NOTICE OF MEETING

November 4, 2016
10:30 a.m. – 3:30 p.m.
(or until completion of business)

2420 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7230 (LATC)

The Landscape Architect Technical Committee (LATC) will hold a meeting, as noted above. The notice and agenda for this meeting and other meetings of the LATC can be found on the LATC's website: latc.ca.gov. For further information regarding this agenda, please see reverse or you may contact Trish Rodriguez at (916) 575-7230.

The LATC plans to webcast this meeting on its website. Webcast availability cannot, however, be guaranteed due to limited resources or technical difficulties. The meeting will not be cancelled if webcast is not available. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at the physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast. The meeting may be cancelled without notice. For meeting verification, call (916) 575-7230 or access the LATC website at http://www.latc.ca.gov.

AGENDA

A. Call to Order – Roll Call – Establishment of a Quorum

B. Chair's Procedural Remarks and LATC Member Introductory Comments

C. Public Comment on Items Not on Agenda
(The Committee may not discuss or take action on any item raised during this public comment section, except to decide whether to refer the item to the Committee's next Strategic Planning session and/or place the matter on the agenda of a future meeting [Government Code sections 11125 and 11125.7(a)].)

D. Review and Possible Action on May 24, 2016 LATC Meeting Minutes

E. Program Manager's Report on Administration, Examination, Licensing, and Enforcement

F. Discuss and Possible Action on Public Comments Regarding California Code of Regulations (CCR) Title 16, Section 2615 (Form of Examinations) Reciprocity Requirements

(Continued)

G. Council of Landscape Architectural Registration Boards (CLARB)
   1. Update on Landscape Architect Registration Examination (LARE) Administration
   2. Review and Ratify 2016-2017 Board of Directors and Committee on Nominations Elections Ballot
   3. Update on 2016 CLARB Annual Meeting

H. Discuss and Possible Action on Strategic Plan Objective to Adopt New Methods and Identify New Resources to Effectively Educate Consumers Regarding Health, Safety, and Welfare Issues Within Landscape Architecture

I. Discuss and Possible Action on Strategic Plan Objective to Explore Methods for Developing a Teleconferenced Educator's Roundtable Comprised of School Representatives to Increase Collaboration and Communication for Future LATC Strategic Plans

J. *North Carolina State Board of Dental Examiners v. Federal Trade Commission* Case Review – Department of Consumer Affairs Legal Counsel

K. Election of LATC Officers for Fiscal Year 2016/17
   Discuss and Possible Action on LATC Officer Election Procedures

L. Review Tentative Schedule and Confirm Future LATC Meeting Dates

M. Adjournment

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Chair and may be taken out of order. The meeting will be adjourned upon completion of the agenda, which may be at a time earlier or later than posted in this notice. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the LATC are open to the public.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the LATC prior to the Committee taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Committee, but the Committee Chair may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Committee to discuss items not on the agenda; however, the Committee can neither discuss nor take official action on these items at the time of the same meeting [Government Code sections 11125 and 11125.7(a)].

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Ms. Rodriguez at (916) 575-7230 emailing trish.rodriguez@dca.ca.gov, or sending a written request to the LATC. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

Protection of the public shall be the highest priority for the LATC in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Business and Professions Code section 5620.1)

Agenda Item A

CALL TO ORDER - ROLL CALL - ESTABLISHMENT OF A QUORUM

Roll is called by the Landscape Architects Technical Committee (LATC) Vice Chair or, in his/her absence, by an LATC member designated by the Chair.

LATC MEMBER ROSTER

Andrew Bowden, Chair

David Allan Taylor, Jr., Vice Chair

Patricia Trauth

Marq Truscott

Agenda Item B

CHAIR'S PROCEDURAL REMARKS AND LATC MEMBER INTRODUCTORY COMMENTS

LATC Chair Andrew Bowden, or in his absence, the Vice Chair will review the scheduled LATC actions and make appropriate announcements.

Agenda Item C

PUBLIC COMMENT ON ITEMS NOT ON AGENDA

Members of the public may address the Committee at this time. The Committee Chair may allow public participation during other agenda items at their discretion.

(The Committee may not discuss or take action on any item raised during this public comment section, except to decide whether to refer the item to the Committee's next Strategic Planning session and/or place the matter on the agenda of a future meeting [Government Code sections 11125 and 11125.7(a)].)

Agenda Item D

REVIEW AND POSSIBLE ACTION ON MAY 24, 2016 LATC MEETING MINUTES

The Landscape Architects Technical Committee (LATC) is asked to review and take action on the attached May 24, 2016 LATC Meeting Minutes.

Attachment:
May 24, 2016 LATC Meeting Minutes

Meeting Minutes

CALIFORNIA ARCHITECTS BOARD
Landscape Architects Technical Committee

May 24, 2016
Sacramento, California

Landscape Architects Technical Committee (LATC) Members Present
Andrew Bowden, Chair
Patricia Trauth
Marq Truscott

LATC Members Absent
David Allan Taylor, Jr., Vice Chair

Staff Present
Doug McCauley, Executive Officer, California Architects Board (Board)
Vickie Mayer, Assistant Executive Officer, Board
Trish Rodriguez, Program Manager, LATC
Rebecca Bon, Legal Counsel, Department of Consumer Affairs (DCA)
Tremaine Palmer, Special Projects Analyst, LATC
Gretchen Kjose, Retired Annuitant, LATC
Matthew McKinney, Enforcement Officer, LATC
Kourtney Nation, Examination Coordinator, LATC

Guests Present
Jeffrey Albrecht, State Water Resources Control Board
Hunter Beckham, Vice President, Professional Practice, Fellow American Society of Landscape Architects (ASLA)
Jonathan Burke, Board and Bureau Relations, DCA
Cindi Christenson, Contractors State License Board (CSLB)
Glenn Gall, Office of Statewide Health Planning and Development
Claire Goldstene, CSLB
Kevin Perry, Urban Rain Design
Micah Silvey, Director of Certification, United States Green Building Council (USGBC)
Jamie Statter, Vice President, Strategic Relationships, USGBC
Linette Straus, Professional Practice Manager, ASLA

A. Call to Order – Roll Call – Establishment of a Quorum

LATC Chair Andrew Bowden called the meeting to order at 10:31 a.m. In the absence of Vice Chair David Taylor, member Patricia Trauth called roll. Three members of LATC were present, thus a quorum was established.

B. Chair's Remarks and LATC Member Comments

Mr. Bowden noted a need to change the time of Agenda Item F, Introduction and Presentation on Sustainable Sites Initiative (SITES) by ASLA representative, to 2:00 p.m.

C. Public Comment for Items Not on Agenda

There were no comments from the public.

D. Review and Approve February 10, 2016 LATC Meeting Minutes

Mr. Bowden asked for comments concerning the February 10, 2016, LATC Meeting Minutes.

- **Marq Truscott moved to approve the February 10, 2016 LATC Meeting Minutes.**

  Patricia Trauth seconded the motion.

  Members Trauth, Truscott, and Chair Bowden voted in favor of the motion. The motion passed 3-0.

E. Program Manager's Report

Trish Rodriguez presented the Program Manager's report. She introduced new Special Projects Analyst, Tremaine Palmer. Ms. Rodriguez added that LATC is recruiting for a Licensing/Administration Coordinator (Office Technician) position.

Ms. Rodriguez reported that on March 3, 2016, the Board held their meeting in Burbank at Woodbury University. She also reported that during the meeting the Board approved LATC's proposal to amend California Code of Regulations (CCR) section 2620 (Education and Training Credits) to clarify the years of experience needed as a landscape contractor. Ms. Rodriguez continued that the Board delegated authority to the Executive Officer (EO) to adopt the regulation provided no adverse comments were received during the public comment period. She announced that the next Board meeting is scheduled for June 9, 2016 in San Francisco.

Ms. Rodriguez reported that LATC outreach presentations were held at University of California (UC), Davis on February 23, 2016, and UC Berkeley on April 21, 2016. She referred the members to Attachment E.2 Student Survey Results, and noted the student survey responses.

Ms. Rodriguez reported on the status of the proposal to amend CCR 2615 (Form of

Examinations) related to reciprocity requirements. She stated that staff is working on the regulatory package and it would be routed through DCA for approval.

Ms. Rodriguez reported that the LATC's draft Disciplinary Guidelines received comments from DCA Legal Counsel, which identified substantive changes. Therefore, she noted this item would be presented again to LATC and the Board for review and consideration.

Ms. Rodriguez reported that the final rulemaking file to amend CCR 2620 (Education and Training Credits) (a) (13) to expand eligibility requirements to allow credit for teaching under a licensed landscape architect was submitted to DCA Legal Office and Division of Legislative and Policy Review on March 24, 2016.

Ms. Rodriguez reported on the UC Extension reviews. She stated that the Landscape Architectural Accreditation Board implemented new accreditation standards in March 2016. Ms. Rodriguez also indicated that LATC staff is analyzing the new standards and procedures, and the regulatory package to amend CCR 2620.5 (Requirements for an Approved Extension Certificate Program) will be in the next meeting packet for LATC to consider.

Ms. Rodriguez informed the Committee that the Strategic Plan objective to *Review Expired License Requirements* (CCR 2624 (Expired License – Three Years After Expiration) and 2624.1 (Expired License - Five Years After Expiration) is under Agenda Item I. She indicated that, at the last meeting, the Committee decided the objective to *Expand Credit for Education Experience* would be discussed during strategic planning. Ms. Rodriguez also noted that, at the last Committee meeting, concerning the objective to *Create and Disseminate Consumer's Guide to Hiring a Landscape Architect*, staff considered edits from DCA Legal Counsel and members of the LATC, which would be discussed under Agenda Item K. She continued that the Committee would be discussing the intra-departmental contract under Agenda Item J for the California Supplemental Examination (CSE) to continue exam development.

Ms. Rodriguez concluded that the next Landscape Architect Registration Examination (LARE) administration will be in August, and that the results for the April administration will be mailed this week.

F. Introduction and Presentation on Sustainable Sites Initiative (SITES) by American Society of Landscape Architects (ASLA) Representative

Hunter Beckham, Micah Silvey, Jamie Statter, and Linette Strauss provided a detailed PowerPoint presentation on SITES.

Ms. Strauss began by explaining that despite the clear success of green building, there were no national standards until now to guide those who wanted to create sustainable landscapes. She continued that, due to the population increasing, land development will have an even more profound impact on the Earth's ecological systems. Ms. Strauss explained that SITES is a set of comprehensive voluntary guidelines with a rating system that assesses a sustainable design, construction, and maintenance of landscapes. She also explained that SITES certification is a separate stand-alone certification for landscapes independent of Leadership in Energy and Environmental Design (LEED) certification. Ms. Strauss stated that the four primary goals of

SITES are:

- Create regenerative systems and foster resiliency
- Ensure future resource supply and mitigate climate change
- Transform the marketplace through the design, development, and maintenance practices
- Enhance human well-being and strengthen community

Mr. Silvey began by explaining the SITES V2 Rating System. He also explained that each component of the rating system is used to define sustainable land development. He continued that the rating system consists of 10 sections, and within those sections, there are 18 pre-requisites and 48 credits that define certain sustainability measures. Mr. Silvey concluded that one must meet all pre-requisites in order to achieve certification; however, other credits may be earned to meet a certain certification level.

Mr. Beckham gave a description of each image of the presentation and reported on the success of each project type. He continued to explain the pre-requisites and recommended strategies in order to become SITES certified.

Ms. Statter began by stating that USGBC's objective is to bring the SITES standards to the markets. She continued that USGBC is most relevant to this conversation due to their work on LEED. She noted that as with LEED efficiencies are expected, as well as improved storm water run-off management, enhanced energy conservation by reducing heat island effect, and better air quality. Ms. Statter stated that the rating systems of LEED and SITES do not overlap, however, USGBC is working on a complete overlap.

Ms. Statter reported that SITES certification is available as of June 2015, and it holds over 30 registered projects. She also reported that USGBC is launching a SITES accredited professional program this year in Los Angeles that will require an examination and continuing education. She concluded that SITES secured a commitment from the General Services Administration, a federal agency, to use SITES in all new projects.

Mr. Truscott inquired how SITES plans to make a connection between the developers and SITES certification. Mr. Silvey responded that it is an ongoing conversation, and that some developers are embracing sustainable sites. Ms. Trauth inquired how SITES would get other professions involved. Ms. Statter responded that they are talking to the LEED community and considering other recommendations.

In closing, Mr. Bowden thanked the presenters. A member of the public asked if there was more information on the SITES website regarding certified projects and whether those individuals involved in the certified projects would lend their expertise. Ms. Statter responded that, in her view, they have been a very useful resource for the program. She added that all information on all pilot projects are available at sustainablesites.org.

G. Update on Council of Landscape Architectural Registration Boards (CLARB) Regarding Task Analysis Survey, LARE Administration and Pass Rates, Upcoming Elections, and Annual Meeting

Ms. Rodriguez reported that CLARB disseminated a Member Board Newsletter with notable dates regarding LARE administration results, webcasts, and upcoming meetings. Ms. Rodriguez also reported that CLARB conducted a Task Analysis Survey, in which California participated. She noted that this year the survey participation rate increased 30% compared to the last survey conducted in 2006. She continued that the results of the survey would determine what changes are necessary to the existing LARE and that the results of the Task Analysis will be shared at their upcoming meeting on September 22-24. Ms. Rodriguez noted that the final slate of nominees for the 2016 CLARB Board of Directors and Committee Nominations Elections would be available in June.

Mr. Bowden stated that he participated in the survey and he believes the reason for the 30% increase, which was less than what CLARB projected, was due to the length of the survey. He continued that it took 30 minutes to complete the survey, and questions were in depth. He opined that CLARB may want to make the survey less time consuming.

Mr. Bowden inquired if LATC sent out the survey to all licensees. Ms. Rodriguez responded that LATC provided CLARB with a list of all licensees, which included mailing addresses. Ms. Rodriguez continued that current laws and regulations do not allow the LATC to furnish e-mail addresses.

Mr. Bowden stated a concern that not all licensees may have received the survey due to ASLA sending it out to their membership only, and not all ASLA members are licensed.
Doug McCauley stated that ultimately CLARB would need to conduct some statistical analysis and verify an appropriate sample of specific individuals received and responded to the survey. Mr. McCauley continued that a mailing list might not be the best way; however, those questions would need to be directed to CLARB.

H. Review and Consider Request by Expired Licensee 2016-1 for Re-licensure, Pursuant to Title 16 California Code of Regulations (CCR) Section 2624 (Expired License – Three Years After Expiration)

Ms. Rodriguez reported that LATC received a re-licensure request from Leslie Ryan, and it was given to review by Messrs. Taylor and Truscott. Kourtney Nation stated that Mr. Taylor's recommendation was consistent with Mr. Truscott's recommendation.

Mr. Truscott stated that he was impressed that the licensee had been and is currently teaching technical classes at a university level. He opined that it would be inappropriate to make the licensee retake the LARE. Mr. Truscott recommended that the licensee take the CSE only.

Mr. Bowden inquired if the licensee was approving any candidate work experience during the time the license was expired. Mr. Truscott stated that he did not see any such evidence.
Ms. Nation concurred. Mr. Bowden asked Mr. Truscott if he was confident that the licensee has demonstrated sufficient skills, knowledge, and abilities to not necessitate taking any part of the LARE; therefore, only requiring the licensee to take the CSE and pay appropriate fees.
Mr. Truscott affirmed and stated he was confident in his recommendation.

- **Marq Truscott moved to approve applicant Leslie Ryan's request for re-licensure notwithstanding any fact or condition that exists, which would justify its revocation, with the condition of Ms. Ryan submitting an application for examination to the LATC, paying appropriate fees, and taking and passing the CSE.**

  Patricia Trauth seconded the motion.

  Members Trauth, Truscott, and Chair Bowden voted in favor of the motion. The motion passed 3-0.

I. Discuss and Possible Action on Proposed Language to Amend or Repeal Business and Professions Code Section 5680.2 (License Renewal – Three Years After Expiration) and Proposed Regulations to Amend or Repeal (Title 16 CCR, Sections 2624 (Expired License – Three Years After Expiration) and 2624.1 (Expired License – Five Years After Expiration)

Ms. Rodriguez reported that at LATC's last meeting, the Board directed LATC to align their license renewal process with the Board. She continued that the Board's process is a five-year expiration period in which a licensee could renew his or her license on a late basis by paying all accrued renewal and delinquency fees. Ms. Rodriguez stated that if the LATC wishes to change its requirements, it would be necessary to amend Business and Professions Code (BPC) section 5680.2, and repeal CCR 2624 and 2624.1. She added that prior to the meeting, staff discovered BPC 5680.1 included language that would also need to be amended. Ms. Rodriguez noted that BPC 5680.1 would be included when presented to the Board for its consideration.

