NOTICE OF MEETING

July 23, 2013
10:00am – 2:00pm
Exceptions and Exemptions Task Force
Sequoia Room
2420 Del Paso Road
Sacramento, CA 95834
(916) 575-7230

The Landscape Architects Technical Committee (LATC) will hold an Exceptions and Exemptions Task Force meeting as noted above. The agenda items may not be addressed in the order noted and the meeting will be adjourned upon completion of the agenda which may be at a time earlier than that posted in this notice. The meeting is open to the public and held in a barrier free facility according to the Americans with Disabilities Act. Any person requiring a disability-related modification or accommodation to participate in the meeting may make a request by contacting Ken Miller at (916) 575-7230, emailing latc@dca.ca.gov, or sending a written request to LATC, 2420 Del Paso Road, Suite 105, Sacramento, California, 95834. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

Agenda

A. Call to Order – Roll Call

B. Public Comment Session

C. Approve October 18, 2012 Exceptions and Exemptions Task Force Meeting Summary Report

D. Review Legal Opinion Regarding Business and Professions Code (BPC) Section 5641 (Chapter Exceptions, Exemptions)

E. Discuss Exceptions and Exemptions Task Force Charge (Ensure the Provisions of BPC Section 5641 are Clear and Protect the Public) and Possible Action

F. Adjournment

Please contact Ken Miller at (916) 575-7230 for additional information related to the meeting. Notices and agendas for LATC meetings can be found at *www.latc.ca.gov*.

Agenda Item A

CALL TO ORDER – ROLL CALL

Roll will be called by Exceptions and Exemptions Task Force Chair, Linda Gates.

EXCEPTIONS AND EXEMPTIONS TASK FORCE ROSTER

Linda Gates

Christine Anderson

Pam Berstler

Dan Chudy

Mona Maggio

Baxter Miller

Larry Rohlfes

Sheran Voigt

Agenda Item B

PUBLIC COMMENT SESSION

Members of the public may address the Exceptions and Exemptions Task Force at this time. The Task Force Chair may allow public participation during other agenda items at her discretion.

Agenda Item C

APPROVE OCTOBER 18, 2012 EXCEPTIONS AND EXEMPTIONS TASK FORCE MEETING SUMMARY REPORT

The Task Force is asked to approve the attached October 18, 2012, Exceptions and Exemptions Task Force Meeting Summary Report.

SUMMARY REPORT

CALIFORNIA ARCHITECTS BOARD
Landscape Architects Technical Committee

Exceptions and Exemptions Task Force
October 18, 2012
Sacramento, California

Task Force Members Present
Linda Gates, Chair, Landscape Architect
Christine Anderson, Landscape Architect
Pamela Berstler, President-Elect 2012, Association of Professional Landscape Designers (APLD) California Chapter
Dan Chudy, Building Official, Community Development Department, City of Riverside
Mona Maggio, Executive Officer, Board of Optometry
Baxter Miller, President, California Council/American Society of Landscape Architects (CC/ASLA)
Larry Rohlfes, Assistant Executive Director, California Landscape Contractors Association (CLCA)
Sheran Voigt, Vice President, California Architects Board (Board)

Staff Present
Doug McCauley, Executive Officer (EO), Board
Vickie Mayer, Assistant EO, Board
Don Chang, Assistant Chief Counsel, Department of Consumer Affairs (DCA)
Trish Rodriguez, Program Manager, Landscape Architects Technical Committee (LATC)
John Keidel, Special Projects Coordinator, LATC
Matt McKinney, Enforcement Coordinator, LATC

Guests Present
Janet Enright, APLD
Kim Larsen, Attorney Representing APLD
Rob Littlepage, Landscape Architect, California School of Garden Design
Laura Morton, APLD
Allison Olson, APLD
Lisa Port, APLD National Advocacy Chair

A. Welcome and Introductions

Linda Gates called the meeting to order at 10:45 a.m. She welcomed and thanked everyone for attending the meeting.

B. Public Comment Session

Ms. Gates called for public comment. There were no public comments.

C. Approve May 24, 2012 Exceptions and Exemptions Task Force Meeting Summary Report

Ms. Gates presented the May 24, 2012 Task Force Meeting Summary Report for review and approval. Pamela Berstler stated that she wanted to be on the record as saying that she concurred with Mona Maggio's comment on page 8 that "there are no regulations or title acts for landscape designers." Ms. Gates agreed that the statement, "Ms. Berstler concurred with Ms. Maggio's comment" should be added after this sentence in the summary report. Ms. Berstler inquired about the differences between regulatory and legislative changes. Doug McCauley explained the differences and how each one is changed and adopted. The Task Force discussed potential outcomes of the regulatory and legislative processes as they relate to its recommendation to be presented to LATC as a result of its charge.

Don Chang stated that statutory laws are sometimes general in nature and boards have authority to adopt regulations to implement, interpret, or make laws specific. He explained that regulations have the same force and effect as law; however, regulations need to be consistent with statutory authority and cannot expand upon that statutory authority. He further stated that based upon what this Task Force recommends to the LATC it may require a statutory amendment enacted by the Legislature or a regulatory proposal adopted by the Board. He stated if the nature of a proposed change is consistent with existing law, it can be accomplished by adopting or modifying a regulation. He further stated that if their recommendation is different from statutory law, it must be adopted by the Legislature.

Ms. Gates stated modifying a statute through the Legislature can be a very long process. Mr. McCauley concurred and explained the bill approval process. Ms. Maggio stated that the process to approve a regulation or statute is quite lengthy and the proposals can be rejected for additional edits and/or clarification. She warned that neither process can be completed immediately.

Mr. Chang redirected the Task Force's focus to the agenda item for the approval of the meeting summary report. Ms. Gates asked for any further comments on the summary report. Christine Anderson noted that on page 2 of the summary report, the first paragraph stated, "The first charge of the Task Force would be to define who the public is." Ms. Anderson did not believe it necessary to define who the public is. She suggested the statement should be "The first charge of the Task Force would be to provide clarity as to how the public is protected." Ms. Gates concurred with this edit to the report. Laura Morton requested that on page 9, the sentence that reads, "She stated that she found herself drawn to other aspects of the green industry," to add "such as horticulture, urban agriculture, and sustainable residential landscape design." Mr. Chang stated the report needs to reflect what was actually said at the meeting. Ms. Morton responded that she believed that is what she said, although maybe not in those exact words. Mr. Chang stated that the summary report for today's meeting will reflect what Ms. Morton previously intended to say. Ms. Gates asked for a motion to approve the summary report.

- **Baxter Miller made a motion to approve the May 24, 2012 LATC Exceptions and Exemptions Task Force Meeting Summary Report with recommended edits to pages 2 and 8.**

  Christine Anderson seconded the motion.

  The motion carried 7-0-1 (Sheran Voigt abstained.)

