspects of the project are maintained over time. The section also dis-
discusses the goals and benefits of sustainable design in the affordable housing sector, and the regulatory framework and resources available for green affordable housing projects.

**Section V** discusses the use of sustainable development strategies by local governments. In particular, this section discusses how local governments have incorporated green building rating systems into incentive programs and requirements, and legal considerations associated with the procurement of sustainable energy technologies.

**Section VI** concludes with a discussion of how attorneys can incorporate sustainability concepts into their own law practice.

Sustainable development and green building are expanding and evolving fields that are impacting virtually every aspect of the building and development industries. This guide will help provide attorneys with a working knowledge of the sustainable development and green building principles that will increasingly impact their practice.