Ms. Rodriguez asked the Committee to consider approval of proposed language to amend BPC 5680.2, and repeal CCR 2624 and 2624.1. She clarified that this action would result in a candidate no longer having to submit a portfolio for review if the license has been expired for fewer than five years. Vickie Mayer noted that, if the license has been expired for more than five years, the candidate would have to reapply for licensure. Ms. Mayer continued that LATC's current process would remain in effect until the amendment becomes effective and passed by the Legislature or in the case of regulations, approved by the Office of Administrative Law.

- **Patricia Trauth moved to approve the language as presented to amend BPC 5680.2 (License Renewal – Three Years After Expiration) and repeal CCR 2624 (Expired License – Three Years After Expiration) and 2624.1 (Expired License – Five Years After Expiration).**

  Marq Truscott seconded the motion.

  Members Trauth, Truscott, and Chair Bowden voted in favor of the motion. The motion passed 3-0.

J. Review and Approve Intra-Departmental Contract with the Department of Consumer Affairs (DCA) Office of Professional Examination Services (OPES) for California Supplemental Examination (CSE) Development

Ms. Rodriguez explained the intra-departmental contract with OPES in the meeting packet under

Agenda Item J. She continued that staff is requesting LATC approval of the contract to continue exam development based on the most recent occupational analysis. Ms. Rodriguez stated that if approved, the contract would go into effect beginning August 1, 2016 through June 30, 2017. Mr. Bowden stated that the contract seemed straightforward and reasonable. He opined that OPES has been doing a great job. Mr. Truscott agreed, and stated that the billing rates and hours are reasonable.

- **Marq Truscott moved to approve the Intra-Departmental Contract with OPES for the term of August 1, 2016 through June 30, 2017 for continued CSE development.**

  Patricia Trauth seconded the motion.

  Members Trauth, Truscott, and Chair Bowden voted in favor of the motion. The motion passed 3-0.

K. Discuss and Possible Action on Extension of Renewal Fee Reduction; Title 16 CCR Section 2649 (Fees)

Ms. Rodriguez addressed the Committee's fund condition. She stated that in 2013, LATC staff worked with the DCA Budget Office and, based on their recommendation, submitted a negative Budget Change Proposal to reduce the fund balance by $200,000, and temporarily reduced the license renewal fee from $400 to $220 for one renewal cycle (July 1, 2015 - June 30, 2017). She reported that staff recently met with the DCA Budget Office staff to discuss whether to continue the renewal fee reduction. Ms. Rodriguez advised that the DCA Budget Office staff recommended continuing the license renewal fee reduction for one more period (July 1, 2017 - June 30, 2019). Ms. Rodriguez continued that the proposed regulatory amendment for the LATC's consideration is to continue the renewal fee reduction from $400 to $220, for one more renewal cycle.

Ms. Trauth inquired if it was certain that the fund balance would be sufficient. Ms. Rodriguez affirmed that by working with DCA Budget Office staff, it was projected that the fund balance would not decrease below three months in unencumbered funds.

Mr. Truscott, in reference to Attachment K.2 LATC Fund Condition – FYs 2014/2015 through 2019/2020 With and Without Fee Reduction, noted that LATC will have a fund balance of three months at the end of FY 2019. He continued that the fund balance would be less than three months by the time the reduction completes its term, and the renewal fee would have to be increased. Ms. Rodriguez responded that the renewal fee would default back to the former amount of $400 on July 1, 2019. Ms. Mayer added that when DCA prepares its analysis, it utilizes a conservative approach assuming that LATC will spend the full budget.

Mr. Bowden inquired about how many landscape architects are licensed every year, and how many are not renewed for various reasons. He continued that he is concerned about the ramifications of a possible shortfall of new incoming licensees to take the place of those exiting the profession. Ms. Rodriguez indicated the number of licensees has maintained at approximately 3,500.

Mr. McCauley asked if DCA Budget Office staff considered an ongoing reduction as an alternative. Ms. Rodriguez stated that a couple of different scenarios were considered.

Ms. Kjose stated that when the DCA Budget Office first researched reduction cycles, the recommendation was to explore one budget cycle to see how much it reduced the fund balance; keeping in mind, it might need to be extended. Mr. McCauley stated that the Board had to increase their fees using the same logic.

Mr. Bowden suggested an ongoing renewal fee amount should be considered at the next strategic planning session.

- **Marq Truscott moved to approve the extension of license renewal fee reduction from $400 to $220 for the period of July 1, 2017 through June 30, 2019.**

  Patricia Trauth seconded the motion.

  Members Trauth, Truscott, and Chair Bowden voted in favor of the motion. The motion passed 3-0.

L. Review and Approve Draft *Consumer's Guide to Hiring a Landscape Architect* for Publication

Ms. Rodriguez referenced the attached *Consumer's Guide to Hiring a Landscape Architect* with two versions. She explained that one version is the final draft, and the other version shows tracked changes that staff made since the last LATC meeting.

Mr. Bowden was pleased with the Guide and the addition of the table. In regards to the table, Ms. Trauth inquired if LATC could be more specific instead of using the word "others" to reference those in the same field. Mr. Truscott stated that there could be a need to define "others" to avoid confusion. Mr. Bowden recommended an asterisk after "others" with a paragraph below referencing the Practice Act.

- **Marq Truscott moved to approve the draft of the *Consumer's Guide to Hiring a Landscape Architect* for publication with the addition of referencing the Landscape Architects Practice Act below the table, and to delegate authority to the EO to make minor technical or legal alterations based on DCA's review.**

  Patricia Trauth seconded the motion.

  Members Trauth, Truscott, and Chair Bowden voted in favor of the motion. The motion passed 3-0.

M. Review Tentative Schedule and Confirm Future LATC Meeting Dates

The next LATC meeting is scheduled for October 12, 2016.

N. Adjourn

The meeting adjourned at 3:05 p.m.

Agenda Item E

PROGRAM MANAGER'S REPORT ON ADMINISTRATION, EXAMINATION, LICENSING, AND ENFORCEMENT

The Program Manager's Report provides a synopsis of current activities and is attached for the LATC's review.

ATTACHMENTS:
1. Program Manager's Report
2. California Architects Board June 9, July 28, and September 29, 2016, Meeting Notices

LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE

Program Manager's Report
October 2016

ADMINISTRATIVE/MANAGEMENT

Annual Reports

Pursuant to Business and Professions Code (BPC) section 312(a), the Department of Consumer Affairs (DCA) submits an Annual Report to the Governor and Legislature. The staff of the Office of Publications, Design and Editing (PDE) began working on the DCA Annual Report 2015-2016. The narrative portion which includes a summary of regulations, major studies and other new program developments was submitted by LATC staff on August 31, 2016. Data summaries of licensing and enforcement activities were submitted to PDE on September 16, 2016.

Applicant Tracking System (ATS)/Workaround System (WAS)

Manual processes created in 2014 remain in place, using the temporary WAS until the transition to BreEZe in 2016. The WAS became a functional necessity upon regulatory approval of licensure requirements. It was established after a freeze was put in place for any legacy system changes during DCA's transition to BreEZe. With no projected date for Release 3 of BreEZe, the hard freeze placed on legacy system changes was lifted on April 7, 2016. However, staff will continue to use WAS in place of ATS. On September 15, 2016, the WAS database was shifted from desktop hardware to an existing server located at the Del Paso office to make it part of the enterprise database. Programming changes were also implemented to encrypt social security numbers and alter the user interface to simplify staff processes. Staff continue to work with the BreEZe team towards integrating WAS and ATS data with the BreEZe system.

BreEZe Project

The DCA has been working with Accenture, LLP to design, configure, and implement an integrated, enterprise-wide enforcement case management and licensing system (BreEZe). This system supports DCA's highest priority initiatives of job creation and consumer protection by replacing aging legacy business systems with an industry-proven software solution that utilizes current technologies to facilitate increased efficiencies for DCA board and bureau licensing and enforcement programs. More specifically, BreEZe supports applicant tracking, licensing, license renewal, enforcement, monitoring, cashiering, and data management capabilities. Additionally, the system is web-based which allows the public to file complaints and search licensee information and complaint status via the Internet. It also allows applicants and licensees to submit applications, license renewals, and make payments online. BreEZe is being deployed department-wide via three separate releases. Release 1 was implemented on October 9, 2013; Release 2 was implemented on January 19, 2016; and Release 3 is planned to begin development in 2016. The Board and LATC are currently part of Release 3. The State Auditor recommended

that DCA conduct a cost-benefit analysis for Release 3 boards and bureaus. Absent any contrary finding in that analysis, DCA plans to bring the remaining boards and bureaus into BreEZe, but likely will do so in smaller groups. Additionally, DCA is collaborating with the Release 3 boards and bureaus and the California Department of Technology in preparing a project plan for the remaining boards and bureaus. A Project Approval Lifecycle Framework outlining four stages (business analysis, alternative analysis, solution development, and project readiness and approval), was provided to Executive Officers and board presidents on September 7, 2016. DCA will conduct a formal cost benefit analysis. Part of this formal evaluation includes a gap analysis of all existing BreEZe functionality as delivered at the completion of Release 2, in comparison to the Release 3 boards and bureaus' business needs and current systems' functionality. The cost benefit analysis/feasibility study will determine the strategy to be utilized; and, whether a vendor, state staff, or a combination thereof will be implementing Release 3.

Budget

Staff completed the required budget schedule documents (i.e., Workload and Revenue and Revenue Detail) for fiscal year (FY) 2017-18 and submitted them to the DCA Budget Office on August 31, 2016. The 2016-17 State Budget was signed by the Governor on June 27, 2016.

California Architects Board Meeting

On June 9, 2016, the Board met in San Francisco at University of San Francisco. LATC's Program Manager provided the Board with a summary of the May 24, 2016, LATC meeting. The summary included LATC's approval of the proposed statutory changes to amend BPC 5680.1 and 5680.2, as well as regulatory changes to repeal California Code of Regulations (CCR) Sections 2624 (Expired License – Three Years After Expiration) and 2624.1 (Expired License – Five Years After Expiration), to better align with the Board's process. The new process requires an individual whose license has expired for less than five years to pay any accrued renewal fees, and to require the holder of a license that has expired for five or more years to reapply for licensure and retake the California Supplemental Examination (CSE). The Board approved the proposed language; and delegated authority to the Executive Officer (EO) to adopt the proposed changes provided no adverse comments are received during the public comment period and make minor technical or non-substantive changes to the language, if needed. Once BPC 5680.1 and 5680.2 are amended and passed by the Legislature, LATC will submit a rulemaking file to the Office of Administrative Law (OAL) to repeal CCR 2624 and 2624.1.

Also reported to the Board was LATC's approval of the proposed regulatory changes to CCR 2649(f) (Fees), to extend the current reduced license renewal fee of $400 to $220, for the period July 1, 2017 through June 30, 2019. The Board approved proposed amendments to CCR 2649(f) and delegated authority to the EO to adopt the proposed changes provides no adverse comments are received during the public comment period and make minor technical or non-substantive changes to the language, if needed.

The Board held a special meeting on July 28, 2016, to discuss Senate Bill (SB) 1132 (Galgiani) [Architects-in-Training], American Institute of Architects, California Council's Architect-in-Training title proposal. The Board moved to support SB 1132 if amended based on the recommendations of a working group appointed by the Board. The working group was tasked to review possible amendments to the bill and make recommendations to the Board.

The Board held a meeting on September 29, 2016, in Los Angeles. The next Board meeting is scheduled for December 15-16, 2016, in Sacramento. This meeting will include a Strategic Planning session on the 16th.

Regulatory Amendments

CCR 2615 (Form of Examinations) – Reciprocity Requirements - At its meeting on February 10, 2015, LATC directed staff to draft proposed regulatory language to specifically state that California allows reciprocity to individuals who are licensed in another jurisdiction, have 10 years of practice experience, and have passed the CSE. At the LATC meeting on November 17, 2015 the Committee approved proposed amendments to CCR 2615(c)(1), and recommended that the Board authorize LATC to proceed with a regulatory change. At its December 10, 2015 meeting, the Board approved the regulatory changes and delegated authority to the EO to adopt the corresponding regulations to amend CCR 2615 provided no adverse comments are received during the public comment period and make minor technical or non-substantive changes to the language, if needed.

Following is a chronology to date, of the processing of LATC's regulatory proposal for CCR 2615:

November 17, 2015	Proposed regulatory language approved by the LATC
December 10, 2015	Proposed regulatory language approved by the Board
August 2, 2016	Notice of Proposed Changes in the Regulations submitted to OAL
August 12, 2016	Notice of Proposed Changes in the Regulations published by OAL
September 27, 2016	Public hearing, public comments received during 45-day period

CCR 2620(a)(13), Expand Eligibility Requirements to Allow Credit for Teaching Under a Licensed Landscape Architect – At the LATC meeting on February 10, 2015, the Committee agreed that up to one year of experience/training credits should be granted for teaching under the supervision of a licensed landscape architect. At the May 13, 2015 LATC meeting, the Committee approved the proposed language to amend CCR 2620 by adding subsection (a)(13) which provides one year of teaching credit under the supervision of a landscape architect in a degree program as specified in CCR 2620(a)(1), (2), and (4). At the August 6, 2015 LATC meeting, the Committee recommended that the Board authorize LATC to proceed with a regulatory change. At its September 10, 2015 meeting, the Board approved the regulatory changes and delegated authority to the EO to adopt the regulations to amend CCR 2620 provided no adverse comments are received during the public comment period and make minor technical or non-substantive changes to the language, if needed.

Following is a chronology to date, of the processing of LATC's regulatory proposal for CCR 2620:

August 6, 2015	Proposed regulatory language approved by LATC
September 10, 2015	Proposed regulatory language approved by Board
October 9, 2015	Notice of Proposed Changes in the Regulations published by OAL
November 30, 2015	Public hearing, no comments received
March 24, 2016	Final rulemaking file submitted to DCA Legal Office and Division of Legislative and Policy Review
June 10, 2016	Final rulemaking file submitted to Business, Consumer Services and Housing Agency (Agency) for approval
July 25, 2016	Final rulemaking file approved by Agency
August 2, 2016	Final rulemaking file submitted to OAL for approval
September 13, 2016	Regulation approved by OAL and filed with the Secretary of State to become effective January 1, 2017

CCR 2620.5, Requirements for an Approved Extension Certificate Program - LATC established the original requirements for an approved extension certificate program based on university accreditation standards from the Landscape Architectural Accreditation Board (LAAB). These requirements are outlined in CCR 2620.5. In 2009, LAAB implemented changes to their university accreditation standards. Prompted by the changes made by LAAB, LATC drafted updated requirements for an approved extension certificate program and recommended the Board authorize LATC to proceed with a regulatory change. At its December 15-16 meeting, the Board approved the regulatory change and delegated authority to the EO to adopt the regulations to amend CCR 2620.5 provided no adverse comments are received during the public comment period and make minor technical or non-substantive changes to the language, if needed. The regulatory proposal to amend CCR 2620.5 was published by the OAL on June 22, 2012.

In 2012, the LATC appointed the University of California Extension Certificate Program Task Force, which was charged with developing the procedures for the review of the extension certificate programs, and conducting reviews of the programs utilizing the new procedures. The Task Force held meetings on June 27, 2012, October 8, 2012, and November 2, 2012. As a result of these meetings, the Task Force recommended additional modifications to CCR 2620.5 to further update the regulatory language with LAAB guidelines and LATC goals. At the November 14, 2012 LATC meeting, the LATC approved the Task Force's recommended modifications to CCR 2620.5, with an additional edit. At the January 24-25, 2013 LATC meeting, the LATC reviewed public comments regarding the proposed changes to CCR 2620.5 and agreed to remove a few proposed modifications to the language to address the public comments. The Board approved adoption of the modified language for CCR 2620.5 at their March 7, 2013 meeting.

On July 17, 2013, a Decision of Disapproval of Regulatory Action was issued by the OAL. The disapproval was based on OAL's determination that the regulatory package did not meet the necessity standard of Government Code (GC) section 11349.1, subdivision (a)(1). GC 11349, subdivision (a), defines "necessity" as demonstrating the need for the regulatory change through

evidence not limited to facts, studies, and expert opinion. Based on OAL's disapproval, staff worked with DCA Legal Counsel and the Task Force Chair to refine the proposed language and identify appropriate justification that would meet OAL's requirements.

In May 2014, the LATC Special Projects Analyst prepared draft language for CCR 2620.5 incorporating Legal Counsel's recommendation that regulatory language be added to address the application, approval, denial, and annual review processes. In June 2014, staff assignments changed. The interim Special Projects Analyst began working on new proposed regulatory language in November 2014. On December 8, 2014, staff was advised by LAAB that the accreditation standards are scheduled to be reviewed and updated beginning with draft proposals in the spring of 2015. LAAB anticipated adopting new standards in early 2016. On December 30, 2014, staff met with the Task Force Chair to discuss proposed changes to CCR 2620.5 and the probability that new LAAB accreditation standards will be implemented in 2016. Staff also met with DCA Legal Counsel on January 14, 2015, to discuss justifications to proposed changes and again on January 28, 2015 to further review edits and justifications.