D. Review Exceptions and Exemptions Task Force Charge

Ms. Gates discussed the charge of the Task Force. She stated that the purpose of the meeting is to determine if the language in Business and Professions Code (BPC) section 5641 needs to be clarified, and if so, the Task Force will need to determine what the clarification process would entail. Ms. Maggio asked for whom clarification should be determined. Ms. Gates suggested that landscape architects might like to have clarity on what they can and cannot do; however, she was not sure if they are unclear about BPC 5641. Ms. Anderson stated that the first goal is to ensure that the language is clear in order for LATC staff to be able to utilize.

Ms. Berstler explained that clarity is currently being determined for the public by the types of enforcement cases being brought to LATC. She opined the members of the profession are unclear about the usual practice of landscape design, landscape architecture, and landscape contracting. She asked Mr. McCauley to confirm if there have been any complaints against landscape designers by consumers regarding public health, safety, and welfare. Mr. McCauley explained the authority to regulate within the exempt area of practice. He stated that all that the Board is empowered to regulate, relative to the exempt area of practice, are title violations and whether an unlicensed person provided service within the regulated area. Ms. Maggio concurred with Mr. McCauley and explained that when she worked for LATC, complaints were received against landscape designers. She noted that because landscape design is an unlicensed profession, the consumer who issued the complaint against the landscape designer was advised to file an action against them in small claims court or seek counsel from an attorney.

The Task Force discussed the original issue of lack of clarity in BPC section 5641. Mr. Miller asked what the original question was that raised issue of whether or not BPC section 5641 was clear. Ms. Berstler stated that LATC enforcement actions around 2009 after regulations changed regarding advertising and methods of advertising landscape design services, showed that there was a lack of clarity between the scope of landscape design and landscape architecture. Mr. Miller stated that LATC does not regulate landscape design so perhaps the concern at the time was that the landscape designers were advertising services that went into the field of landscape architecture. Ms. Berstler stated the issue is that there are other exemptions to the Landscape Architects Practice Act that clarify the roles of other practitioners of the land-forming field, and those exemptions provide further clarity. She stated that the exemptions in the Landscape Architects Practice Act make it the responsibility of the LATC to enforce.

Larry Rohlfes stated that Ms. Berstler brought up an issue at the May 24, 2012 Task Force meeting that might show a lack of clarity in BPC section 5641. He explained that landscape designers creating drawings that could be considered construction details raised questions regarding the definition of a construction detail. The Task Force discussed whether exceptions and exemptions give greater clarity concerning irrigation consultants and if there is a need to widen the exempt area. Ms. Anderson stated that she does not think the exemption provides

further clarity; and that a determination was made to exclude their practice. Ms. Berstler stated that everyone is supposed to protect the public. Mr. Miller responded that landscape designers do not have a responsibility to protect the public, however, landscape architects do by virtue of being licensed and regulated. Ms. Berstler opined that this strengthens the argument for a landscape design exemption because she believes that the risk posed to the public by irrigation consultants is at least as great as the risk posed by landscape designers. Mr. Miller stated that he does not necessarily disagree with this on a conceptual level, but for that determination to be made, an analysis of the landscape design profession must be conducted. Ms. Berstler asked why irrigation consultants have an exemption. Mr. Miller replied that at some point, a recommendation was made that deemed irrigation consultants and golf course architects the ability to practice within the landscape architecture professional's area of expertise and exempted from regulation by LATC. He stated that it is fine if landscape designers want to define their profession through regulation, but the purpose of the Task Force is to determine if there is a lack of clarity regarding BPC section 5641.

Ms. Berstler stated that because advertising complaints against landscape designers were enforced by the LATC in variable ways, it showed a lack of clarity in BPC section 5641. Ms. Gates asked if the complaints mentioned by Ms. Berstler were isolated incidents or an ongoing problem. Mr. McCauley responded that over three years ago, there were a small number of enforcement cases that were not handled consistently with how enforcement cases are typically handled. He stated that the problem was identified and the situation was rectified. Ms. Gates inquired if the same kind of confusion is still an issue. Mr. McCauley replied not to his knowledge. Trish Rodriguez concurred. Ms. Berstler stated her point is not that LATC has done a great job of refining the enforcement process; her point is that this kind of enforcement anomaly could happen at any time because the law is open to interpretation. Ms. Maggio explained the responsibilities of regulatory bodies. She stated that there has to be clarity in the regulations for the public. She surmised that Ms. Berstler is requesting LATC to create a niche in their law for experienced landscape designers to be able to do more than an individual with no experience. She stated it is not the responsibility of the Task Force to create a niche for an unregulated profession. She explained that professions with exemptions in the Landscape Architects Practice Act have defined scopes such as landscape contractors. She further stated that landscape designers work in an unlicensed area of practice so she is uncomfortable giving them an exemption in the Landscape Architects Practice Act. Ms. Berstler responded that an exemption is needed for landscape designers because irrigation consultants are not licensed, yet they have an exemption in the Landscape Architects Practice Act. She stated that the Task Force has discussed conceptually the possibility for landscape designers to potentially infringe on the protection of the public, but she has not seen any complaints against landscape designers that have harmed the public through their practice. She stated that there are no facts to support this idea. Mr. Miller noted that Ms. Berstler's argument is more for removal of the irrigation consultant and golf course architect exemptions in the Landscape Architects Practice Act because as she pointed out, they do dangerous things. Ms. Berstler replied that she is not advocating for removal of the irrigation consultant and golf course architect exemptions.

The Task Force discussed whether BPC section 5641 is restricting to landscape designers. Ms. Berstler stated that BPC section 5641 is restricting to landscape designers because a planting plan cannot be created without affecting grading or without specifying what a pathway is. She stated that even if landscape designers are only allowed to create a planting plan and the conceptual placement of tangible objects, drainage must be included as well as specifications of materials and dimensions in order to create one. Mr. Miller responded that Ms. Berstler is

making the argument that landscape designers cannot place plants anywhere without performing tasks that only other licensed professionals are regulated to do. Ms. Berstler stated it seems as though the Task Force is not trying to make the Landscape Architects Practice Act easier to understand among industry professionals or to inform the public that they have a choice within the land-forming industry. Mr. Miller noted that LATC staff indicated there are few enforcement problems regarding landscape design. He asked whether complaints are being made to LATC because of a lack of clarity to the public or to landscape designers. Ms. Berstler responded it is not lack of clarity to landscape designers; it is lack of clarity within the landscape profession as a whole, which is the basis for the complaints. She stated that the Landscape Architects Practice Act is outdated.