Proposed regulatory language was presented to the LATC at its February 10-11, 2015, meeting. At this meeting, the Committee approved the appointment of a new working group to assist staff in substantiating recommended standards and procedures in order to obtain OAL approval. Linda Gates and Christine Anderson, former LATC members and University of California extension program reviewers, were appointed to the working group.

On June 5, 2015, LAAB confirmed that they are in the process of updating their Standards and Procedures for the Accreditation of Landscape Architecture Programs. The process included a public call for input and commentary that took place last fall (2014). LAAB met in the summer of 2015 to draft revisions to the Standards. In the fall 2015, additional public input and comments were received.

On October 8, 2015, LATC received a copy of LAAB's proposed revisions which included several suggested changes to curriculum requirements. LATC staff began incorporating the proposed changes and drafting new proposed language that included many of LATC's previously submitted modifications to CCR 2620.5. LAAB implemented its new Accreditation Standards and Procedures in March 2016, which identified a few additional changes to curriculum requirements that staff is incorporating into the proposed amendments to CCR 2620.5. LATC's working group will meet to review the new Standards and Procedures and provide sufficient justification to meet OAL requirements and GC 11349 and 11349.1 which will be presented for consideration to the LATC.

Following is a chronology to date, of the processing of LATC's regulatory proposal for CCR 2620.5:

November 22, 2010	Proposed regulatory language approved by LATC
December 15, 2010	Proposed regulatory language approved by the Board
June 22, 2012	Notice of Proposed Changes in the Regulations published by OAL (Notice re-published to allow time to notify interested parties)
August 6, 2012	Public hearing, no public comments received

November 30, 2012	40-Day Notice of Availability of Modified Language posted
January 9, 2013	Written comment (one) received during 40-day period
January 24, 2013	LATC approved modified language to address public comment
February 15, 2013	Final rulemaking file submitted to DCA Legal Office
March 7, 2013	Proposed regulatory changes of modified language approved by the Board
May 31, 2013	Final rulemaking file submitted to OAL
July 17, 2013	Decision of Disapproval of Regulatory Action issued by OAL
August 20, 2013	LATC voted not to pursue a resubmission of rulemaking file to OAL
February 21, 2014	Staff met with Task Force Chair to discuss justifications for proposed changes
December 8, 2014	LAAB reported that accreditation standards are scheduled to be reviewed and updated in 2015
February 10, 2015	LATC approved the appointment of a new working group to assist staff
October 8, 2015	LATC received LAAB's suggested revisions to curriculum requirements
March 2016	LAAB implemented its new Accreditation Standards and Procedures*

**Staff has analyzed the new standards and procedures and is researching program approval requirements to develop recommendations for consistency among various education requirements.*

CCR 2680 (Disciplinary Guidelines) – The LATC current Strategic Plan tasks the LATC with collaborating with the Board to review and update its *Disciplinary Guidelines*. The LATC's *Disciplinary Guidelines* were last updated in 2000.

The Board's 2013 and 2014 Strategic Plans directed its Regulatory and Enforcement Committee (REC) to review and update the Board's *Disciplinary Guidelines*. To this end, Board staff consulted with its Legal Counsel and Deputy Attorney General (DAG) Liaison and reviewed the *Disciplinary Guidelines* for both the Board for Professional Engineers, Land Surveyors, and Geologists and the Contractors State License Board to determine if changes were needed to the Board's *Disciplinary Guidelines*. As a result, staff and Legal Counsel recommended revisions which were provided to the REC for its consideration and ultimately approved by the Board at its December 10, 2014 meeting.

Based upon the Board's approval of its *Disciplinary Guidelines* and authorization to proceed with a regulatory amendment, LATC staff reviewed and revised its own *Disciplinary Guidelines* to mirror the Board's wherever possible.

At its February 10, 2015 meeting the LATC approved the edits to its *Disciplinary Guidelines*. Following that meeting, staff requested its DAG Liaison to review the approved Guidelines. The DAG made several suggestions that were incorporated into the previously approved Guidelines. These amendments included: 1) Changes to the Factors to be Considered; 2) Increasing the length of suspension for Gross Incompetence in Practice, from 90 to 120 days; and, 3) Adding Conviction of Crime; Suspension, Revocation – Grounds as an offense.

At its August 6, 2015 meeting, the LATC approved the DAG's recommended revisions to its *Disciplinary Guidelines*, the proposed regulations to amend CCR 2680, and directed staff to

present to the Board for approval. Following the August 6, 2015 LATC meeting, DCA Legal Counsel advised staff of additional research necessary regarding Optional Conditions 9 (CSE) and 10 (Written Examination) of the *Disciplinary Guidelines*. Absent any additional recommended edits by DCA Legal Counsel, the amended *Disciplinary Guidelines* and proposed regulatory package was approved by the Board at their September 10, 2015 meeting.

Staff subsequently discussed the issues regarding Optional Conditions 9 and 10 with DCA Legal Counsel on September 30, 2015. On October 21, 2015 staff sent DCA Legal Counsel proposed edits to the Optional Conditions for review. DCA Legal Counsel notified staff on November 12, 2015 that the edited portions were sufficient but substantive, and would require approval by the Board. On November 25, 2015, DCA Legal Counsel further advised staff to include the current version of the Board's Quarterly Report of Compliance form (1/11) as "Attachment A" in the *Disciplinary Guidelines*. At its December 10, 2015 meeting, the Board approved the revised *Disciplinary Guidelines* and delegated authority to the EO to adopt the regulations to amend CCR section 2680 provided no adverse comments are received during the public comment period, and to make minor technical or non-substantive changes to the language, if needed. Board staff prepared the proposed regulatory package for DCA Legal Counsel's review and approval on March 15, 2016. On April 8, 2016, DCA Legal Counsel advised staff that more substantive changes were necessary prior to submission to the OAL.* Board staff is currently developing recommended revisions to the *Guidelines* in response to DCA Legal Counsel's concerns, and will present those revisions to the REC for review and consideration at its next meeting in the fall. Once approved, LATC staff will update its *Guidelines* to include the approved changes for the LATC's consideration.

Following is a chronology to date, of the processing of LATC's regulatory proposal for CCR 2680:

August 6, 2015	Proposed regulatory language approved by LATC
September 10, 2015	Proposed regulatory language approved by Board
December 10, 2015	Proposed regulatory changes approved by Board (including DCA Legal Counsel recommended edits)

**Staff is working with DCA Legal Counsel and developing recommended revisions for the Guidelines, to be presented to the REC in the fall.*

Strategic Plan Objectives

LATC's Strategic Plan for 2015–2016 contains numerous objectives. Below is a summary of objectives currently in-work:

Create and Disseminate Consumer's Guide - to educate the public on the differences between landscape architects, landscape contractors, and landscape designers. At its November 17, 2015 meeting, staff presented to the Committee a drafted *Consumer's Guide to Hiring a Landscape Architect*, which is based on the Board's *Consumer's Guide to Hiring an Architect*. Following discussion, the Committee agreed to create a subcommittee to complete revisions to the guide. During discussion at its February 10, 2016 meeting, the Committee suggested editions to the guide including a chart for professional qualifications within the industry as well as information on drought conditions and the Model Water Efficiency Landscape Ordinance. The subcommittee worked with staff to revise the guide and create a chart on the professional

qualifications of landscape architects, landscape contractors, and other related professions. At its May 24, 2016 meeting, the Committee approved the guide with minor edits to be made to the professional qualifications chart. Staff completed the edits and worked with DCA's Digital Print Services to prepare the guide which a draft is available today as a handout.

Expand Credit for Education Experience - to include degrees in related areas of study, i.e., urban planning, environmental science or horticulture, etc., to ensure that equitable requirements for education are maintained. At the November 17, 2015 LATC meeting, the Committee directed staff to agendize this objective. At the February 10, 2016 LATC meeting, the Committee agreed to table the objective until its upcoming Strategic Planning Session in January 2017.

Review Expired License Requirements (CCR 2624 and 2624.1) - to assess whether any revisions are needed to the regulations, procedures, and instructions for expired license requirements. At the August 6, 2015 LATC meeting, the Committee reviewed the procedures and expired license requirements contained in BPC 5680.2 (License Renewal – Three Years After Expiration) and CCR 2624 and 2624.1, and directed staff to assess whether the Board's procedures and requirements should be considered for use by LATC. At the November 17, 2015 LATC meeting, the Committee reviewed re-licensure requirements of various state landscape architect licensing boards and three DCA licensing boards and directed staff to research re-licensure procedures for additional state boards. At the February 10, 2016 LATC meeting, the Committee directed staff to draft proposed language to amend the LATC's re-licensure procedures to require an individual whose license has been expired for less than five years to pay any accrued fees, and to require the holder of a license that has expired for more than five years to reapply for licensure and retake the CSE.

At its meeting on May 24, 2016, the Committee voted to amend BPC 5680.2 and repeal CCR 2624 and 2624.1. Prior to the meeting, staff discovered BPC 5680.1 included language that would also need to be amended. It was noted to the Committee that BPC 5680.1 would be included when presented to the Board for its consideration. At its June 9, 2016, meeting, the Board voted to amend BPC 5680.1 and 5680.2 and repeal CCR 2624 and 2624.1. Staff worked with DCA Legal Counsel to draft the amendment of BPC 5680.1 and 5680.2. Once the amendments to BPC 5680.1 and 5680.2 are passed by the Legislature, staff will prepare the rulemaking file to repeal CCR 2624 and 2624.1.

Training

The following employees have been scheduled to participate in the upcoming training:

10/5/16	Non-IT Contracts (Stacy)
10/11/16	Excel Pivot Table (Kourtney and Matt)
10/19/16	Excel 2010 – Level 2 (Stacy)
10/26/16	Word 2010 – Level 1 (Stacy)
12/6/16	Word 2010 – Level 2 (Stacy)
12/20/16	Research, Analysis and Problem Solving (Tremaine)

Website

On June 24, 2016, LATC's "Accessibility" page and website were updated to follow a new set of guidelines. The new guidelines are in compliance with section (d) of GC 11135. GC 11135 requires that all electronic and information technology developed or purchased by the State of California Government is accessible to people with disabilities. New features include keyboard commands for: Internet Explorer, Firefox, Chrome, and Safari. As well as keyboard and mouse website compatibility, a hyperlink to the "Accessibility" page from all pages within the website, and alternative text/title attributes which provide a written description when the mouse is placed over an image.

LATC staff continues to publish the updated "Licensee Search" lists monthly.

EXAMINATION PROGRAM

Landscape Architect Registration Examination (LARE)

Examination results for the August 1-13, 2016, administration of the LARE were mailed to candidates on September 28, 2016. Pass rates for the August LARE are included under Agenda G. The next LARE administration will be held on December 5-17, 2016 and the candidate application deadline is October 21, 2016. Test results are released five-six weeks following the last day of administration.

California Supplemental Examination (CSE)

BPC 139 requires that an Occupational Analysis (OA) be conducted every five to seven years. An OA was completed by the Office of Professional Examination Services (OPES) for the LATC in 2014. The Test Plan developed from the 2014 OA is being used during content development of the CSE. The CSE development is based on an ongoing analysis of current CSE performance and evaluation of examination development needs. The prior Intra-Agency Contract Agreement (IAC) with OPES for examination development expired on June 30, 2016. Staff worked with OPES on the development of a new IAC for the term of August 1, 2016 through June 30, 2017, which was approved by the Committee at its May 24, 2016, meeting. Upon execution of the IAC with OPES, the LATC began recruiting subject matter experts to participate in examination development workshops to focus on item writing and examination construction. Monthly examination development workshops began on August 25, 2016 and will conclude on December 2, 2016.

ENFORCEMENT PROGRAM

Disciplinary Actions

Crispin, Chad (Los Angeles) Effective July 13, 2016, Chad Crispin's landscape architect license number LA 4636 was surrendered and he thereby loses all rights and privileges of a landscape architect in California. The action was a result of a Stipulated Surrender of License and Order, which was adopted by the Board. An Accusation was filed against Crispin for alleged violations of BPC 5640 (Unlicensed Person Engaging in Practice – Sanctions), 5657 (Filing of Mailing Address – Requirement), 5666 (Practice in Violation of Chapter Provisions), and 5671 (Negligence, Willful Misconduct) in conjunction with CCR 2670 (Rules of Professional Conduct). The Accusation alleged that in 2013, Crispin committed acts constituting negligence and/or willful misconduct by contracting to provide complete conceptual and construction drawings/plans for landscape architecture. At the time, Crispin had an expired license, and after taking a deposit from the client, abandoned the project without completing it. The Accusation further alleged that Crispin engaged in unlicensed practice of landscape architecture and failed to respond to the Board's numerous requests for complete information and documents related to the project which was the subject of the case.

Gustard, Christopher Ian (San Diego) Effective August 8, 2016, Christopher Gustard's landscape architect license was revoked and he thereby loses all rights and privileges of a landscape architect in California. The action was a result of a Proposed Decision which was adopted by the Board on June 9, 2016. An Accusation was filed against Gustard as a result of his pleading guilty to one felony count in United States District Court, was sentenced to 120 months in prison and required to register as a sex offender. On May 11, 2015, following notification of the plea of guilty and conviction, the Board filed the Accusation pursuant to BPC section 5675 (Felony Conviction – Sanctions)

Enforcement Actions

Ware, Charles (Corona del Mar) The Board issued a two-count citation that included a $2,500 administrative fine to Ware, landscape architect license number LA 6113, for alleged violations of BPC 5640 (Unlicensed Person Engaging in Practice - Sanctions) and CCR 2670(b)(2) (Willful Misconduct). The action alleged that Ware had used the protected title "landscape architect" prior to being licensed as well as failed to respond to a request for information and/or evidence for a Board investigation within 30 days of the date mailed. The citation became final on June 6, 2016.

Te Selle, Mary (San Rafael) The Board issued a citation that included a $1,250 administrative fine to Mary Te Selle, an unlicensed individual, for alleged violations of BPC 5640 (Unlicensed Person Engaging in Practice - Sanctions). The action alleged that Te Selle provided services for a project in Crockett which is not an exempt project as described in BPC 5641. Te Selle paid the fine, satisfying the citation. The citation became final on August 25, 2016.

Enforcement Statistics	Current Month September 2016	Prior Month August 2016	FYTD 2015/16	5-FY Avg 2011/12 – 2015/16
Complaints				
Received/Opened(Reopened)	0(0)	1(0)	14(0)	26(0)
Closed:	4	1	23	36
Average Days to Close:	86 days	32 days	368 days	360 days
Pending:*	3	7	10	21
Average Age (Pending)	203 days	114 days	162	301 days
Citations				
Issued:	1	0	6	3
Pending:*	1	0	2	2
Pending (AG):***	0	0	1	2
Final:	0	1	3	2
Disciplinary Actions				
Pending AG:*	0	0	2	1
Pending DA:*	0	0	0	0
Final:	0	1	0	1
Settlement Reports (§5678)**				
Received/Opened:	0	1	1	1
Closed:	1	0	1	1
Pending:*	1	2	2	1

* *FYTD data is presented as a monthly average of pending cases.*
** *Also included within "Complaints" information.*
*** *Also included within "Pending Citations."*

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

Edmund G. Brown Jr.
GOVERNOR

NOTICE OF BOARD MEETING

MODIFIED

June 9, 2016
10:30 a.m. to 3:00 p.m.
(or until completion of business)
University of San Francisco
School of Education, Room 201
2350 Turk Street, San Francisco, CA 94118
(916) 574-7220 or (916) 575-7221 (Board)

The California Architects Board will hold a Board meeting, as noted above. The notice and agenda for this meeting and other meetings of the Board can be found on the Board's website: cab.ca.gov. For further information regarding this agenda, please see below or you may contact Mel Knox at (916) 575-7221.

The Board plans to webcast this meeting on its website at cab.ca.gov. Webcast availability cannot, however, be guaranteed due to limited resources or technical difficulties. The meeting will not be cancelled if webcast is not available. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

Agenda

A. Call to Order/Roll Call/Establishment of Quorum

B. President's Procedural Remarks and Board Member Introductory Comments

C. Public Comment on Items Not on Agenda
(The Board may not discuss or take action on any item raised during this public comment section, except to decide whether to refer the item to the Board's next Strategic Planning session and/or place the matter on the agenda of a future meeting [Government Code sections 11125 and 11125.7(a)].)

D. Review and Possible Action on March 3, 2016 Board Meeting Minutes

E. Executive Officer's Report
1. Update on May 2016 Monthly Report on Board's Administrative/ Management; and Examination, Licensing and Enforcement Programs
2. Budget Update

2420 Del Paso Road,
Suite 105
Sacramento,
CA 95834

916-574-7220 T
916-575-7283 F

cab@dca.ca.gov
www.cab.ca.gov

(Continued)

F. Presentation on University of San Francisco's Architecture and Community Design Program and Department of Art + Architecture by Seth Wachtel, Department Chair, Associate Professor

G. Update and Possible Action on Legislation Regarding:
   1. Assembly Bill (AB) 507 (Olsen) [BreEZe]
   2. Senate Bill (SB) 1479 (Business Professions, & Economic Development) [Exam Eligibility – Integrated Degree Program]
   3. SB 1195 (Hill) [Board Actions: Competitive Impact]

H. National Council of Architectural Registration Boards (NCARB)
   1. Presentation by Michael J. Armstrong, Chief Executive Officer and Katherine E. Hillegas, CAE, Director, Council Relations on:
      a. Architect Registration Examination (ARE) 5.0
      b. Architectural Experience Program (AXP)
      c. First Cohort of Integrated Path Schools
      d. Annual Business Meeting Resolutions and Presentations
      e. Model Law
      f. New Benefits to the NCARB Certificate
   2. Review of 2016 NCARB Annual Business Meeting Agenda
   3. Review and Possible Action on Recommended Positions on 2016 Resolutions and Candidates for Office

I. Review and Possible Action on 2016/17 Intra-Departmental Contract with Office of Professional Examination Services (OPES) for California Supplemental Examination (CSE) Development

J. Regulatory and Enforcement Committee (REC) Report
   1. Update on REC April 28, 2016 Meeting
   2. Review and Possible Action on Architect Consultant Contract for Fiscal Years 2016/17 Through 2018/19
   3. Discuss and Possible Action on Recommendation on SB 1132 (Galgiani) [Intern Title] and The American Institute of Architects, California Council's (AIACC) Architect-in-Training Title Change Proposal

K. Landscape Architects Technical Committee (LATC) Report
   1. Update on LATC May 24, 2016 Meeting
   2. Review and Possible Action on Proposed Language to Amend Business and Professions Code Sections 5680.1 (Expired License – Renewal) and 5680.2 (License Renewal – Three Years After Expiration) and Proposed Regulations to Amend California Code of Regulations (CCR) Title 16, Sections 2624 (Expired License – Three Years After Expiration) and 2624.1 (Expired License – Five Years After Expiration)
   3. Review and Possible Action on Proposed Regulations to Amend CCR Title 16, Section 2649(f) (Fees) as it Relates to Extension of Renewal Fee Reduction

(Continued)

L. Closed Session
   1. Review and Possible Action on March 3, 2016 Closed Session Minutes
   2. Pursuant to Government Code Section 11126(e)(1), the Board will Confer with Legal Counsel to Discuss and Take Possible Action on Litigation Regarding *Marie Lundin vs. California Architects Board, et al.*, Department of Fair Employment and Housing, Case No. 585824-164724
   3. Pursuant to Government Code Section 11126(c)(3), the Board will Deliberate on Disciplinary Matters
   4. Pursuant to Government Code Section 11126(a)(1), the Board will Conduct Annual Evaluation of its Executive Officer

M. Reconvene Open Session

N. Adjournment

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Board President and may be taken out of order. The meeting will be adjourned upon completion of the agenda, which may be at a time earlier or later than posted in this notice. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting [Government Code sections 11125 and 11125.7(a)].

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Mel Knox at (916) 575-7221, emailing mel.knox@dca.ca.gov, or sending a written request to the Board. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Business and Professions Code section 5510.15)

Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

NOTICE OF BOARD MEETING

MODIFIED

July 28, 2016
2:00 p.m. – 4:00 p.m.
(or until completion of business)
California Architects Board
2420 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 574-7220

The California Architects Board will hold a Board meeting as noted above and via teleconference at the following locations:

Jon Alan Baker
BakerNowicki Design Studio
731 Ninth Avenue, Suite A
San Diego, CA 92101
(619) 795-2450

Tian Feng
300 Lakeside Drive, 22nd Floor, Room 2236
Oakland, CA 94612
(510) 464-6549

Pasqual Gutierrez
Denise Campos
Robert Pearman
HMC Architects
633 West 5th Street, 3rd Floor
Los Angeles, CA 90071
(213) 542-8300

Sylvia Kwan
Kwan Henmi Architecture & Planning
456 Montgomery Street, Suite 200
San Francisco, CA 94104
(415) 901-7203

Ebony Lewis
1111 South Grand Avenue
Los Angeles, CA 90015
(626) 773-0379

Nilza Serrano
1575 Hill Drive
Los Angeles, CA 90041
(323) 807-2601

Barry L. Williams
Robert E. Kennedy Library
1 Grand Avenue
Conference Room 220A
San Luis Obispo, CA 93407
(805) 459-7353

The notice and agenda for this meeting and other meetings of the Board can be found on the Board's website: cab.ca.gov. For further information regarding this agenda, please see below or you may contact Mel Knox at (916) 575-7221.

2420 Del Paso Road,
Suite 105
Sacramento,
CA 95834

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916-575-7283 F

cab@dca.ca.gov
www.cab.ca.gov

(Continued on Reverse)

AGENDA

A. Call to Order/Roll Call/Establishment of a Quorum

B. Public Comment on Items Not on Agenda
(The Board may not discuss or take action on any item raised during this public comment section, except to decide whether to refer the item to the Board's next Strategic Planning session and/or place the matter on the agenda of a future meeting [Government Code sections 11125 and 11125.7(a)].)

C. Discuss and Possible Action on Recommendation Concerning Senate Bill 1132 (Galgiani) [Architects-in-Training] and The American Institute of Architects, California Council's Architect-in-Training Title Change Proposal

SPECIAL MEETING

D. Finding of Necessity

E. Closed Session
Pursuant to Government Code Section 11126(e)(1), the Board will Confer with Legal Counsel to Discuss and Take Possible Action on Litigation Regarding Marie Lundin vs. California Architects Board, et al., Department of Fair Employment and Housing, Case No. 585824-164724

F. Adjournment

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Board President and may be taken out of order. The meeting will be adjourned upon completion of the agenda, which may be at a time earlier or later than posted in this notice. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting [Government Code sections 11125 and 11125.7(a)].

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Mel Knox at (916) 575-7221, emailing mel.knox@dca.ca.gov, or sending a written request to the Board. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Business and Professions Code section 5510.1)

Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

NOTICE OF BOARD MEETING

September 29, 2016
10:30 a.m. to 3:00 p.m.
(or until completion of business)
HMC Architects (US Bank Tower)
633 West 5th Street, Third Floor, Conference Room 1
Los Angeles, CA 90071
(213) 542-8300 or (916) 575-7221 (Board)

The California Architects Board will hold a Board meeting, as noted above. The notice and agenda for this meeting and other meetings of the Board can be found on the Board's website: cab.ca.gov. Due to US Bank Tower's security procedures, attendees must present identification (containing a photograph) in the building lobby. For further information regarding this agenda, please see below or you may contact Mel Knox at (916) 575-7221.

The Board plans to webcast this meeting on its website at cab.ca.gov. Webcast availability cannot, however, be guaranteed due to limited resources or technical difficulties. The meeting will not be cancelled if webcast is not available. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

Agenda

A. Call to Order/Roll Call/Establishment of a Quorum

B. President's Procedural Remarks and Board Member Introductory Comments

C. Public Comment on Items Not on Agenda
(The Board may not discuss or take action on any item raised during this public comment section, except to decide whether to refer the item to the Board's next Strategic Planning session and/or place the matter on the agenda of a future meeting [Government Code sections 11125 and 11125.7(a)].)

D. Review and Possible Action on June 9, 2016 and July 28, 2016 Board Meeting Minutes

2420 Del Paso Road,
Suite 105
Sacramento,
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(Continued)

E. Executive Officer's Report
   1. Update on August 2016 Monthly Report on Board's Administrative/ Management; and Examination, Licensing and Enforcement Programs
   2. Board Member Liaison Reports on Organizations and Schools

F. Update and Possible Action on Legislation Regarding:
   1. Senate Bill (SB) 1132 (Galgiani) [Architect-in-Training]
   2. SB 1195 (Hill) [Board Actions: Competitive Impact]
   3. SB 1479 (Business, Professions and Economic Development) [Exam Eligibility – Integrated Degree Program]

G. National Council of Architectural Registration Boards (NCARB)
   1. Review and Possible Action on NCARB Mutual Recognition Arrangement Between Australia and New Zealand Architectural Licensing Authorities
   2. Update and Possible Action on NCARB Integrated Path to Architectural Licensure

H. Professional Qualifications Committee (PQC) Report
   1. Update on July 12, 2016, PQC Meeting
   2. Discuss and Possible Action on Recommendation Regarding 2015-16 Strategic Plan Objective to Evaluate the Profession in Order to Identify Entry Barriers for Diverse Groups

I. *North Carolina State Board of Dental Examiners v. Federal Trade Commission* Case Review – Department of Consumer Affairs Legal Counsel

J. Closed Session
   1. Review and Possible Action on June 9, 2016 and July 28, 2016 Closed Session Minutes
   2. Pursuant to Government Code Section 11126(e)(1), the Board will Confer with Legal Counsel to Discuss and Take Possible Action on Litigation Regarding *Marie Lundin vs. California Architects Board, et al.*, Department of Fair Employment and Housing, Case No. 585824-164724
   3. Pursuant to Government Code Section 11126(c)(3), the Board will Deliberate on Disciplinary Matters

K. Reconvene Open Session

L. Adjournment

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Board President and may be taken out of order. The meeting will be adjourned upon completion of the agenda, which may be at a time earlier or later than posted in this notice. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public.

(Continued)

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting [Government Code sections 11125 and 11125.7(a)].

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Mel Knox at (916) 575-7221, emailing mel.knox@dca.ca.gov, or sending a written request to the Board. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Business and Professions Code section 5510.15)

Agenda Item F

DISCUSS AND POSSIBLE ACTION ON PUBLIC COMMENTS REGARDING CALIFORNIA CODE OF REGULATIONS (CCR) TITLE 16, SECTION 2615 (FORM OF EXAMINATIONS) RECIPROCITY REQUIREMENTS

In December 2012, the Landscape Architects Technical Committee (LATC) received a public comment letter regarding California's current reciprocity requirements. In May 2013, the LATC began discussing the issue of reciprocity with other jurisdictions and subsequent Strategic Plans have included objectives to review reciprocity requirements. The Committee has received several requests for reciprocal licensure from individuals licensed in jurisdictions where a landscape architecture degree was not a requirement for initial licensure. At its May 22, 2013 meeting, the LATC directed staff to compile the education, training, and examination requirements of other states and report the findings.

A summary of each states' requirements for initial and reciprocal licensure was presented at the November 7, 2013 LATC meeting. After review, the Committee asked staff to identify the specific number of educational years required by each state, whether a degree is mandatory, and the number of years of experience required for initial licensure. The Committee also requested that staff research state specific requirements for reciprocity.

Attachments 1, 2, and 3 outline the reciprocal licensure requirements of other states and the requirements for Council Certification by the Council of Landscape Architectural Registration Boards (CLARB). To summarize:

Reciprocity Requirements	Years	States
National Average - Combined Training and/or Education	7	50
National Average - Education	4	22
National Average - Training	4	50
Education Only Pathway	4	4
Training Only Pathway	8	27
Education Required - Region 5 (AZ, CA, HI, ID, MT, NV, OR, UT, WA)	N/A	1 (CA)
Education Required - Large Jurisdictions (CA, FL, NY, TX)	N/A	2 (CA & TX)
Landscape Architecture Degree Required	N/A	4
CLARB Certification Required	N/A	4

To obtain CLARB Certification, an individual must verify completion of: (1) the CLARB registration examination, (2) a 4-year degree, (3) at least 3 years of training experience, and current licensure by a CLARB member board.

The Committee requested that legal counsel research CCR section 2620 to determine whether there was a means to make reciprocity requirements less prescriptive and allow more flexibility without the necessity of a regulatory amendment. At the March 20, 2014 LATC meeting, legal counsel advised the Committee that regulatory amendments would be necessary in order to allow reciprocity applicants who have not met the current education requirement to become licensed.

At the February 10, 2015 LATC meeting, the Committee addressed this objective and suggested a regulation amendment to allow reciprocity to individuals who are licensed in another jurisdiction, have 10 years of practice experience, and have passed the California Supplemental Examination. The Committee directed staff to review the reciprocity requirements from Arizona and New York and draft proposed regulatory language for the Committee's consideration.

Arizona allows reciprocity if the applicant's education, experience, and examination were "substantially identical" to the requirements that existed in Arizona at the time they were originally licensed. New York allows reciprocity to an applicant who holds a current license, has passed the written exam given in the jurisdiction in which they are licensed, and met New York's requirements at the time their license was issued in the other jurisdiction. Both New York and Arizona accept 10 years of licensed experience in lieu of meeting their degree and experience requirements.

Based on the LATC's request, staff prepared proposed regulatory language to amend CCR section 2615 (see attachment 4). The proposed amendment includes provisions that require a candidate for reciprocal licensure to either submit verifiable documentation of education and experience equivalent to that required of California applicants at the time of application **or** submit verifiable documentation that the candidate has been actively engaged as a licensed landscape architect in another jurisdiction for at least 10 of the last 15 years.

At the November 17, 2015 LATC meeting, the Committee approved the proposed regulatory language for CCR section 2615. Staff then prepared and submitted the initial rulemaking package to the Office of Administrative Law (OAL) [see attachments 5 and 6]. The Notice of Proposed Changes in the Regulations was published by OAL on August 12, 2016; beginning the 45-day public comment period. On September 27, 2016, a public hearing was held and the public comment period officially ended at the close of business. During the public comment period, 296 comments were received. 291 comments were substantially similar; therefore, the comments have been consolidated for the LATC's review (see attachment 10). As part of the formal rulemaking process under the Administrative Procedure Act, agencies are required to respond to any comments received during the public comment period as part of the rulemaking file.

At today's meeting, the Committee is asked to review the attached public comments on the proposed regulation and take action.

ATTACHMENTS:

1. Eligibility and Reciprocity Requirements - by State
2. Initial Licensure and State Specific Reciprocity Requirements - by State
3. CLARB Standards of Eligibility for Council Certification
4. Proposed Regulatory Language to Amend CCR Section 2615 (Form of Examinations)
5. Notice of Proposed Changes in the Regulations
6. Initial Statement of Reasons
7. LATC Evaluation of Education and Experience Requirements - January 2010
8. CLARB Determinants of Success Research Study - October 2011
9. Landscape Architectural Accreditation Board Accreditation Standards - March 2016
10. Public Comments Received During Public Comment Period

National Landscape Architects - Eligibility and Reciprocity Requirements

State - Acroynym	Initial Education/Experience Requirements	Reciprocity Requirements	Education Experience Required for Purposes of Reciprocity
Alabama - AL	6 years combined education and experience which may include up to 5 years credit for education. In lieu of education, 8 years experience if that experience began prior to August 1, 2012.	Passed a test prepared by CLARB and is from a state with similar qualifications for licensure that also offers reciprocity with AL.	Yes, unless 8 years of practice experience was gained or began prior to August 1, 2012.
Alaska - AK	8 to 12 years combined education and experience, plus a course in arctic engineering.	Licensed in a state that the board determines meets the requirements of law or, have a CLARB certificate. Must also complete an artic engineering course.	Yes
Arizona - AZ	8 years of active education or experience or both (not more than 5 years credit for education).	Must meet the mimimum experience requirements or have CLARB certification. In lieu of meeting education, training and examination requirments, applicants may submit proof of licensure for at least 10 of the last 15 years.	No
Arkansas - AR	Accredited degree in LA plus 2 years experience; or a degree in a field related to LA plus 4 years experience; or 7 years experience satisfactory to the board.	Holds a current, valid license issued under standards equivalent to AR at the time of original licensure. May submit a valid CLARB certificate.	No
California - CA	6 years combined education and experience. Minimum one year education and minimum one year experience under landscape architect post graduation. Multiple pathways.	Licensed in another jurisdiction and meets initial eligiblity requirements for California candidates.	Yes
Colorado - CO	Accredited degree in LA plus 2 years experience or 6 years practical experience or a combination of education and experience to meet the 6 year requirement. Educational credit is given for non-accredited programs.	Holds a current, valid license in another jurisdiction with eligibility requirements substantially equivalent to CO.	No
Connecticut - CT	Accredited degree in LA plus 2 years of experience or 8 years experience.	CLARB certification or licensure in another state with standards substantially similar or higher than CT.	No
Delaware - DE	Accredited degree in LA plus 2 years experience or 2 years coursework in LA from an accredited school plus 4 years experience.	Proof of licensure in good standing in another state or territory and passage of a uniform national licensing exam for landscape architecture.	Yes
District of Columbia - DC	N/A	N/A	N/A
Florida - FL	Accredited degree in LA plus 1 year of experience, or 7 years experience and/or education credit.	Licensure by Endorsement if the applicant has passed a licensing exam substantially equivalent to that used by FL or who holds a valid LA license in a state or territory with substantially identical criteria to the requirements in FL at the time of issuance.	No
Georgia - GA	BA/BS degree in LA plus 18 months of training or post graduate degree in LA.	Legally registered/licensed by another jurisdiction where licensure requirements are substantially equivalent to GA and where the same privilege is extended to GA licensees.	Yes
Hawaii - HI	MA in LA plus 2 years experience or undergraduate degree in LA plus 3 years experience or undergraduate degree in pre-LA or Arts and Sciences plus 5 years experience, or 12 years experience. Applicants with 15 years experience do not have to pass the L.A.R.E.	Current licensure in a jurisdiction where the requirements for licensure at the time the license was issued are satisfactory to the Board. Must pass the national licensing exam and the HI supplemental exam.	No
Idaho - ID	Graduation from a college or school of LA approved by the board or 8 years experience.	Licensure in another jurisdiction whose requirements are substantially equivalent to ID or CLARB certification	No