Mr. Chang stated the initial conversation was if the purpose of the Task Force is to clarify BPC section 5641 or to expand the scope of practice. He noted that based upon the conversation, there appears to be clarity on what an unlicensed person can or cannot do; the issue now is that Ms. Berstler is not satisfied with this. He stated that since the Task Force seems to agree on what an unlicensed person can or cannot do, the issue now is whether the definition of unlicensed practice should be expanded. Ms. Berstler stated that she still views it as a clarity issue. Ms. Gates stated that Ms. Berstler pointed out that landscape designers cannot operate without affecting grading and drainage, so she is effectively saying that she wants to change the law, not clarify it. Ms. Berstler explained that she wants to clarify that there is a practice of landscape design as indicated in the proposed language submitted to the Task Force by APLD. She further explained that she wants to clarify that landscape designers understand that landscape architects have a specialized purview, but they would like to have a realistic differentiation between the two. She explained that when the law states that a person is not prohibited from placing plants, from creating drawings, or from placing tangible objects, the law is essentially saying that landscape designers cannot operate. She stated that this is because those functions cannot be performed without doing more than just creating a conceptual drawing.

Ms. Maggio stated a problem with expanding the scope is making an exception for an unlicensed person. She explained that there is no way to regulate an unlicensed person in the way that licensure does. Ms. Berstler suggested that the marketplace is a determinant of whether or not an individual can perform. Ms. Anderson explained that LATC must protect the public health, safety, and welfare and the marketplace cannot accomplish that.

Ms. Berstler stated it has not been proven that there has been harm caused by landscape design. Mr. Miller responded that is not the responsibility of the Task Force. He explained the law is very specific on why the LATC exists and if something is unclear about it, the law should be changed. He stated the Task Force is here to discuss the clarity of BPC section 5641.
Ms. Berstler stated that the LATC enforcement actions that were previously applied too broadly showed that the law is unclear. She further stated that this could occur again under different LATC staff. She noted that the laws in the Landscape Architects Practice Act can be easily manipulated, forcing a person to have to respond to enforcement actions, resulting in the harassment of landscape designers. Mr. Miller responded saying that the nature of our society is that when one person has a complaint, the other person has a response, and it is dealt with within the context of the laws. He noted that sometimes this can be handled by education or more outreach.

Ms. Gates asked what in the language caused the enforcement challenges. Ms. Berstler explained the different types of landscape designer advertisements, including statements that

they perform design, analysis, create beautiful gardens with pictures of landscapes with hardscapes, or preparing designs with hardscapes. She further explained that the practice of landscape design is not well understood by the landscape industry. She further stated if it is well understood by the industry, then there are practitioners who are taking advantage of the LATC's bureaucratic process and the unlicensed portion of the Landscape Architects Practice Act to create problems for landscape designers. Ms. Maggio responded that she does not view this as a problem because investigating complaints is the responsibility of the LATC. She explained that if LATC receives a complaint of this nature, they will review the complaint, determine if it could be a possible violation, and write the landscape designer to request information to be reviewed and investigated.

Ms. Maggio explained the law specifies what an unlicensed person may provide. She stated that if the scope of work appears to be exceeded, it is investigated. She stated there is no differentiation between a person working in their backyard and an experienced designer because there is no law regulating landscape designers. Ms. Berstler stated the restriction is what landscape designers can do and what consumers can choose for their landscapes. She further stated that consumers who want to deal with any kind of landscape issue except a non-dimensioned layout of plants and placement of tangible objects are without a choice. Ms. Voigt inquired whether a landscape designer could make a living because the law is so restrictive. Kim Larsen responded that she felt landscape designers could not make a living in addition to the potential threat of criminal action. She explained that there was an enforcement letter sent to a landscape designer that stated there were potential fines and criminal prosecutions.
Mr. McCauley explained that she is referring to the enforcement actions that are over three years old and there have been no recent letters of this nature. He explained that every board under DCA enforces the same statutes in the BPC and the reality is there can be criminal sanctions for violating the law.

Ms. Morton stated she can function as a landscape designer and earn a living but not under the definition in the Landscape Architects Practice Act. She explained she follows the law as any unlicensed person would have to but it is very limiting. She further explained the usual and customary roles of landscape design work. She stated she may be hired to design a vegetable garden, which may need a trellis, or a raised bed to provide better soil and will have to give specifications for the raised bed. She concluded there are building and design aspects even in that small instance. Mr. Miller stated that DCA is a consumer protection agency, not a professional protection agency. He stated that LATC charged the Task Force with developing recommendations for clarity regarding BPC section 5641.

Ms. Gates stated she is not aware that building departments are checking every backyard for what is done, such as building an arbor, or if plans are required to be submitted. She noted one of the particularly challenging things about residential practice is that a building inspector cannot be deferred to in order to make sure that the person who is hired to perform the services is qualified to make sure the arbor will not collapse. She further stated there is no way to make sure someone without the training, knowledge, and commitment would do the job as well as someone dedicated to the profession of landscape design. Ms. Larsen stated that city ordinance dictates what permits are required. She stated that if a permit is not required, then it has been implied not to be a public health or safety issue. Mr. Rohlfes responded by explaining that the International Building Code includes a section that gives a list of exemptions that do not require a permit or oversight by the local jurisdiction. Ms. Larsen stated that anything that does not require an ordinance under the city you are practicing in is, by default, one that has been deemed

by that city as not potentially a public health risk. Mr. Rohlfes concurred that was a fair assessment. Ms. Larsen concluded that if something does not require a permit, there should not be any need for regulation.

Ms. Gates stated that there is inconsistency between cities regarding permit requirements. She explained that certain things may or may not be regulated by local jurisdictions. She noted that in the proposed language she submitted for Task Force review provided in today's meeting packet, she addressed three items that she believes should be designed by a licensed professional: overhead structures, true retaining walls, and work that alters the drainage of a landscape. She explained that she does not necessarily believe there is a risk for an unlicensed person to install a pathway or birdbath or create a berm that does not alter drainage. She noted that an argument can be made that all work performed on landscape can potentially affect drainage, but there is a judgment call as to whether the work can affect someone next door. She stated that a designer can collaborate with a landscape architect. She further stated that the level of detail she specified in her proposed language was written in a manner so that the public could understand it. She explained that her proposed language was not meant to make landscape designers feel restricted; it was meant to protect the consumer.

Ms. Berstler stated if a city has a regulation in place that requires any drainage or movement of soil requiring a stamp or approval from the city, then only a licensed landscape architect can perform the work. She further stated if the city has no restriction on downspout redirection but moving 15 cubic feet of soil or more requires a restriction, an individual cannot design what the city code allows. She concluded that you cannot include that standard plan on a drawing because it is not just the placement of plants in the landscape and that this presents an issue. Ms. Gates stated that just because one city deems it a safety issue and another does not, does not mean it is not a potential issue. She further stated an area of concern is individuals who do not have the training tend to include details from the internet regarding how to complete a task, which might lead people to believe there is a higher level of control than actually exists.