Illinois - IL	Approved professional degree in LA plus 2 years experience.	Licensure in another state which has substantially equivalent requirements and/or CLARB certification.	Yes
Indiana - IN	Accredited degree in LA plus 3 years of experience or, before January 2003, at least 8 years experience.	Licensed in another jurisdiction with substantially equivalent requirements as IN and/or CLARB certification.	Yes, unless 8 years of practice experience was gained before January 2003.
Iowa - IA	4 year accredited degree in LA plus 3 years experience, 4 year non-accredited degree in LA plus 4 years experience, or 10 years experience.	Licensure in another jurisdiction whose requirements are substantially equivalent to IA.	No
Kansas - KS	Accredited 5 year degree in LA plus 3 years experience or accredited 4 year degree in LA plus 4 years experience.	Licensure in another jurisdiction whose requirements are substantially equivalent to KS.	Yes, unless licensed in their home state before January 1993, may use 8 years experience in lieu of education.
Kentucky - KY	Accredited degree in LA plus 2 years experience.	Licensed in a jurisdiction where the requirements at the time of licensing were equal to those required in KY at the time of application.	Yes
Louisiana - LA	Professional degree from an accredited school or a degree which the commission has declared to be substantially equivalent plus at least 1 year experience, or 6 years experience.	No provision for reciprocity.	No
Maine - ME	Accredited degree in LA plus 2 years experience other than as a principal or 5 years as a principal, or non-accredited degree plus 3 years experience other than a principal or 5 years experience as a principal, or bachelors degree in a non-related field plus 5 years experience, or 3 years experience under the supervision of a licensed LA plus 5 years experience as a principal, or 12 years experience other than as a principal at least 6 of which was under the supervision of a licensed LA.	Current and valid license from another jurisdiction where the requirements for licensure are equivalent to the requirements in ME or CLARB certification issued after examination.	No
Maryland - MD	Accredited degree plus 2 years experience, or design-related degree plus 4 years experience, or non-related degree plus 6 years experience, or 8 years experience.	Licensed in another jurisdiction with substantially equivalent requirements as MD and which offers reciprocity to MD licensees.	No
Massachusetts - MA	Accredited degree and 2 years experience or, 6 years experience	Licensed in another jurisdication whose requirements are at least substantially equivalent to MA provided the jurisdication extends the same privilege to MA licensees.	No
Michigan - MI	7 years of education and/or work experience. BS/BA degree equals 4 years of the 7 year requirement; MA equals 5 years of the 7 year requirement.	Must meet the mimimum experience requirements or have CLARB certification.	No
Minnesota - MN	5 year accredited degree in LA plus 3 years experience or, 4 year accredited degree in LA plus 4 years experience or, related degree plus MA/Ph.d. in LA plus 3 years experience.	CLARB certification.	Yes
Mississippi - MS	Accredited degree in LA or one that is accepted by a CLARB recognized accreditation body. In lieu of education, 7 years experience in LA suitable to the board. A degree in a curriculum other than LA qualifies for 2 years credit toward the 7 year requirement.	Licensed by another jurisdiction recognized by CLARB and/or CLARB certification. An applicant without CLARB certification must meet the education and/or experience requirements.	No
Missouri - MO	Accredited degree in LA plus 3 years experience.	Must meet the mimimum education and experience requirements.	Yes
Montana - MT	Accredited MA degree in LA plus 2 years experience or, non-accredited MA degree in LA and 3 years experience or, BA/BS degree plus 4 years experience or AA degree plus 6 years experience, or 8 years experience.	Verification of licensure in another jurisdiction disclosing the laws and regulations in effect at the time of licensure, verification from CLARB of having passed all sections of the LARE. The board determines whether the education and experience requirements for original licensure are substantially equivalent to those in MT.	No

Nebraska - NE	Accredited degree in LA or, non-accredited degree plus 1 year experience or, any bachelors degree plus 3 years experience.	Licensure in another jurisdiction and has CLARB certification.	Yes
Nevada - NV	Accredited or approved BA/MA degree in LA plus 2 years experience or, an AA in LA or BA in a related field plus 4 years experience or, an accredited BA in architecture or civil engineering plus 3 years experience or, any combination of education and experience the Board deems acceptable. A MA degree in a related field counts as 1 year of experience.	Licensure in another jurisdiction and actively engaged in the practice of LA for 2 or more years or fulfilled the education and experience requirements of NV.	No
New Hampshire - NH	Accredited degree in LA and 3 years experience or, non-accredited degree in LA or related field and 5 years experience.	Licensure in another jurisdiction whose requirements are substantially equivalent to those in NH or, CLARB certification accompanied by verification of licensure in the other jurisdiction.	Yes
New Jersey - NJ	Accredited or approved degree in LA plus 4 years experience of which at least 2 years must have been full time.	Licensure in another jurisdiction where the standards for licensing met the standards in NJ at the time of initial licensure, and passed the national examination or holds CLARB certification.	Yes
New Mexico - NM	Accredited degree in LA plus 2 years experience or, non-accredited degree in LA plus 4 years experience or, BA or MA in a related field plus 5 years experience, or 10 years practical experience in LA at least 1 of which must have been under the direct supervision of a licensed LA (each year of completed study in an accredited LA program counts as 1 year experience and a baccalaureate degree in any field counts as 2 year experience toward the 10 year requirement).	Licensure in another jurisdiction with standards as stringent or higher than NM and meet the qualifications of a licensed LA in NM.	No
New York - NY	Accredited or approved degree in LA plus experience to equal at least 8 years total or, 12 years experience in LA. Each complete year of study satisfactory to the board counts as 2 years toward the 12 year requirement, not to exceed 8 years of credit.	Licensure in another jurisdiction provided the applicant's qualification met the requirements in NY at the time of initial licensure.	No
North Carolina - NC	Accredited degree in LA plus 4 years experience or, 10 years education and experience in any combination in LA.	Licensure in a jurisdiction whose requirements are deemed equal or equivalent to NC. Applicant must provide proof of education, experience and examination.	Yes
North Dakota - ND	N/A	N/A	N/A
Ohio - OH	Accredited degree in LA plus 3 years experience.	Licensure in another jurisdiction whose qualifications at the time of licensure were substantially equal to the requirements in OH and CLARB certification.	Yes
Oklahoma - OK	Accredited or approved degree in LA plus 3 years experience. The board may accept "broad experience" in LA as meeting the educational requirements.	Licensure in another jurisdiction with requirements substantially equivalent to OK and where reciprocity is granted for OK licensees.	No
Oregon - OR	Accredited degree in LA plus 3 years experience or, non-accredited in LA or related field plus 4 years experience or, degree in any field plus 6 years experience or, 11 years experience.	Must meet the same requirements as OR applicants.	No
Pennsylvania - PA	Accredited or approved degree in LA plus 2 years experience or, accredited or approved degree in LA plus 1 year of graduate school in LA plus 1 year experience or, 1 year of study in an approved program in LA plus 6 years of combined education and experience or, 8 years experience actual experience in LA. The board waives the examination requirements for individuals with a degree in LA and 10 years experience and for individuals with 15 years experience in LA.	Must meet the education and experience requirements and hold a current license in LA in another jurisdiction.	No

Rhode Island - RI	Accredited BS/MA degree in LA or, at the discretion of the board, a BS/MA degree in a field related to LA or completion of a non-accredited program, plus 2 years experience in LA or 1 year experience in LA plus 1 year experience in a related field. In lieu of a degree, 6 years experience.	Licensure in another jurisdiction with equal standards to those in RI and that grants equal rights to RI licensees, provided that the applicant passed a comparable examination and demonstrates comparable education and experience.	No
South Carolina - SC	Accredited degree in LA plus 2 years experience or, non-accredited degree in LA or a related field plus 5 years experience.	Licensure in another jurisdiction with substantially equivalent requirements to those in SC at the time of initial licensure.	Yes
South Dakota - SD	Accredited degree in LA and completion of a council record from CLARB. Experience requirements are those required by CLARB.	Must meet the mimimum education and experience requirements or have CLARB certification.	Yes
Tennessee - TN	Accredited degree in LA plus 3 years experience.	Comity - must have accredited degree in LA plus 3 years experience, current CLARB certification and be licensed in another jurisdiction.	Yes
Texas - TX	Professional degree from a program accredited by the LAAB plus 2 years experience.	Licensed in another jurisdiction with requirements substantially equivalent to those in TX, or where the jurisdiction has entered into an agreement with the Board that has been approved by the Governor of TX. Applicants must have passed the LARE or an equivalent exam approved by CLARB as conforming to CLARB's standards or as being acceptable in lieu of the LARE, and have 2 years of post licensure experience or have CLARB certification.	Yes
Utah - UT	Degree in LA or no less than 8 years experience. Each year of education counts as 1 year of experience.	No provisions for reciprocity cited in law or rules.	No
Vermont - VT	Accredited degree in LA plus 3 years experience or 9 years experience under a licensed LA. Up to 1 year of that experience may be under the supervision of an architect, professional engineer or land surveyor. Credits from an accredited degree program may be substituted for no more than 3 of the 9 year requirement.	Licensure in another jurisdiction with substantially equal requirements as VT or CLARB certification.	No
Virginia - VA	Accredited degree in LA plus 3 years experience or, non-accredited degree in LA plus 4 years experience or, any bachelors degree plus 6 years experience or, 8 years experience.	Licensed in a jurisdiction whose requirements were at least as rigorous as those in VA at the time of original licensure (must have passed an examinatiion) or CLARB certification.	No
Washington - WA	Accredited degree in LA or an equivalent degree in LA as determined by the board plus 3 years experience, or 8 years LA experience, 6 of which must have been under the supervision of a licensed LA. Up to 2 years of experience may be granted for postsecondary education courses in LA if the courses are equivalent to those offered in accredited degree programs.	Licensure in another jurisdiction if the applicant's qualifications and experience are equivalent to the requirements of WA.	No
West Virginia - WV	Accredited degree in LA plus 2 years experience, or accredited graduate degree in LA plus 1 year experience, or, prior to December 31, 2006, 10 years experience in LA, 6 of which must have been under the supervision of a licensed LA or a person having similar qualifications as a LA. After January 1, 2007, 10 years of experience under the supervision of a licensed LA or a person having similar qualifications.	Licensure in another jurisdiction with substantially equivalent requirements to those in W.VA., or CLARB certification.	No
Wisconsin - WI	Accredited degree in LA or an equivalent degree plus 2 years experience, or 7 years training and experience in LA including at least 2 years of coursework in LA or an area related to LA and 4 years practical experience.	Licensed in another jurisdiction with similar requirements to those in WI.	Yes
Wyoming – WY	Accredited degree plus 3 years experience.	Licensed in a jurisdiction with substantially equal requirements to those in WY or CLARB certification.	Yes

Landscape Architects - Initial Licensure and State Specific Reciprocity Requirements

	Initial Licensure					Reciprocity
	Required Years Combined Training and Educational Experience	**Credit for Years of Education**	**Credit for Years of Training**	**Allow Education Only**	**Allow Years of Training Only**	**State Specific Requirements for Reciprocity**
AL	6	4 -5	1 - 2	No	Yes, 8	Must offer reciprocity with AL
AK	8 - 12	1 - 6	2 - 12	No	No	Course in arctic engineering and accepts CLARB certification
AZ	8	4 - 5	3 - 4	No	Yes, 8	Accepts CLARB certification
AR	6 - 8	4	2 - 4	No	Yes, 7	Accepts CLARB certification
CA	6	1 - 4	2 - 5	No	No	
CO	6	1 - 4	2 - 6	No	Yes, 6	
CT	6 - 8	4	2 - 8	No	Yes, 8	CLARB certification required
DE	6	2 - 4	2 - 4	No	No	CLARB certification required
DC	N/A	N/A	N/A	N/A	N/A	
FL	5 - 6	4	1 - 6	No	Yes, 7	
GA	5.5	4	1.5	Yes, BA plus MA in LA	No	Must offer reciprocity with GA
HI	6 - 12	4	2 - 12	No	Yes, 12	
ID	4 - 8	4	8	LA degree	Yes, 8	Accepts CLARB certification
IL	6	4	2	No	No	Accepts CLARB certification
IN	7	4	3	No	Yes, 8 prior to 2003	Accepts CLARB certification
IA	7 - 8	4	3 - 4	No	Yes, 10	
KS	8	4 - 5	3 - 4	No	Yes, 8 prior to 1993	
KY	6	4	2	No	Yes, 7 prior to 1994	
LA	5 - 6	2 - 4	1 - 4	No	Yes, 6	No provision for reciprocity
ME	6 - 12	3 - 4	2 - 12	No	Yes, 12	Accepts CLARB certification
MD	6 - 8	2 - 4	2 - 8	No	Yes, 8	Must offer reciprocity with MD
MA	6	4	2 - 6	No	Yes, 6	Must offer reciprocity with MA
MI	7	1 - 5	6 - 7	No	Yes, 7	CLARB certification required
MN	8	4 - 5	3 - 4	No	No	CLARB certification required
MS	4 - 7	2 - 4	5 - 7	Yes, BA or MA	Yes, 7	Accepts CLARB certification
MO	7	4	3	No	No	
MT	2 - 8	2 - 5	2 - 8	No	Yes, 8	
NE	5 - 7	4	1 - 3	No	No	CLARB certification required
NV	6 - 8	2 - 4	2 - 4	No	Yes, 6	
NH	7 - 8	3 - 4	3 - 5	No	No	Accepts CLARB certification
NJ	8	4	4	No	No	
NM	6 - 10	4	2 - 10	No	Yes, 10	
NY	8	2 - 4	4 - 12	No	Yes, 12	
NC	8 - 10	4	4 - 10	No	No	
ND	N/A	N/A	N/A	N/A	N/A	
OH	7	4	3	No	No	Accepts CLARB certification
OK	7	4	3	No	Yes, at the board's discretion	Must offer reciprocity with OK
OR	7 - 10	4	3 - 6	No	Yes, 11	
PA	6 - 7	1 - 5	1 - 6	No	Yes, 8	
RI	6	4	2	No	Yes, 6	
SC	6 - 9	4	2 - 5	No	No	
SD	5	4	1	No	No	CLARB certification required
TN	7	4	3	No	No	CLARB certification required
TX	6	4	2	No	No	Accepts CLARB certification
UT	4 - 8	4 - 5	8	Yes, BA or MA	Yes, 8	
VT	7	3 - 4	3 - 9	No	Yes, 9	Accepts CLARB certification
VA	6 - 8	3 - 4	3 - 6	No	Yes, 8	Accepts CLARB certification
WA	7	2 - 4	3 - 8	No	Yes, 8	
WV	4 - 6	4 - 5	1 - 2	No	Yes, 10	Accepts CLARB certification
WI	6 - 7	2 - 4	2 - 5	No	No	
WY	7	4	3	No	No	Accepts CLARB certification

Standards of Eligibility for Council Certification

Certification by the Council of Landscape Architectural Registration Boards is formal recognition that the Certificate holder's education, experience, examination and professional conduct meet or exceed CLARB's Certification standards. These standards are approved by CLARB's member boards and are recommended nationally as the minimum standards for licensure.

Certificate records consist of verified documentation of the qualifications of the Certificate holder and carry CLARB's recommendation to all registration boards that the individual be granted reciprocal registration without further examination.

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1. CLARB Certification Standards

To be granted CLARB Certification, an applicant must demonstrate through current, verified documentation that he/she satisfies all of the following requirements in accordance with the evaluation criteria listed in Sections 2, 3, and 4.

Note: Any applicant who does not satisfy the Certification standards listed in Section 1 may be issued a Certificate if he/she has sufficient other qualifications which, while not considered to be equal to the Certification requirements, are accepted in lieu of these requirements. Alternative qualifications are identified in Sections 2, 3, and 4.