Ms. Berstler stated the issue she has with the language in BPC section 5641, is the statement "as required by law." She asked what this means and whether codes are considered to be law. Mr. Chang confirmed that codes are law. Ms. Berstler stated there has been no known harm to consumers from landscape design. Ms. Anderson asked if harm should occur before a law is made to prevent it. She explained the purpose of architectural licensing, landscape architectural licensing, and civil engineering are to be preventative. Ms. Berstler stated that things that rise to the level of irreparable harm are already regulated. Mr. Miller confirmed this and explained that at some point, the Legislature determined landscape architects need to fall within a particular framework of practice. He stated that DCA began to regulate landscape architecture, administer exams, revise the exams, and establish minimum competency for the practice. He further stated that standards inform the public that if you engage licensees, even if they are not paid, and there is failure or unprofessional conduct, you can file a complaint with the State and DCA and have the issue resolved. He noted in regards to landscape designers, as long as they do not rise to the level where anyone challenges them, they will never come to the concern of LATC because they are unregulated.

Ms. Berstler stated she is interpreting the discussion to be advocating for landscape designers to do what they normally do because the only things that will be brought to the attention of LATC are things that are problematic by other members of the profession. Mr. Miller stated that those are separate issues from determining clarity for BPC section 5641. He stated that if misconduct

by a professional occurs, it should be brought to the attention of LATC, which could take action against that individual. He explained that he knows of a garden designer in his town who works with contractors, landscape architects, and architects who take responsibility for the outcome of the product. He noted that to his knowledge, there have been no complaints about the garden designer in 30 years and she has made a great living. He inquired what can be done to clarify the law so individuals are not misled.

Mr. Rohlfes stated although the Task Force seems to agree the language in BPC section 5641 is clear, the discussion is indicating that it is not as clear as it could be. He suggested addressing this by altering the law or putting out a communication explaining how LATC interprets what tangible objects and pathways are. He suggested this as an alternative rather than sending a letter when someone violates the law. He suggested the Task Force cease discussion on clarifying the section and proceed to discussing expanding the scope practice. He asked if clarity can be addressed once the scope discussion occurs. He stated that it makes more sense to discuss scope before discussing clarity.

Ms. Gates stated the original mission was to discuss clarity and determine if there had been enforcement issues because of a lack of clarity. She suggested determining whether the discussion should open up to expanding the scope or continue with clarity. Mr. Miller stated that his preference is to discuss clarity. He noted that a tangible object is defined as a real thing that you can touch or experience with your senses. He stated that he has always viewed landscape design as an ethereal, visionary type of activity until it rests on the ground and becomes a constructional feature, at which point people who have skillsets in particular areas can build it.

Ms. Gates asked the Task Force members if they would like to continue the discussion of clarity or discuss expanding the scope. Mr. Miller explained that if there is a need to change the scope, then more work needs to be done to define what that scope area is. He noted that he became involved with the Task Force to participate in the discussion over clarity. Ms. Anderson noted that the LATC wants to make sure there is clarity in the law, but the charge of the Task Force is not to expand the scope of an unlicensed individual. She stated that part of the charge is to ensure that the language in BPC section 5641 adequately protects the public. Dan Chudy stated he wanted to discuss clarifying BPC section 5641. Ms. Voigt stated that based on the discussion, the law is clear; however, there is a need to expand the scope and that is not the charge of the Task Force. Mr. Rohlfes suggested looking at the scope first, and then coming back to clarity after determining if any significant changes would protect the public. Ms. Maggio stated the law is clear and that the Task Force could discuss changing the scope. Ms. Berstler stated that the law is not clear to the public concerning what rises to the level of needing a landscape architect. She questioned when something conceptual becomes too specific. She further stated that it is unclear, without a lot of work on the part of the person reading the law, what the difference is between landscape design and landscape architecture. Ms. Berstler stated she agrees with Mr. Rohlfes and the Task Force should first discuss scope and then discuss clarity. Ms. Maggio inquired whether the charge of the Task Force includes reviewing the scope of practice. She stated that it might be necessary to go back to LATC and express the need to expand the charge of the Task Force. Ms. Gates suggested there might be some clarification that does not expand scope, just clarifies it because the term “tangible objects” seems to confuse people. She stated if there is a feeling that we need to expand scope, it would have to be recommended to LATC.

Ms. Berstler stated most of the problems encountered between professionals comes with the definition of conceptual design. Ms. Gates noted that the Task Force is discussing unlicensed

professionals so the Task Force should be discussing it in a way that protects the uninformed consumer. She stated that discussing it in this manner is not intended to be disrespectful to landscape designers. Ms. Berstler stated this manner of conversation is not unprecedented because a previous discussion over a building designer exemption was handled in the same manner. Ms. Gates clarified that she did not want there to be any reflection that landscape designers are not knowledgeable. Ms. Berstler noted there is an issue between the definitions of unlicensed and illegal. She stated an amendment is needed that clarifies that it is legal to practice landscape design without a license. Ms. Gates commented that it is legal to say that you are a landscape designer. Ms. Berstler explained there was a recent incident at a garden show where landscape designers were providing conceptual plan designs to homeowners as a fundraiser. She stated that landscape architects were also at the show informing people that these designs were not created legally. She further explained that afterwards an article was written in a San Diego newsletter commending the landscape architects at the show for informing the public that the designs were not created legally. She stated that making this kind of statement in a public forum shows that it is unclear where legality is and where the unlicensed overlap is.

Mr. Miller suggested that if there are representatives of the profession acting in this manner to bring it to the attention of the ASLA and LATC. He stated that free speech cannot be regulated and no regulation change can alter an individual's perception of the law. He stated that the issue should be brought up as a complaint. Ms. Berstler stated she brought this issue up to illustrate lack of clarity and not as a complaint. Ms. Voigt opined it should be a complaint.
Mr. McCauley suggested the complaint might be based upon another body of law. Ms. Gates noted a need for education and clarification.

E. Review Follow-up Items

The Task Force discussed the follow-up items from the May 24, 2012 Task Force meeting and reviewed proposed changes to BPC section 5641. The Task Force discussed clarity regarding conceptual drawings referenced in the law. Mr. Miller stated that conceptual drawings often include the words "Not for construction, design only." He stated this notifies the client and the clarification is made on the document that it is not intended to be a construction drawing. He further stated that a city's requirements with design submittal are required to have information that can be done as design or conceptual as part of the package. He explained that creating engineered and metered details and plans for the purpose of construction is what crosses the line. He noted that construction-drawing details have to be regulated by the State. He stated the key to creating conceptual drawings is to clearly identify the intent of the document and the expectation of the client as it relates to the document.