- Education: A first professional degree in landscape architecture from a program which has been accredited by the Landscape Architectural Accreditation Board (LAAB). (See Section 2.)
- Experience: 3 years of diversified experience in landscape architecture under the direct supervision of a licensed landscape architect. (See Section 3.)
- Examination: Successful completion of the CLARB registration examination where the examination administration and grading were conducted in accordance with CLARB's standards in effect at the time. (See Section 4.)
- Licensure: Current licensure by a CLARB member board.
- Professional Conduct: History of acceptable professional conduct as verified by employers, landscape architects, and member boards. Applicants may be denied Certification if, in the practice of landscape architecture, they have violated the law or if they have intentionally provided erroneous information on their application for Certification.

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2. Education

2.1 A first professional degree in landscape architecture from a program which has been accredited by the Landscape Architectural Accreditation Board (LAAB) or the Canadian Society of Landscape Architects Accreditation Council is required.

2.2 In lieu of the degree specified in 2.1 above, satisfaction of 5.0 years of education credit as follows:

	Activity	***Percent Allowed***	***Maximum Credit***
2.2.1	Non-accredited B.L.A. or M.L.A.	100%	4 years
2.2.2	NAAB-accredited B.Arch. or M. Arch.	100%	4 years
2.2.3	ABET-accredited degree in Civil Engineering	100%	4 years
2.2.4	Any Bachelor's degree	100%	2 years
2.2.5	Diversified experience in landscape architecture under the direct supervision of a licensed landscape architect	100%	3 years
2.2.6	Diversified experience in landscape architecture under the direct supervision of a licensed landscape architect if the applicant was licensed prior to January 1, 1991.	100%	5 years

2.3 Evaluation Criteria

2.3.1 Degrees listed in 2.2.1 - 2.2.4 cannot be combined to satisfy the education credit requirement.

2.3.2 The work experience applied as education credit may not also be used to satisfy experience requirements.

2.3.3 Any degree awarded less than two years prior to the accreditation of the program will be accepted as an accredited degree.

2.3.4 Any degree awarded after a program has ceased to be accredited will not be accepted as an accredited degree.

3. Experience

3.1 Three (3) years diversified experience directly related to landscape architecture under the direct supervision of a licensed landscape architect is required.

3.2 In lieu of 2.0 years of the experience in 3.1 above, 2.0 years of experience credit as follows:

	Activity	***Percent Allowed***	***Maximum Credit***
3.2.1	Diversified experience in landscape architecture practicing as a principal	100%	N/A
3.2.2	Diversified experience directly related to landscape architecture under the direct supervision of a civil engineer, architect or credentialed planner	100%	2 years
3.2.3	Teaching in an LAAB-accredited program	50%	1 year
3.2.4	Experience in landscape architecture directly related to on-site construction, maintenance or installation procedures	50%	1 year
3.2.5	Non-diversified experience in landscape architecture under the direct supervision of a licensed landscape architect, civil engineer, architect or credentialed planner	50%	1 year

3.3 Evaluation Criteria

3.3.1 Every applicant for Certification must have at least one year of diversified experience in landscape architecture (acquired after the satisfaction of the education requirement) under the direct supervision of a licensed landscape architect; or

3.3.2 Applicants who have acquired six (6.0) years of diversified experience in landscape architecture after the satisfaction of the education requirement practicing as a principal shall be deemed to have satisfied the experience requirement.

3.3.3 Work experience in category 3.1 above will only receive credit as follows:

3.3.3.1 If it is at least 35 hours per week for at least 2 continuous months--100%
3.3.3.2 If it is at least 20 hours per week for at least 4 continuous months-- 50%

3.3.4 Work experience in any alternative category will receive the credit indicated only when the experience is at least 35 hours per week and at least 2 continuous months in duration.

3.3.5 No experience credit may be earned prior to satisfaction of the education requirement.

3.3.6 Experience received outside the United States or Canada is limited to 1 year maximum.

3.3.7 No additional education or experience credit will be awarded for obtaining more than one degree.

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4. Examination

Note: For candidates not licensed by January 1, 2008, any sections of the exam completed prior to 1992 will no longer be accepted for transition credit towards satisfaction of the examination standard for CLARB Certification.

4.1 Successful completion of the CLARB registration examination where the examination administration and grading were conducted in accordance with CLARB's standards in effect at the time is required.

4.2 In lieu of passing the CLARB registration examination, satisfaction of one of the following (4.2.1. - 4.2.6):

4.2.1 For applicants initially licensed without successfully completing a written examination, satisfaction of both 4.2.1.1 and 4.2.1.2:

4.2.1.1 10 years of diversified experience in landscape architecture; at least 7 years of which must occur after licensure

4.2.1.2 Successful completion of the CLARB Reciprocity Validation Examination between the years of 1997 to 1999.

4.2.2 Successful completion of written examination prepared by a member board prior to 1970 and 10 years of diversified experience in landscape architecture after licensure.

4.2.3 Successful completion of a written examination prepared by a member board between the years 1970 to 1975.

4.2.4 Successful completion of the British Columbia Society of Landscape Architects' written examination, 5 years of diversified experience in landscape architecture after licensure and satisfaction of the education and experience requirements.

4.2.5 Successful completion of the California P.E.L.A., satisfaction of the licensure, education and experience requirements, as well as successful completion of L.A.R.E. Sections D & E.

4.2.6 For applicants initially licensed in British Columbia or Ontario without successfully completing the L.A.R.E., satisfaction of 4.2.6.1 and 4.2.6.2 as follows:

4.2.6.1 10 years of diversified experience in landscape architecture; at least 7 years of which must occur after licensure.

4.2.6.2 Successful completion of the CLARB Reciprocity Validation Examination between the years 1997 to 1999.

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5. Requirements for Maintaining a CLARB Council Record/Certificate

- A CLARB Certificate holder must maintain registration in good standing with a CLARB member board. If the Certificate holder fails to maintain registration with at least one CLARB member board, the Certificate will be revoked until such time as a verification of current registration from a member board is received.

- The CLARB Council Record/Certificate is valid for one year from the date of the initial application and must be updated annually with a completed annual activity report and payment of the annual renewal fee.

- Failure to renew the CLARB Council Record/Certificate will cause the Record/Certificate to become inactive and ineligible for transmittal.

6. Revocation of CLARB Certification

- The Council may revoke a landscape architect's Certification when a member board revokes the landscape architect's registration or when a member board or court issues findings of fact regarding the professional conduct of a Certificate holder that indicate a breach of the CLARB Standards of Eligibility for Certification.

- The Council may suspend a landscape architect's Certification when a member board suspends the landscape architect's registration, issues findings of fact regarding the professional conduct of a Certificate holder that indicate a breach of the CLARB Standards of Eligibility for Certification or when the landscape architect fails to satisfy the other requirements for listed in the CLARB Standards of Eligibility for Certification. The suspension will remain in effect until such time as the cause for suspension has been removed, corrected, or otherwise remedied.

- Such matters shall be inserted in the Council Record of the individual in question for the information of member boards who may consider the individual for registration and rely upon information in the Council Record or the recommendation of the Council Certificate.

CALIFORNIA ARCHITECTS BOARD
LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE
PROPOSED REGULATORY LANGUAGE

Proposed language to amend California Code of Regulations section 2615 as follows:

§ 2615 Form of Examinations

(a)(1) A candidate who has a combination of six years of education and training experience as specified in section 2620 shall be eligible and may apply for the Landscape Architect Registration Examination.

(2) Notwithstanding subdivision (a)(1), a candidate who has a Board-approved degree in landscape architecture in accordance with section 2620(a)(1) or an extension certificate in landscape architecture from a Board-approved school in accordance with section 2620(a)(3) shall be eligible and may apply for Sections 1 and 2 of the Landscape Architect Registration Examination (LARE). Such candidates shall not be eligible for Sections 3 and 4 of the LARE until the candidate has a combination of six years of education and training experience as specified in section 2620.

A candidate's score on the LARE shall not be recognized in this State if at the time the candidate took the LARE, the candidate was not eligible in accordance with California laws and regulations for the examination or sections thereof.

(b) A candidate shall be deemed eligible and may apply for the California Supplemental Examination upon passing all sections of the Landscape Architect Registration Examination.

(c) All candidates applying for licensure as a landscape architect shall pass all sections of the Landscape Architect Registration Examination or a written examination substantially equivalent in scope and subject matter required in California, as determined by the Board, and the California Supplemental Examination subject to the following provisions:

(1) A candidate who is licensed as a landscape architect in a U.S. jurisdiction, Canadian province, or Puerto Rico by having passed a written examination substantially equivalent in scope and subject matter required in California as determined by the Board shall be eligible for licensure upon passing the California Supplemental Examination provided that the candidate submits verifiable documentation to the Board indicating:

(A) Candidate possesses education and experience equivalent to that required of California applicants at the time of application; or

(B) Candidate holds a valid license in good standing, and has been practicing or offering professional services for at least 10 of the last 15 years.

(2) A candidate who is not a licensed landscape architect and who has received credit from a U.S. jurisdiction, Canadian province, or Puerto Rico for a written examination substantially equivalent in scope and subject matter required in California shall be entitled to receive credit for the corresponding sections of the Landscape Architect Registration Examination, as determined by the Board, and shall be eligible for licensure upon passing any remaining sections of the Landscape Architect Registration Examination and the California Supplemental Examination.

Authority cited: Section 5630, Business and Professions Code. Reference: Sections 5650 and 5651, Business and Professions Code.

STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA ARCHITECTS BOARD
LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE
NOTICE OF PROPOSED CHANGES IN THE REGULATIONS

NOTICE IS HEREBY GIVEN that the California Architects Board (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

California Architects Board
Landscape Architects Technical Committee
2420 Del Paso Road, Suite 105
Sacramento, California 95834
Tuesday, September 27, 2016
10:00 a.m.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on **September 27, 2016** or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: As a result of legislative reorganization, the Landscape Architects Technical Committee (LATC), established on January 1, 1998, replaced the former Board of Landscape Architects and was placed under the purview of the Board. Pursuant to the authority vested by section 5630 of the Business and Professions Code (BPC) and to implement, interpret, or make specific section 5650 of the BPC, the Board is considering changes to Division 26 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

A. Informative Digest

Amend Title 16 CCR Section 2615 – Form of Examinations

BPC section 5650 requires candidates for licensure to have a combination of six years education and training in landscape architecture to qualify for the licensing examination. BPC section 5651 requires candidates to pass a written examination as a means of ascertaining their professional qualifications to practice, prior to receiving a license.

BPC section 5651 allows the Board to waive the written examination for candidates currently licensed in a United States jurisdiction, Canadian province, or Puerto Rico who have passed a

written examination equivalent to that which is required in California at the time of application, have submitted proof of job experience equivalent to that required of Californian applicants at the time of application, and have passed the California Supplemental Examination (CSE) if, at the time of application, it is required of California applicants.

CCR section 2615(c)(1) allows candidates licensed in a United States jurisdiction, Canadian province, or Puerto Rico by having passed a written examination equivalent in scope and subject matter required in California as determined by the Board, to be eligible for licensure upon passing the CSE.

This proposal would amend CCR section 2615(c)(1) by adding the provision that candidates applying for California licensure based on licensure in another jurisdiction must submit verifiable documentation that they possess both education and experience equivalent to that required of California applicants or, if they do not meet the education requirement, that they hold a current license in good standing in another jurisdiction where they have been actively engaged in the profession for at least 10 of the last 15 years.

B. Policy Statement Overview/Anticipated Benefits of Proposal

This proposed regulation expands opportunities to become licensed in California while still protecting the health, safety, and welfare of California consumers because it allows candidates who are licensed and have extensive experience practicing in another jurisdiction but do not meet the education requirements of California candidates to obtain California licensure.

C. Consistency and Compatibility with Existing State Regulations

After conducting a review for any regulations that would relate to or affect this area, the Board has evaluated this regulatory proposal and it is neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: NA

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not affect small businesses as it only affects landscape architect applicants.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The benefit of the regulation is that it will continue to protect the health, safety, and welfare of California consumers by expanding opportunities for licensure in California to applicants currently licensed in other jurisdictions with extensive experience in landscape architecture but who do not meet the educational requirement of California's laws and regulations.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the California Architects Board, Landscape Architects Technical Committee at 2420 Del Paso Road, Suite 105, Sacramento, California 95834 or by telephoning the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below (or by accessing the website listed below).

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Kourtney Nation
Address:	2420 Del Paso Road, Suite 105 Sacramento, CA 95834
Telephone No.:	(916) 575-7237
Fax No.:	(916) 575-7285
E-Mail Address:	kourtney.nation@dca.ca.gov

The backup contact person is:

Name:	Trish Rodriguez
Address:	2420 Del Paso Road, Suite 105 Sacramento, CA 95834
Telephone No.:	(916) 575-7231
Fax No.:	(916) 575-7285
E-Mail Address:	trish.rodriguez@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.latc.ca.gov.

CALIFORNIA ARCHITECTS BOARD
LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE
INITIAL STATEMENT OF REASONS

Hearing Date: **September 27, 2016**

Subject Matter of Proposed Regulation: **Form of Examinations**

Section Affected: California Code of Regulations (CCR), Title 16, Division 26, Section 2615

As a result of legislative reorganization, the Landscape Architects Technical Committee (LATC), established on January 1, 1998, replaced the former Board of Landscape Architects and was placed under the purview of the California Architects Board (Board). Business and Professions Code (BPC) section 5630 authorizes the Board to adopt, amend, or repeal rules and regulations that are reasonably necessary in order to carry out the provisions under the Landscape Architects Practice Act.

1. PURPOSE

BPC section 5650 requires candidates for licensure to have a combination of six years education and training in landscape architecture to qualify for the licensing examination. BPC section 5651 requires candidates to pass a written examination as a means of ascertaining their professional qualifications to practice, prior to receiving a license.

BPC section 5651 allows the Board to waive the written examination for candidates currently licensed in a United States jurisdiction, Canadian province, or Puerto Rico who have passed a written examination equivalent to that which is required in California at the time of application, have submitted proof of job experience equivalent to that required of Californian applicants at the time of application, and have passed the California Supplemental Examination (CSE) if, at the time of application, it is required of California applicants.

Currently, CCR section 2615(c)(1) allows candidates licensed in a United States jurisdiction, Canadian province, or Puerto Rico by having passed a written examination equivalent in scope and subject matter required in California as determined by the Board, to be eligible for licensure upon passing the CSE.

The problem being addressed is that the LATC receives applications for reciprocal licensure from individuals licensed in jurisdictions where additional years of experience could be substituted for education in meeting the prerequisites for taking the licensing examination. Under current California laws and regulations, these individuals are precluded from licensure here because they do not meet the education requirements of this state, even though they have been practicing in other jurisdictions and thus have additional years of training.

This proposal would amend CCR section 2615(c)(1) by adding provisions that candidates applying for California licensure based on licensure in another jurisdiction must submit verifiable documentation that they have education and experience equivalent to that required of

California applicants or, if they do not meet the education experience requirement, that they hold a current license in good standing in another jurisdiction where they have been actively engaged in the profession for at least 10 of the last 15 years.

FACTUAL BASIS/RATIONALE

The LATC has received and continues to receive reciprocal licensure requests from candidates licensed in other jurisdictions, many for several years, who do not meet the educational requirements of BPC section 5650. In 2013, LATC began discussing the issue of equitable reciprocal licensure with other jurisdictions and reviewing the education, training and examination requirements of other states.

Research reveals that education and/or experience is required by all states to qualify for the licensing examination. Only 4 states allow candidates to take the licensing examination upon completion of an undergraduate or graduate degree in landscape architecture with no experience requirement; 31 states allow candidates to take the examination on the basis of experience alone, with a range of 6 to 12 years required; 5 states have specific provisions that allow reciprocity only if their licensees are granted reciprocity in return; and, 6 states grant reciprocity on the basis of having a Council of Landscape Architectural Registration Boards' (CLARB) certification (which certifies education and/or experience, and passage of the licensing examination).

At its November 2013 meeting, LATC discussed the fact that BPC section 5650 requires a combination of six years education **and** training as a prerequisite for licensure in California. Therefore, the law precludes licensing in California for candidates licensed in jurisdictions where education was not a component of initial licensure, even though they may have been practicing safely and competently for many years.

LATC asked legal counsel if there is a way to make reciprocity requirements for education less prescriptive to allow more flexibility in evaluating the qualifications of candidates licensed in other states. At the March 2014 LATC meeting, Department of Consumer Affairs (DCA) legal counsel advised that a regulatory change would be needed to consider reciprocity for applicants who have not met California's education requirement.

At its February 2015 meeting, LATC directed staff to provide the reciprocity requirements of Arizona and New York, states with similar licensing populations as California. LATC also discussed the current combination six year education and training requirements candidates must complete prior to taking the licensing examination and noted that candidates can qualify for the examination with an associate degree in landscape architecture (1 year of educational credit) and 5 years training/experience. Once a candidate has successfully passed the examination, he/she is deemed to be minimally competent for entry level practice. During the discussion, LATC expressed the belief that licensed professionals continue to learn and gain expertise with each year of practice. Their opinion was that a substantial number of years of post-licensure experience would demonstrate an individual's competence to practice safely, even though they may not have met California's minimum educational experience requirements.