Mr. Miller stated that the Task Force could recommend that LATC have an outreach program for the community to provide certain guidance and clarifications as it relates to information as opposed to trying to start narrowing it down. He stated the exemptions for irrigation consultants and golf course architects cause a lack of clarity because it is not clear why they are exempt.
Ms. Maggio suggested the Task Force recommendation could be more specific, and state what a conceptual drawing is, what it leads to, and what is considered a conceptual drawing. Mr. Miller explained that could be a recommendation that moves to LATC, the Board, its legal counsel, and a handful of others to determine whether it is defensible or corrective.

Ms. Berstler asked what the Task Force agrees with in the language proposal submitted by APLD, and what the Task Force thinks landscape designers can do, given that the Task Force

agrees that the unlicensed person's exemption is correct. Ms. Gates explained that a landscape designer could consult, investigate, conduct reconnaissance, research and design, and prepare conceptual plans. She stated that the preparation of drawings would require some clarification. She stated the part of the proposed language that was unclear to her was the phrase "with accepted professional standards of public health and safety." She explained that this means the law would defer to laws of local jurisdictions which she does not necessarily know, and she would feel uncomfortable adding this to the law. She inquired if there was a feeling of not being able to do analysis or reconnaissance among landscape designers. Ms. Berstler responded that was the case. Ms. Larsen suggested an issuance of a legal opinion letter. Ms. Gates stated that it might be interesting to have a written legal opinion. Ms. Larsen commented that it could be used as a reference. Ms. Gates stated the concern was this might happen again ten years from now and Ms. Anderson concurred. Mr. Miller noted that it may not ever happen again and the benefit of regulations is that you can tackle the areas that are prohibited.

Ms. Berstler stated the heart of the clarity issue is that practitioners in the green industry believe varying things about what landscape designers can do under the current language for unlicensed individuals. She stated that she wants clarity regarding what unlicensed people are allowed to do that does not rely on an opinion. Ms. Gates concurred and added that she is only providing her opinion during the discussion. She suggested that frequently asked questions (FAQs) could provide more clarity than other options. Ms. Berstler indicated that would be a soft approach. Ms. Gates noted that she believes many people have not reviewed the Landscape Architects Practice Act in 20 or 30 years and they operate based on their interpretation at the time. She suggested having a discussion on whether there is consumer protection and safety being provided and moving forward from there.

Ms. Anderson explained attachment E-2 of the meeting packet as it relates to the Landscape Architect Registration Examination (LARE) test specifications. She stated the Landscape Architects Practice Act provides protection because we rely on a national examination to test for minimal competency, experience, and education requirements. Mr. Miller noted the State also establishes rules that determine those who are minimally competent and can practice in California. He stated that subject matter experts change and become more relevant to the current practice of landscape architecture. He suggested having a regulated group of landscape designers, who could establish a standard of practice as well as a process, but stated that is not the charge of the Task Force.

Ms. Berstler requested that Ms. Anderson clarify her earlier statement concerning landscape architects and whether the activities listed in attachment E-2 are the purview of landscape architects only. Ms. Anderson replied that many of these duties are performed by other professions, but the list in attachment E-2 is what differentiates landscape architecture from architecture, engineering, and landscape design. She stated the sum total of all these parts defines the practice of landscape architecture. Ms. Berstler inquired how this relates to the exemptions the State has in the Landscape Architects Practice Act. Ms. Anderson explained it does not relate to the exemptions. She explained that we are ensuring that all of this is incorporated into the Landscape Architects Practice Act to protect public health, safety, and welfare. Mr. Miller asked if the attachment was more of an inventory of test items than a description of the practice. Ms. Gates stated the tasks in attachment E-2 are what qualify a person to be a landscape architect, but some of the tasks can also be performed by a landscape designer. She inquired whether the exemptions achieve the protection of public health, safety, and welfare. Ms. Anderson responded that it adequately protects the public even though there

could be more clarity. She explained that she does not believe adding or removing language to BPC section 5641 will protect the public to a greater or lesser degree.

Mr. Miller stated the challenges with liability are the point of construction documentation. He noted that liability is clarified with the statement "for the conceptual design and placement" as opposed to the statement "conceptual design and placement for construction." He further stated that BPC section 5641 adequately protects the public health, safety, and welfare, as it is written. Ms. Berstler inquired whether specifications were included on the examination specifications for the LARE. Ms. Anderson stated that the term "specifying an object" is different from the term "a specification." She stated she would not consider dimensions and material descriptions to be specifications. Ms. Berstler inquired if plants could be placed in plans and drawings. Mr. Miller explained that BPC section 5641 states "prohibit any person from drawings for conceptual design and placement of tangible objects and landscape features or plans, drawings, and specifications for the selection, placement, and use of plant materials in a single-family dwelling." He explained that LATC becomes involved when a complaint is received that a person is practicing as a landscape architect with the intent of constructing.

Mr. Chang stated that the question is whether the exemption protects the public and if it needs further clarity. He stated the first sentence of BPC section 5641 allows anyone to prepare drawings for the conceptual design and placement of tangible objects, and this part of the section is clear. He noted the problem comes with the second sentence, which states "Construction documents, details, or specifications for the tangible objects or landscape features, and alteration of site requiring grading and drainage plans shall be prepared by a licensed professional as required by law." He further stated there is ambiguity with the phrase "as required by law"; however, perhaps the ambiguity protects the public because the intent is plans and specifications are required to be done by licensed design professionals, so they can only be done by a licensed professional. He explained the converse is also true, to the extent that those plans and specifications are not required to be done by a licensed professional, anyone can do. He concluded that BPC section 5641 may protect the consumer because it specifies those plans, which are required to be prepared by a licensed professional cannot be done by an unlicensed person, but at the same time, it is ambiguous because they could specify what those plans are. He stated that it may have been intentionally worded to be ambiguous to provide these protections.

Ms. Berstler inquired about having an opinion or interpretation that would provide guidance for practitioners of all land forming fields to be able to understand. She defined "land forming" as landscape contractors, landscape architects, landscape designers, and all who engage in landscape design in one form or another. Mr. Chang stated that he could prepare an opinion letter that provides interpretation similar to what he previously stated, but the law may still have ambiguity in what is required to be done by licensed professionals. Ms. Anderson stated it is LATC's responsibility to provide the landscape designers some clarification because it seems clear to the Task Force and to LATC staff but, in ten years with a new staff, it might not be the same. She further stated it would be helpful to send a recommendation to LATC that they publish an opinion, FAQs, white paper, or whatever they deem necessary for the public/ consumer. Ms. Gates stated an individual practicing landscape design deserves to know if they have gone beyond what an unlicensed person can perform and landscape architects might have a misinterpretation as well.

Ms. Anderson stated the clarity issue is real and the Task Force's responsibility is to make sure BPC section 5641 is as clear as possible to the public. Ms. Gates stated the benefit to FAQs or a "white paper" is that it can be completed in a reasonable amount of time, as opposed to legislation or regulation changes. She further stated that if the Task Force determines that the issue is not addressed, the Task Force can discuss changing the law. Ms. Maggio inquired if something could be developed that would be easy for everyone to understand, such as a document that states if a fence is over ten feet high, it must be designed by a professional. Ms. Gates noted that the document would bring up many questions and requires examining potential health and safety risks. Ms. Berstler asked what the difference is between a white paper and a legal opinion. Mr. Chang explained an opinion letter is an explanation of the law. He stated that white papers stem from legal opinions or policy arguments. Ms. Gates stated that it is beneficial to know the areas of practice where questions occur. She noted questions regarding dimensional or conceptual language or what a specification is, may have to be answered somewhere.

Ms. Larsen stated she has handled complaints on behalf of ALPD members. She suggested that it would be helpful to have an opinion letter from LATC stating that nothing contained in BPC section 5641 prohibits an unlicensed person from performing certain tasks. Ms. Berstler stated their proposed language came from the existing exemption in the Landscape Architects Practice Act. She explained the language addresses elements in landscape design that are being brought into question or have been in the past.

Ms. Anderson asked Mr. McCauley if the Task Force could formulate a recommendation to the LATC that they prepare an opinion letter of this nature. Mr. McCauley responded that was a possible outcome. Ms. Gates inquired how the Task Force feels about acquiring an opinion letter that facilitates the interpreted understanding of the law. Ms. Morton stated that she did not know how a legal opinion would help the issue of being approached by a landscape architect who accuses her of acting illegally because she is not a landscape architect. Ms. Gates asked Ms. Morton if she would rather file a complaint with LATC to investigate the allegation or have an opinion letter that states she is legally operating. Ms. Morton replied that she would be interested in whatever would be most helpful in preventing such conversations at the onset. She stated that if an opinion letter prevents such conversations, then it would be beneficial. She further stated that putting the issue in the position where there is no argument in the future and no opinion letter is needed is something that she would be interested in.

Ms. Anderson stated that as long as you are an unlicensed practitioner you will always have to fight that argument. She stated that she agrees very strongly with Mr. Miller in that if there are licensees harassing landscape designers, it is a point of ethical conduct within landscape architecture and should be brought to the attention of the LATC. Ms. Gates suggested if an opinion letter is written, outreach can be conducted to bring it to the attention of landscape architects and provide more clarity.

Ms. Berstler asked if an opinion letter can refer to landscape design since it is not a regulated industry. Mr. Chang explained that it would refer to an unlicensed person. Ms. Berstler stated that she wants to include in the letter something that would make it clear that it is permissible for an unlicensed individual to perform certain activities. She explained that unlicensed activity is synonymous with illegal activity so it needs clarification. Mr. Miller opined that creating a list differentiating landscape design and landscape architecture would be a double-edged sword. He explained that on one hand it is open to interpretation enough to work in a marketplace and hire

people if they stay within a particular framework, but on the other hand, the result would be a large list that would present a challenge to create. He stated the differentiation between a licensed professional and unlicensed professional is restrictive enough and can be moderately well defined. He stated when we get to the point of defining landscape designers we have to physically define what a landscape designer does. Ms. Gates stated this strategy feels like something that can be accomplished quickly as opposed to waiting to see who is confused about the law. Ms. Berstler noted the strategy is interesting because it addresses an idea about why there is not a residential exemption in the Landscape Architects Practice Act.

Ms. Anderson stated that there is lack of clarity with the definition of tangible objects and conceptual versus construction terminology. She stated that FAQs that can be posted are usually far better received and easier to understand than a legal opinion. Mr. Rohlfes asked Mr. Chang to repeat what he had said earlier about his opinion letter. Mr. Chang stated that the first sentence in BPC section 5641 is clear which allows unlicensed persons to perform drawing for conceptual design and placement of tangible objects. He explained that the questions regarding tangible objects and conceptual design are "terms of art" for members of the profession to discuss. He stated that the point of clarification for him to address occurs in the second sentence in BPC section 5641 dealing with construction documents, details, and specifications for tangible objects and landscape features and alteration of sites requiring grading and drainage. He explained that the law states it has to be prepared by a licensed design professional as required by law and he interprets the phrase "as required by law" as meaning where it is required to be designed by design professionals. He noted that the converse is also true in that if they are not required to be designed by design professionals, then an unlicensed person can design them. He stated that he believes the purpose of that when it was drafted was to protect the public.

Mr. Rohlfes asked if the phrase "as required by law" is the law. Mr. Chang explained that this is the law but "as required by law" is modifying "shall be prepared by a licensed professional" to the extent that there are other provisions, such as the building code, which require those structures to be designed by a licensed design professional and that is the controlling language. Ms. Gates inquired if "as required by law" refers to local ordinances within a city. Mr. Chang responded that it does. Ms. Gates asked if a city does not require an arbor to have a structural design, then could a designer do it. Mr. Chang stated that could be an interpretation. Ms. Gates asked for clarification on how the building code applies in a jurisdiction that does not require a design to be submitted. Mr. Chang explained if there is no one to submit a design to, but the general building code requires the design to be done by an engineer, the design still has to be done according to local ordinances and general building code. He stated if any of those laws require plans to be designed by a licensed professional, an unlicensed professional cannot design them. Mr. Miller stated that the city of Lawndale requires a licensed architect's stamp on plans for decks so landscape architects can design it, but they cannot stamp it. Mr. Chang stated that if there is any law that requires something to be designed by a licensed professional, an unlicensed professional cannot do it regardless of whether it is being enforced by local jurisdiction.

Ms. Berstler stated that the model landscape ordinance written by Department of Water Resources says the submission of design packages needed to be submitted as permitted by law. She explained that it was specifically written to enable landscape design professionals or unlicensed persons who are capable of doing calculations or preparing plans to be able to submit those documents. She stated that landscape architects successfully argued in many cases that only licensed professionals should be able to submit these packages. She stated that APLD members and other people successfully submit these packages. She asked how this aligns with

the notion that landscape architects and landscape contractors are the only ones capable of submitting these packages. Mr. Miller explained that local jurisdictions can be more restrictive but not less restrictive. Ms. Berstler stated this is an example of how local jurisdictions were influenced by an argument that landscape designers were not able to legally submit these kinds of packages.

Ms. Anderson stated that every profession has some sort of restriction on them; even landscape architects deal with jurisdictions that will not allow them to review grading plans when their law clearly says they can. She explained they have to fight that battle every time it comes up because it is up to the local jurisdiction. Mr. Miller stated that the city of Corona has no landscape architects on staff to review plans, so while they require plans to be submitted, they had no one to review them. He further stated their criteria is based on their own needs and standards and personnel requirements and the state does the same.