At its November 2015 meeting, LATC reviewed Arizona's and New York's reciprocity standards. Arizona allows reciprocity if the applicant's education, experience and examination were "substantially identical" to the requirements that existed in Arizona at the time they were originally licensed. Arizona allows candidates to test, without education, if they have 8 years of experience. New York grants reciprocity to applicants who hold a current license, have passed the written examination given in the jurisdiction in which they were licensed, and met New York's requirements at the time their license was issued in the other jurisdiction. New York also allows candidates to test, without education, if they have 12 years of experience. Both New York and Arizona accept 10 years of licensed experience for the purpose of reciprocity in lieu of meeting their degree and experience requirements.

Before making a decision on whether to consider years of licensed experience in lieu of education for reciprocity candidates, the LATC discussed the importance of recent and current practice as they relate to competency in offering skills that are up to date with changes in the profession. One way to ensure that practitioners maintain their knowledge and skills is to require periodic license renewal. In California, BPC section 5680 mandates that licenses be renewed every two years and CCR section 2624.1 specifies that licenses that have been expired for more than five years, cannot be renewed.

After discussion and based on the information provided above, LATC voted to approve an amendment to CCR section 2615(c)(1) to add provisions that candidates applying for California licensure based on licensure in another jurisdiction must submit verifiable documentation that they either possess both education and experience equivalent to that required of California applicants or, if they do not meet the education requirement, that they hold a current license in good standing in another jurisdiction where they have been actively engaged in the profession for at least 10 of the last 15 years.

UNDERLYING DATA

1. LATC Strategic Plans – 2013/14, 2014/15 and 2015/16
2. Summary Report – LATC Meeting, November 17, 2015
3. Summary Report – LATC Meeting, May 13, 2015
4. Summary Report – LATC Meeting, February 10, 2015
5. Summary Report – LATC Meeting, March 20, 2014
6. Summary Report – LATC Meeting, November 7, 2013
7. Arizona Administrative Code, Title 4, Section R4-30-203 (Waiver of Examination)
8. New York Education Law, Article 148, Section 7324 (Requirements for a professional license)
9. Landscape Architects - Initial Licensure and State Specific Eligibility Requirements
10. National Landscape Architects – Eligibility and Reciprocity Requirements

BUSINESS IMPACT

This regulation will not have a significant adverse economic impact on directly affecting business, including the ability of California businesses to compete with business in other states, because it affects only candidates for examination and licensure.

ECONOMIC IMPACT ASSESSMENT

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it only affects candidates for examination and licensure.
- It will not create new business or eliminate existing businesses within the State of California because it only affects candidates for examination and licensure.
- It will not affect the expansion of businesses currently doing business within the State of California because it only affects candidates for examination and licensure.
- This regulatory proposal will continue to protect the health and welfare of California residents because it allows individuals who have extensive experience practicing in another jurisdiction to obtain California licensure.
- This regulatory proposal does not affect worker safety because it is not related to worker safety in any manner.
- This regulatory proposal does not affect the state's environment because it is not related to the environment in any manner.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

LANDSCAPE
ARCHITECTS
TECHNICAL
COMMITTEE

Landscape Architects Technical Committee

The Evaluation of Education and Experience Requirements to Examine for Licensure

January 2010

Credits and Contact Information

The Landscape Architects Technical Committee would like to thank the Education Subcommittee volunteers for all their time, effort, and long-term commitment to the report.

Richard Zweifel, Chair
Christine Anderson
Linda Gates
Steve Lang
Alexis Slafer

Contacting the Landscape Architects Committee and Copies of Report

All communication should be addressed to:

2420 Del Paso Road, Suite 105 • Sacramento, CA 95834 • P (916) 575-7230 • F (916) 575-7285
latc@dca.ca.gov • www.latc.ca.gov

Approved January 2010

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October 2004 - Landscape Architects Body of Knowledge (LABOK)
December 2006 – DCA Office of Examination Resources, California Validation Report
2006 - Thompson Prometric National Task Analysis

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EXECUTIVE SUMMARY

The Landscape Architects Technical Committee (LATC) formed an Education Subcommittee in 2004 in response to the Joint Legislative Sunset Review Committee's recommendation to further evaluate California's eligibility requirements and access to landscape architecture licensure in California. The intent of the evaluation was to ensure that applicants have appropriate educational and training/work experience prior to taking the required examination. Specifically, the Subcommittee was to determine appropriate levels of landscape architecture education and training preparation as related to public health, safety, and welfare in California and successfully preparing applicants for the examination.

As part of its charge, and with the assistance of LATC staff, the Educational Subcommittee also provides a comparative analysis of several related discipline's eligibility requirements as part of their assessment and basis for recommendations that were then vetted, modified and approved by the LATC and the California Architects Board (CAB):

- Council of Landscape Architectural Regulatory Boards (CLARB's) national eligibility requirements
- Eligibility requirements of neighboring and larger licensing jurisdictions
- Eligibility requirements of other design professional boards (CAB and Board for Professional Engineers and Land Surveyors)
- Eligibility requirements pertaining to the type and duration of training/work experience
- Any additional licensure requirements of other jurisdictions that may pertain to the subcommittee's charge including requirements for reciprocity
- Curricula of California landscape architectural programs with specific attention to licensing examination subject matter

List of Recommended Changes as Approved by Landscape Architects Technical Committee and California Architects Board

The following are the summary recommendations that were initiated by the Education Subcommittee with subsequent review and approval by the LATC and CAB. They were developed in response to the Joint Legislative Sunset Review Committee's findings regarding increasing access to landscape architecture licensure.

- Accept accredited professional architecture degree as meeting the education requirement for eligibility
- Based on a transcript review of major and support courses, grant credit for partial completion of an accredited landscape architecture degree allowing minimum "education" eligibility for examination
- Allow early eligibility to begin examination, prior to meeting work experience requirements, for candidates with an accredited degree or approved extension certificate in landscape architecture
- Develop and implement a candidate education/ experience tracking system and reciprocity candidate tracking system to collect objective data regarding preparation and success for examination
- Revise certificate of applicant's experience form to include more specific information regarding the preparation recommended for California examination and licensure
- Develop and communicate additional student/ candidate/educator/employer information regarding examination and California licensure

Other Eligibility Issues Reviewed and Retained

The LATC thoroughly assessed the full spectrum of education and experience requirements and determined that the following should remain unchanged.

- Retain the six-year education/experience requirements
- Retain credit for associate degrees in landscape architecture
- Retain current reciprocity requirements
- Not implement a rolling time clock to limit the number of years for a candidate to obtain licensure
- Not allow licensure with work experience alone
- Not provide credit for teaching and research experience

As a result of the review, it was determined that further outcome assessment regarding candidate examination success and preparation would be needed to determine if additional modification to the eligibility requirements may be warranted. The Subcommittee recommended that additional candidate tracking procedures be implemented to provide the necessary data.

Intent of Recommendations

The LATC anticipates that implementing the recommendations will improve access to qualified individuals interested in becoming landscape architects. Examples of expanded eligibility access include:

- Applicants with an accredited degree in architecture will be determined to have met the educational access component for examination eligibility
- Applicants who can demonstrate successful completion of a majority of an accredited landscape architecture degree, will be determined to have met the minimum educational access component for examination eligibility
- Candidates will be allowed access to the multiple choice sections of the national licensure examination upon graduation thereby encouraging a clear and continuous path to licensure
- LATC will be better able to identify specific correlations with education and work experience preparation requirements with examination success
- Information guide(s) will identify preparation expectations for licensure success in California for candidates, educators and students
- Candidates and employers will be better able to identify on-the-job duties that relate to LARE and California examination

History of Statutory and Regulatory Law

With the roots of the profession in North America dating back to 1860, California became the first U.S. jurisdiction to regulate the practice of landscape architecture in 1953 with the formation of the Board of Landscape Architects (BLA). In 1997, the BLA was sunset by the California Legislature and restructured in 1998 as the Landscape Architects Technical Committee (LATC) under the California Architects Board (CAB). Today, 49 states, two Canadian provinces, and Puerto Rico regulate the practice of landscape architecture. California has both a practice act, which precludes unlicensed individuals from practicing landscape architecture, and a title act, which restricts the use to the title "landscape architect" to those who have been licensed by the LATC.

There are currently more than 20,000 licensed landscape architects in the United States. The LATC licenses more than 3,700 landscape architects, who are responsible for the design and planning of millions of dollars worth of public sector, private development, and residential projects.

The Practice of Landscape Architects

Landscape architecture is a profession that involves planning and designing the use, allocation and arrangement of land and water resources through the creative application of biological, physical, mathematical, and social processes. Based on environmental, physical, social and economic considerations, landscape architects produce overall guidelines, reports, master plans, conceptual plans, construction contract documents, and construction oversight for landscape projects that create a balance between the needs and wants of people and the limitations of the environment. Specific services include city planning and development, environmental restoration, regional landscape planning, urban/town planning, park and recreation planning, ecological planning and design, landscape design, code research and compliance, cost analysis, and historic preservation. The decisions and performance of landscape architects affect the health, safety, and welfare of the client, as well as that of the public and environment. Therefore, it is essential that landscape architects meet minimum standards of competency.

The LATC's regulation of the practice of landscape architecture protects both direct consumers of landscape architectural services and the public at large – the millions of people who use or visit the spaces designed by landscape architects.[1]

The California Business and Professions Code defines the practice of landscape architecture as:

> **§ 5615. "Landscape Architect" — Practice of Landscape Architecture**
> "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."[2]

Associated Professions

Architects

Architects are licensed by CAB. They research, plan, design, and administer building projects for clients, applying knowledge of design, construction procedures, zoning and building codes, and building materials. They consult with clients to determine functional and spatial requirements of new structure or renovation, and prepare information regarding design, specifications, materials, color, equipment, estimated costs, and construction time. They also plan the layout of the project and integrate engineering elements.

The California Business and Professions Code defines the practice of architecture as:

> **§ 5500.1 Practice of Architecture Defined**
> "(a) The practice of architecture within the meaning and intent of this chapter is defined as offering or performing, or being in responsible control of, professional services which require the skills of an architect in the planning of sites, and the design, in whole or in part, of buildings, or groups of buildings and structures.
> (b) Architects' professional services may include any or all of the following:
> (1) Investigation, evaluation, consultation, and advice.
> (2) Planning, schematic and preliminary studies, designs, working drawings, and specifications.
> (3) Coordination of the work of technical and special consultants.
> (4) Compliance with generally applicable codes and regulations, and assistance in the governmental review process.
> (5) Technical assistance in the preparation of bid documents and agreements between clients and contractors.
> (6) Contract administration.
> (7) Construction observation."

Under the Landscape Architects Practice Act, a licensed architect is exempt from the provisions of the Landscape Architects Practice Act except that an architect may not use the title "landscape architect" unless he or she holds a landscape architect license as required.

Civil Engineers

Civil engineers are licensed by the Board for Professional Engineers and Land Surveyors. They plan, design, and direct civil engineering projects, such as roads, railroads, airports, bridges, harbors, channels, dams, irrigation systems, pipelines, and power plants; analyze reports, maps, drawings, blueprints, tests, and aerial photographs on soil composition, terrain, hydrological characteristics, and other topographical and geologic data to plan and design a project. They calculate costs and determine feasibility of projects based on analysis of collected data, applying knowledge and techniques of engineering, and advanced mathematics.[3]

The California Business and Professions Code defines the practice of civil engineer as:

> **§ 6701. Professional Engineer Defined**
> "'Professional engineer,' within the meaning and intent of this act, refers to a person engaged in the professional practice of rendering service or creative work requiring education, training and experience in engineering sciences and the application of special knowledge of the mathematical, physical and engineering sciences in such professional or creative work as consultation, investigation, evaluation, planning or design of public or private utilities, structures, machines, processes, circuits, buildings, equipment or projects, and supervision of construction for the purpose of securing compliance with specifications and design for any such work."
>
> **§ 6702. Civil engineer defined**
> "'Civil engineer' as used in this chapter means a professional engineer in the branch of civil engineering and refers to one who practices or offers to practice civil engineering in any of its phases."

Under the Landscape Architects Practice Act, a licensed professional engineer is exempt from the provisions of the Landscape Architects Practice Act except that a licensed engineer may not use the title "landscape architect" unless he or she holds a landscape architect license as required.

Landscape Contractors

Landscape contractors are licensed by the Contractors State License Board, and must install their own designs or the design work of landscape architects. Landscape contractors cannot prepare independent landscape plans they do not install. A landscape contractor constructs, maintains, repairs, installs, or subcontracts the development of landscape systems and facilities for public and private gardens and other areas. In connection therewith, a landscape contractor prepares and grades plots and areas of land for the installation of any architectural, horticultural and decorative treatment or arrangement.

> **California Code of Regulations**
> **Title 16, Division 8, Article 3. Classifications: C27 - Landscaping Contractor**
> "A landscape contractor constructs, maintains, repairs, installs, or subcontracts the development of landscape systems and facilities for public and private gardens and other areas which are designed to aesthetically, architecturally, horticulturally, or functionally improve the grounds within or surrounding a structure or a tract or plot of land. In connection therewith, a landscape contractor prepares and grades plots and areas of land for the installation of any architectural, horticultural and decorative treatment or arrangement."

Under the Landscape Architects Practice Act, a licensed landscape contractor may design systems and facilities for work to be performed and supervised by that landscape contractor. A licensed landscape contractor may not use the title "landscape architect" unless he or she holds a landscape architect license.

Landscape Designers

A landscape designer is unlicensed and may only prepare plans, drawings, and specifications for the selection, placement, or use of plants for single-family dwellings; and drawings for the conceptual design and placement of tangible objects and landscape features. Due to limitations provided in the Landscape Architects Practice Act regarding unlicensed practitioners, they may not prepare construction documents, details, or specifications for tangible landscape objects or landscape features or prepare grading and drainage plans for the alteration of sites. Unlicensed individuals may not use the title "landscape architect," "landscape architecture," "landscape architectural," or any other titles, words or abbreviations that would imply or indicate that he or she is a landscape architect.

Landscape Architects Technical Committee Actions

During the 1996 Joint Legislative Sunset Review Committee (JLSRC) review, it was recommended that Department of Consumer Affairs (DCA) review the six-year education and experience requirement to determine if it is justified. This review did not occur due to the sunset of the Landscape Architects Board in 1998.

The JLSRC 2004 Recommendations and the 2004 LATC Strategic Plan directed the LATC to identify examination eligibility issues, propose solutions and report to DCA and the Legislature if changes should be made to this requirement. The Strategic Plan further directs the LATC to, if necessary, modify examination eligibility requirements under California Code of Regulations (CCR), Title 16, Division 26, Section 2620, and prepare "guidelines" for meeting examination experience requirements.[4]

An Education Subcommittee was formed August 2004 and charged with evaluating California's eligibility requirements for the national Landscape Architects Registration Examination (LARE) to ensure that applicants have appropriate educational and training/work experience before the examination is taken. Specifically, the Subcommittee's charge was to determine appropriate levels of experience as they relate to: 1) public health, safety and welfare in California, and 2) successfully preparing applicants for the examination. The Subcommittee met between October 8, 2005 and February 27, 2007. After subsequent meetings with the LATC and the California Architects Board (CAB), the recommendations were shared with the California Council of the American Society of Landscape Architects and approved by the LATC on May 4, 2007 and CAB on June 15, 2007. A summary of the meeting notes is included in Appendix C.

CURRENT LICENSURE STANDARD AND RECOMMENDED CHANGES

Statutory Law

California Business and Professions Code Section 5650-Examinations-Qualifications, Application, Fee states:

> "Subject to the rules and regulations governing examinations, any person, over the age of 18 years, who has had six years of training and educational experience in actual practice of landscape architectural work shall be entitled to an examination for a certificate to practice landscape architecture. A degree from a school of landscape architecture approved by the board shall be deemed equivalent to four years of training and educational experience in the actual practice of landscape architecture. Before taking the examination, a person shall file an application therefore with the executive officer and pay the application fee fixed by this chapter."

Regulatory Law

California Code of Regulations are stated below with the impact of the LATC recommended changes in ~~strike-out~~ / underline format:

§ 2615. Form of Examinations.

(a) (1) A candidate who has a combination of six years of education and training experience as specified in section 2620 shall be eligible and may apply for the Landscape Architect Registration Examination.

(2) Notwithstanding subdivision (a)(1), a candidate who has a Board approved degree in landscape architecture in accordance with section 2620(a)(1) or an extension certificate in landscape architecture from a Board approved school in accordance with section 2620(a)(3) shall be eligible and may apply for the multiple choice sections of the Landscape Architect Registration Examination.