Ms. Gates asked if there was support for Mr. Chang's legal opinion, developing FAQs, or conducting an in depth review of these clarifications and deciding if a clarification in the language is necessary. Mr. Miller noted the Board of Directors at CC/ASLA has reviewed the proposed language and has written a letter stating that they are not in support of any of the proposed language and recommends that BPC section 5641 remain as it is. He stated they are responding specifically to the proposed changes by APLD, Mr. Chudy's and Ms. Gates' and their official position is that they are not in favor of the proposed language changes. Mr. Rohlfes stated he is in favor of the legal opinion letter and the FAQ strategy. He explained it seems to address many of the concerns and to be simple to obtain. Mr. Chang stated a legal opinion would not be a problem, while the FAQs would run the risk of being viewed as an underground regulation. He suggested that hopefully the legal opinion would be sufficient and provide enough direction without being so specific as to be viewed as an underground regulation.

Mr. Rohlfes mentioned a brochure that Contractors State Licensing Board publishes regarding hiring a landscape contractor and what they services they can perform. Mr. Chang stated that brochures are somewhat better than FAQs since they can become too definitive and may become line-item policy.

Ms. Gates asked if there was support for the legal opinion. Ms. Berstler stated she would move to recommend to the LATC to request a legal opinion be prepared. Mr. Miller inquired exactly what would be the topic of the opinion. Mr. Chang stated the opinion would address the intent and the correct construction of BPC section 5641 as it relates to what unlicensed persons are permitted to perform. Mr. Chang explained intent is very critical because it gives an understanding of why the language was written as it was.

- **Ms. Berstler moved to recommend to the LATC that LATC acquire a legal opinion to provide clarification on BPC section 5641, Chapter Exceptions, Exemptions.**

  Ms. Voigt seconded the motion.

  The motion carried 8-0.

Ms. Gates stated the recommendation would be made to the LATC at its next meeting scheduled for November 14, 2012. Ms. Voigt suggested informing LATC that the Task Force is in favor of some form of FAQs and there is an informal way of adding this item to the newsletter in a

thought for the day. Ms. Gates asked if the Task Force wanted to also recommend to the LATC that it perform outreach to unlicensed professionals on what services they can legally provide. Ms. Berstler asked if it would be LATC outreach or professional outreach. Ms. Gates indicated you can only initiate outreach through LATC because it is their responsibility to clarify legal concerns. She further noted that ASLA can help by providing further clarity. Mr. Miller stated that since ASLA will be having this conversation every few years they will do anything they can to help expand knowledge in a non-confrontational manner. He stated ASLA has members who are also members of APLD so they want to make sure, when dealing with this clarity issue it does not result in conflict.

F. Select Future Task Force Meeting Dates

Ms. Gates stated that the Task Force will be provided a copy of the legal opinion letter if LATC approves the recommendation. She stated that once the Task Force receives the letter, they can determine if the Task Force needs to meet again. Therefore, a date for a future Exceptions and Exemptions Task Force meeting was not set.

Adjourn

- **Linda Gates adjourned the meeting.**

The meeting adjourned at 1:27 p.m.

Agenda Item D

REVIEW LEGAL OPINION REGARDING BUSINESS AND PROFESSIONS CODE (BPC) SECTION 5641 (CHAPTER EXCEPTIONS, EXEMPTIONS)

During the October 18, 2012 meeting, the Exceptions and Exemptions Task Force discussed BPC section 5641, specifically the last sentence which contains the phrase "as required by law" (see below).

> "This chapter shall not be deemed to prohibit any person from preparing drawings for the conceptual design and placement of tangible objects and landscape features or plans, drawings, and specifications for the selection, placement, or use of plants for a single family dwelling. Construction documents, details, or specifications for the tangible objects or landscape features, and alteration of site requiring grading and drainage plans shall be prepared by a licensed professional *as required by law*."

The Task Force recommended that Don Chang, Legal Counsel, provide LATC with a legal opinion on BPC section 5641. In May 2013, Mr. Chang provided the requested legal opinion to LATC which was accepted at its May 22, 2013 meeting.

The Task Force is asked to review the attached legal opinion for BPC section 5641.

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MEMORANDUM

DATE	April 30, 2013
TO	Trish Rodriguez Landscape Architects Technical Committee
FROM	Don Chang Assistant Chief Counsel
SUBJECT	Section 5641 - Exceptions

Section 5641 of the Business and Professions Code[1] specifies landscape architectural activities which are exempt from the provisions of Chapter 3.5 (commencing with section 5615 - hereafter referred to as the "Landscape Architects Act" or "Act"), Division 3, of the Business and Professions Code. The Landscape Architects Technical Committee ("LATC") created a task force to review the section 5641 to determine if clarification of its provisions was necessary.

During the October 18, 2012 Task Force meeting, the discussion focused on the following phrase contained in section 5641:

> "... Construction documents, details, or specification for the tangible objects or landscape features, and alterations of site requiring grading and drainage plans shall be prepared by a licensed professional *as required by law...*"

The question posed was whether the term "as required by law" meant that if there was no law that required the enumerated construction documents, details or specification to be prepared by licensed professionals would unlicensed persons be permitted to prepare such documents.

Conclusion

The preparation of construction documents, details or specifications for tangible objects or landscape features is a service required by the Landscape Architects Act to be performed by a licensed landscape architect. Accordingly, the provisions of section 5641 which require construction documents, details or specifications for tangible objects

[1] All section references are to that Code.

or landscape features to be prepared by a licensed professional as required by law do not permit an unlicensed person to provide or prepare such documents without being under the immediate and responsible direction of a landscape architect.

Analysis

Section 5615 defines "landscape architect" as follows:

> "5615. As used in this chapter:
> "Landscape architect" means a person who holds a license to practice landscape architecture in this state under the authority of this chapter. A person who practices landscape architecture within the meaning and intent of this article is a person who offers or *performs professional services, for the purpose of landscape* preservation, *development and enhancement, such as* consultation, investigation, reconnaissance, research, planning, *design, preparation of drawings, construction documents and specifications*, and responsible construction observation. Landscape preservation, development and enhancement is the dominant purpose of services provided by landscape architects. *Implementation* of that purpose *includes*: (1) the preservation and aesthetic and functional enhancement of land uses and natural land features; (2) *the location and construction of aesthetically pleasing and functional approaches and settings for structures and roadways; and, (3) design for trails and pedestrian walkway systems*, plantings, landscape irrigation, landscape lighting, landscape grading and landscape drainage.
>
> Landscape architects perform professional work in planning and design of land for human use and enjoyment. Based on analyses of environmental physical and social characteristics, and economic considerations, they produce overall plans and landscape project designs for integrated land use.
>
> *The practice of a landscape architect may*, for the purpose of landscape preservation, development and enhancement, *include*: investigation, selection, and allocation of land and water resources for appropriate uses; feasibility studies; formulation of graphic and written criteria to govern the planning and design of land construction programs; preparation review, and analysis of master plans for land use and development; *production of overall site plans*, landscape grading and landscape drainage plans, irrigation plans, planting plans, and construction details; specifications; cost estimates and reports for land development; collaboration in the design of roads, bridges, and structures with respect to the functional and aesthetic requirements of the areas on which they are to be placed; negotiation and arrangement for execution of land area projects; field observation and inspection of land area construction, restoration, and maintenance.

> *This practice shall include* the location, arrangement, and *design of those tangible objects and features as are incidental and necessary to the purposes outlined herein.* Nothing herein shall preclude a duly licensed landscape architect from planning the development of land areas and elements used thereon or from performing any of the services described in this section in connection with the settings, approaches, or environment for buildings, structures, or facilities, in accordance with the accepted public standards of health, safety, and welfare. This chapter shall not empower a landscape architect, licensed under this chapter, to practice, or offer to practice, architecture or engineering in any of its various recognized branches." (Emphasis added)

The definition of the scope of practice for a landscape architect is extensive. However, distilled to its essence, as it relates to the preparation of plans, specifications and construction details, a landscape architect performs professional services for the purpose of landscape preservation, development and enhancement, such as design, preparation of drawings, construction documents and specifications and construction observation. The implementation of landscape preservation, development and enhancement includes the design of pedestrian walkway systems, plantings, landscape irrigation, landscape lighting, landscape grading and landscape drainage plans, irrigation plans, planting plans. The practice of landscape architecture may include the production of overall site plans and construction details. The practice also includes the design of those tangible objects and features as are incidental and necessary to the purpose of landscape development and enhancement.

Section 5640 makes it a misdemeanor for any person who does not hold a current and valid license issued under the Act to engage in the practice of landscape architecture, to represent themselves as a landscape architect or any other title or words that would imply or indicate that he or she is a landscape architect.

The Act provides for various exemptions from the licensure requirements for specified activities, e.g., irrigation consultants, golf course designers,. Our attention is focused on section 5641 which provides exceptions to the prohibition contained in section 5640. It provides as follows:

> "This chapter shall not be deemed to prohibit any person from preparing drawings for the conceptual design and placement of tangible objects and landscape features or plans, drawings, and specification for the selection, placement, or use of plants for a single family dwelling. Construction documents, details, or specifications for the tangible objects or landscape features, and alteration of site requiring grading and drainage plans shall be prepared by a licensed professional as required by law."

The first sentence of section 5641 allows unlicensed persons to perform drawings for the conceptual design and placement of tangible objects and landscape feature and

planting plans. It defines the landscape architecture activities that may be performed by an unlicensed person. The second sentence of section 5641 provides that where required by law, construction documents, details or specifications must be prepared by a licensed professional. The second sentence is a limitation on the activities of an unlicensed person performing landscape architectural activities.

Generally exceptions to a statute are construed narrowly to cover only those circumstance which are within the words and reason of the exception. *All One God Faith, Inc. v. Organic and Sustainable Industry Standards, Inc.*, (2010) 107 Cal.Rptr. 3d 861. In the instant case, an unlicensed person may lawfully engage in the practice of landscape architecture to the extent that such activities are exempt.

At the LATC Task Force meeting, I stated that if a local ordinance required a licensed professional to design a landscape feature, such an ordinance would be considered a law which precluded an unlicensed person from preparing such instruments of services. Unfortunately, the discussion focused on local laws governing design and there may have been an erroneous impression that if there was no local law requiring that construction documents, details or specifications be prepared by a licensed professional, such documents could be prepared by an unlicensed person.

There is no universally accepted definition of the term "law." However, it appears clear that a law is a rule which is passed by a legislative governmental body. The law includes, state laws and regulations and local government codes and ordinances. For example, the Health and Safety Code authorizes the State to adopt building standards which it does by adopting regulations in Title 24 of the California Code of Regulations that govern the design and construction of buildings and associated facilities. Cities and counties are required by state law to enforce Title 24 and may adopt ordinances making more restrictive requirements than provided by Title 24 due to local climatic, geological or topographical conditions.

The Landscape Architects Act is a state law of general application. Section 5640 prohibits persons who do not hold a landscape architect's license or are exempt from the Practice Act from engaging or offering to provide landscape architectural services. As discussed above, the practice of landscape architecture includes the design of tangible objects and features that are incidental and necessary for the purpose of landscape development and enhancement. Accordingly, the preparation of construction documents, details or specifications for tangible objects or landscape feature are a function of the practice of landscape architecture and require licensure or an exemption to be lawfully performed. Section 5640 only permits an unlicensed person to provide conceptual design and placement of tangible objects and planting plans. It does not authorize an unlicensed person to prepare construction documents, details or specifications for tangible objects or landscape features.

We trust that the foregoing is responsive to your inquiry.

Agenda Item E

DISCUSS EXCEPTIONS AND EXEMPTIONS TASK FORCE CHARGE (ENSURE THE PROVISIONS OF BPC SECTION 5641 ARE CLEAR AND PROTECT THE PUBLIC) AND POSSIBLE ACTION

The Exceptions and Exemptions Task Force is charged with determining how the Landscape Architects Technical Committee (LATC) can ensure clarity about BPC section 5641 (Chapter Exceptions, Exemptions), and ensure that these provisions protect the public.

During its first meeting on May 24, 2012, the Task Force discussed its charge and noted that it could include investigating possible changes to BPC section 5641. At the conclusion of the meeting, members were asked to submit information to be reviewed and considered at the next meeting.

At the October 18, 2012 meeting, the Task Force members provided information to assist in their discussion on how LATC can ensure clarity regarding BPC section 5641. The Task Force reviewed and discussed the following information:

1. Council of Landscape Architectural Registration Boards (CLARB) Determinants of Success Research Study, October 2011
2. CLARB Landscape Architect Registration Examination Specifications
3. September 7, 2012, Letter from the Association of Professional Landscape Designers (including Washington State Landscape Architects Practice Act)
4. Dan Chudy, City of Riverside Building Official, Suggestions to BPC Section 5641
5. Linda Gates, Landscape Architect, Suggestions to BPC Section 5641

During the October 18, 2012 meeting, a question was posed regarding the phrase “as required by law” contained in BPC section 5641. The Task Force recommended that Don Chang, Legal Counsel, provide LATC with a legal opinion on BPC section 5641. On November 14, 2012, the LATC approved the Task Force’s recommendation.

In May 2013, Mr. Chang provided the requested legal opinion to LATC, which was accepted at its May 22, 2013 meeting. The LATC requested the Task Force convene a final meeting to review the legal opinion, complete its charge, and report to LATC at its next meeting.

The Task Force is asked to complete its charge and make a recommendation for LATC’s consideration at its next meeting.

Agenda Item F

ADJOURNMENT

Time: _____