(b) A candidate shall be deemed eligible and may apply for the California Supplemental Examination upon passing all sections of the Landscape Architect Registration Examination.

(c) All candidates applying for licensure as a landscape architect shall pass all sections of the Landscape Architect Registration Examination or a written examination substantially equivalent in scope and subject matter required in California, as determined by the Board, and the California Supplemental Examination subject to the following provisions:

~~(a)~~ (1) A candidate who is licensed as a landscape architect in a U.S. jurisdiction, Canadian province, or Puerto Rico by having passed a written examination substantially equivalent in scope and subject matter required in California as determined by the board shall be eligible for licensure upon passing the California Supplemental Examination.

~~(b)~~ (2) A candidate who is not a licensed landscape architect and who has received credit from a U.S. jurisdiction, Canadian province, or Puerto Rico for a written examination substantially equivalent in scope and subject matter required in California shall be entitled to receive credit for the corresponding sections of the Landscape Architect Registration Examination, as determined by the Board, and shall be eligible for licensure upon passing any remaining sections of the Landscape Architect Registration Examination and the California Supplemental Examination.

2620. Education and Training Credits-Operative on ~~January 1, 1997~~

The Board's evaluation of a candidate's training and educational experience is based on the following table:

Experience Description	Education Max. Credit Allowed	Training and/or Practice Max. Credit Allowed
(a) Experience Equivalent:		
(1) Degree in landscape architecture from an approved school.	4 years	
(2) Degree in landscape architecture from a non-approved school.	3 years	
(3) Extension certificate in landscape architecture from an approved school.	2 years	
(4) Associate degree in landscape architecture from a city/community college which consists of a least a 2-year curriculum.	1 year	
(5) Extension certificate as specified in subdivision (a)(3) and a degree from a university or college which consists of a 4-year curriculum.	4 years	
(6) Associate degree from a college specified in subdivision (a)(4) and an extension certificate as specified in subdivision (a)(3) of this section.	3 years	
(7) Partial completion of a degree in landscape architecture from an approved school.	1 year	
(8) Partial completion of an extension certificate in landscape architecture from an approved school where the applicant has a degree from a university or college which consists of a four-year curriculum.	1 year	
(9) A degree in architecture which consists of at least a four-year curriculum that has been accredited by the National Architectural Accrediting Board.	1 year	
(~~7~~10) Self employment as, or employment by, a landscape architect licensed in the jurisdiction where the experience occurred shall be granted credit on a 100% basis.		5 years
(~~8~~11) Self employment as, or employment by, a licensed architect or registered civil engineer in the jurisdiction where the experience occurred shall be granted credit on a 100% basis.		1 year
(~~9~~12) Self employment as a California licensed landscape contractor or a licensed landscape contractor in another jurisdiction where the scope of practice for landscape contracting is equivalent to that allowed in this state pursuant to Business and Professions Code Section 7027.5 and Cal. Code Regs. Title 16, Section 832.27 shall be granted credit on a 100% basis.		4 years

(b) Education Credits.

(1) Candidates shall possess at least one year of educational credit to be eligible for the examination.

(2) A degree from a school with a landscape architecture program shall be defined as one of the following:

(A) Bachelor of Landscape Architecture.

(B) Bachelor of Science in landscape architecture.

(C) Bachelor of Arts in landscape architecture.

(D) Masters degree in landscape architecture.

(3) The maximum credit which may be granted for a degree or combination of degrees from an approved school shall be four years of educational credit.

(4) A degree from a school with a landscape architecture program shall be deemed to be approved by the Board if the landscape architectural curriculum has been approved by the Landscape Architectural Accreditation Board (LAAB) as specified in its publication: "Accreditation Standards for Programs in Landscape Architecture" dated February 26, 1990 or the Board determines that the program has a curriculum equivalent to a curriculum having LAAB accreditation.

(5) For purposes of subdivisions (a)(7) and (8), "partial completion" shall mean that the candidate completed at least 80 percent of the total units required for completion of the 4-year degree or extension certificate program.

(~~3~~6) ~~No~~ Except as provided in subdivisions (a)(7) and (8), no credit shall be granted for academic units obtained without earning a degree or extension certificate ~~under categories of subsection (a)(1), (2), (3) or (4) of this section~~.

(~~4~~7) A candidate enrolled in a degree program where credit earned is based on work experience courses (e.g., internship or co-op program) shall not receive more than the maximum credit allowed for degrees under subdivision (a)(1), (2) or (3) of this section.

(~~5~~8) Except as specified in subdivision (a)(5) and (6) of this section, candidates with multiple degrees shall not be able to accumulate credit for more than one degree.

(~~6~~9) The Board shall not grant more than four years of credit for any degree or certificate or any combination thereof for qualifying educational experience.

(c) Training Credits

(1)(A) Candidates shall possess at least two years of training/practice credit to be eligible for the examination.

(B) At least one of the two years of training/practice credit shall be under the direct supervision of a landscape architect licensed in a United States jurisdiction, and shall be gained in one of the following forms:

1. A~~a~~fter graduation from an educational institution specified in subdivision (a)(1), (2), (3), ~~or~~ (4) or (9) of this section.

2. After completion of education experience specified in subdivision under (a)(7) and (8) of this section.

(C) A candidate shall be deemed to have met the provisions of subdivision (c)(1)(B) if he or she possesses a degree from a school specified in subdivision (a)(1) and has at least two years of training/practice credit as a licensed landscape contractor or possesses a certificate from a school specified in subdivision (a)(3) and has at least four years of training/practice credit as a licensed landscape contractor.

(2) Candidates shall be at least 18 years of age or a high school graduate before they shall be eligible to receive credit for work experience.

(3) A year of training/practice experience shall consist of 1500 hours of qualifying employment. Training/practice experience may be accrued on the basis of part-time employment. Employment in excess of 40 hours per week shall not be considered.

(d) Miscellaneous Information

(1) Independent, non-licensed practice or experience, regardless of claimed coordination, liaison, or supervision of licensed professionals shall not be considered.

(2) The Board shall retain inactive applications for a five (5) year period. Thereafter, the Board shall purge these records unless otherwise notified by the candidate. A candidate who wishes to reapply to the Board, shall be required to re-obtain the required documents to allow the Board to determine their current eligibility.[5]

In California, the LATC is the governing body over the practice of landscape architecture. In keeping with its highest priority of protection of the public, the LATC has established licensure eligibility and professional qualifications minimums that candidates must meet through a combination of preparation requirements. They include direct experience in the discipline, landscape architectural education and demonstration of knowledge through examination.

Landscape Architecture Examination

There are two separate examinations that candidates must successfully complete as a part of the licensure process in California. The first is the Landscape Architects Registration Examination (LARE). The LATC maintains a contract with the Council of Landscape Architects Registration Boards (CLARB) for them to develop, administer and grade the LARE. The LATC is a member of CLARB. CLARB is the sole provider for the LARE that is used by all 48 member boards throughout the United States and Canada.

The second examination is the California Supplemental Examination developed and administered by the LATC. This examination consists of 100 multiple-choice questions designed to assess a candidate's landscape architecture knowledge specific to California. The LARE must be successfully completed in order to be *eligible* for the California Supplemental Examination.

The LARE is an inter-related, multi-section examination consisting of five interdependent sections covering landscape architecture competencies. There are three multiple-choice sections (A,B and D) and two graphic response sections (C and E) that require a drafted solution.

- Section A - Project and Construction Administration
- Section B - Inventory, Analysis and Program Development
- Section C - Site Design
- Section D - Design and Construction Documentation
- Section E - Grading, Drainage and Stormwater Management

As developed by CLARB and employed by the LATC in the execution of its regulatory duties the LARE *"is designed to determine whether applicants for landscape architectural licensure possess sufficient knowledge, skills and abilities to provide landscape architectural services without endangering the health, safety and welfare of the public."*

In 2004, CLARB computerized all multiple-choice sections and began administering them at centralized testing centers. As an efficiency measure in 2009, the LATC enacted regulatory changes to allow the ability to further contract the administration of the graphic sections of the LARE to CLARB. CLARB now administers all five sections of the LARE for California.

Comparison with 'Model' Requirements used by CLARB for Examination Eligibility

CLARB member licensing jurisdictions enforce their own eligibility requirements or delegate the responsibility to CLARB, who applies established model law identifying eligibility requirements to evaluate prospective applicants.

- Hold a four or five year Landscape Architectural Accreditation Board [LAAB] or Canadian Society of Landscape Architects Accreditation Council [LAAC] accredited undergraduate degree in landscape architecture, or a LAAB or LAAC accredited graduate degree program in landscape architecture (or will complete by the exam administration date), or
- Hold a **National Architectural Accrediting Board** [NAAB] accredited degree in architecture, and have completed (or will complete by the exam administration date) one year of diversified experience in landscape architecture under the direct supervision of a licensed landscape architect, or
- Hold a Accreditation Board for Engineering and Technology [ABET] accredited degree in engineering, and have completed (or will complete by the exam administration date) one year of diversified experience in landscape architecture under the direct supervision of a licensed landscape architect, or
- Hold a non-accredited undergraduate degree in landscape architecture, or a non-accredited graduate degree program in landscape architecture, and have completed (or will complete by the exam administration date) one year of diversified experience in landscape architecture under the direct supervision of a licensed landscape architect, or
- Hold a bachelor's degree in any subject and have completed (or will complete by the exam administration date) three years diversified experience in landscape architecture under the direct supervision of a licensed landscape architect, or
- Have applied to and been approved by a CLARB member board.

A side-by-side examination eligibility comparison between California education and experience requirements used by the LATC and model law used by CLARB was carried out in December 2008. This comparison identified the differences between the two standards. CLARB accepts applicants with no experience if they have an accredited landscape architecture degree. Unaccredited landscape architecture degrees, accredited architecture or civil engineering degrees are all accepted with only one year of experience under a landscape architect. CLARB

also accepts any bachelor degree with three years experience under the direction of a landscape architect.
In contrast, along with the recommended educational preparation of an accredited landscape architectural degree (four or five years), the LATC accepts candidates with a variety of other educational preparations including an associate degree with five years experience under the direction of a landscape architect or a certificate from a University of California Extension Program with four years experience under a landscape architect. In California, the UC Extension Program has two landscape architecture programs and four two-year colleges that offer associate degrees in landscape architecture. These programs are somewhat unique to California and provide a significant number of California citizens with access to an education in landscape architecture. The table below identifies the comparison:

Synopsis of Current Paths to Qualify for Exam/Licensure

LATC				CLARB	
Education	Max Ed Credit		Education + Experience Combinations equals six credits	Education	Education + Experience Combinations equals five credits
Accredited LA Degree	**4**	**A**	2 yrs as or under LA	**Accredited LA Degree**	no experience required
After degree is awarded, one year training/experience under LA is required except for pattern E.		**B**	1 yr as or under LA 1 yr as or under an Arch		
		C	1 yr as or under LA 1 yr as or under CE		
		D	1 yr as or under LA 1 yr holding C-27 license		
		E	2 yrs holding C-27 license		
Unaccredited LA Degree (includes approved Foreign degrees)	**3**	**F**	3 yrs as or under LA	**Unaccredited LA Degree**	1 yr under an LA
		G	2 yrs as or under LA 1 yr as or under Arch		
		H	2 yrs as or under LA 1 yr as or under CE		
		I	2 yrs as or under LA 1 yr holding C-27		
		J	1 yr as or under LA 2 yrs holding C-27		
		K	1 yr as or under LA 1 yr holding C-27 1 yr as or under Arch		
		L	1 yr as or under LA 1 yr holding C-27 1 yr as or under CE		
Approved Extension Certificate in LA	**2**	**M**	4 yrs as or under LA	not accepted	
After Certificate is		**N**	3 yrs as or under LA 1 yr as or under Arch		
		O	3 yrs as or under LA 1 yr as or under CE		
		P	2 yrs as or under LA 2 yrs holding C-27		
		Q	2 yrs as or under LA 1 yr as or under Arch 1 yr holding C-27		
		R	2 yrs as or under LA 1 yr as or under CE 1 yr holding C-27		
		S	1 yr as or under LA 3 yrs holding C-27		
		T	1 yr as or under LA 2 yrs holding C-27 1 yr as or under Arch		

awarded, one year training/experience under LA is required except for pattern V.		U	1 yr as or under LA 2 yrs holding C-27 1 yr as or under CE		
		V	4 yrs holding C-27		
Approved Extension Certificate in LA + 4 yr degree in any Subject	**4**	**A**	2 yrs as or under LA	not accepted	
After Certificate is awarded, one year training/experience under LA is required except for pattern AA.		B	1 yr as or under LA 1 yr as or under an Arch		
		C	1 yr as or under LA 1 yr as or under CE		
		D	1 yr as or under LA 1 yr holding C-27 license		
		E	2 yrs holding C-27 license		
Associate LA Degree	**1**	**W**	5 yrs as or under LA	not accepted	
		X	4 yrs as or under LA 1 yr as or under Arch		
		Y	4 yrs as or under LA 1 yr as or under CE		
		Z	4 yrs as or under LA 1 holding C-27		
		AA	3 yrs as or under LA 2 yrs holding C-27		
		BB	3 yrs as or under LA 1 yr holding C-27 1 yr as or under Arch		
		CC	3 yrs as or under LA 1 yr holding C-27 1 yr as or under CE		
		DD	2 yrs as or under LA 3 yrs holding C-27		
		EE	2 yrs as or under LA 2 yrs holding C-27 1 yrr as or under Arch		
		FF	2 yrs as or under LA 2 yrs holding C-27 1 yr as or under CE		
		GG	1 yr as or under LA 4 yrs holding C-27		
		HH	1 yr as or under LA 3 yrs holding C-27 1 yr as or under Arch		
		II	1 yr as or under LA 3 yrs holding C-27 1 yr as or under CE		
not accepted				**Accredited Arch Degree**	1 yr as or under LA
not accepted				**Accredited CE Degree**	1 yr under LA
not accepted				**Any Bachelors Degree**	3 yr under LA

Other CLARB Member Boards

In 2002, the LATC discussed the need to review its current eligibility requirements for appropriateness, as well as compare the requirements of other CLARB member jurisdictions and other design profession boards. At that time, staff research revealed that California's requirements were comparable to other licensing jurisdictions. For example, 45 licensing jurisdictions recommended that applicants have a degree in landscape architecture as a primary means of satisfying the educational requirement for the examination. Of those that did not specifically require a degree in landscape architecture, a range of between eight and twelve years of work experience was required.

In addition, the LATC assessed that California candidates are offered flexibility in meeting the educational requirement, as accredited and unaccredited bachelors and masters' degrees, extension certificates, and associate degrees in landscape architecture are recognized. Further, the extension certificate

programs allow individuals the opportunity to more easily transition into a landscape architectural career by offering evening course schedules. Candidates are also able to satisfy the experience requirements with self-employment as a licensed landscape contractor, and self-employment, or employment by, a licensed architect or registered civil engineer. Therefore, upon reviewing its requirements, the LATC assessed that they remain appropriate for California, and that a more thorough evaluation should be conducted once data becomes available through the candidate tracking process.

As a part of the examination eligibility review process, the LATC Education Subcommittee evaluated the acceptance of various "related" degrees that are either recognized by other states or were identified by Subcommittee members and/or LATC staff. Consideration of accepting degrees related to landscape architecture was a result of the following: 1) the Joint Legislative Sunset Review Committee (JLSRC) previously raised concerns regarding the fact that, prior to 1997, California applicants could receive educational credit for holding any type of bachelors degree with a four-year curriculum; 2) CAB grants educational credit for designated degrees related to architecture; 3) a review of California's neighboring and the larger landscape architectural licensing jurisdictions (New York, Florida, Texas, Arizona, Hawaii, Nevada, New Mexico, Oregon, and Washington) revealed that at least six out of those nine jurisdictions recognize degrees that are related to landscape architecture; and 4) model law used by CLARB to determine eligibility currently allows applicants to sit for the licensing examination with any type of bachelors degree, plus three years of diversified experience under the direct supervision of a licensed landscape architect.

In addition, a survey sent out by LATC staff in May 2005 to the neighboring and larger landscape architectural licensing jurisdictions confirmed that: 1) many of the states accept various related degrees; 2) a few of the states accept any degree; and 3) most of the states that accept non-landscape architecture degrees accept architecture and civil engineering degrees.

Other Board Requirements for Examination Eligibility

California Architects Board

To be eligible to begin the examination and licensure process, candidates seeking an architect license must provide verification of at least five years of education and/or architectural work experience. Candidates can satisfy the five-year requirement as follows:

1) Providing verification of a three-year, five-year, or six-year professional degree in architecture through a program that is accredited by NAAB or Canadian Architectural Certification Board (CACB).
2) Providing verification of at least five years of educational equivalents. Candidates are granted educational equivalents in various amounts pursuant to the Board's Table of Equivalents:

- A maximum of four years for a non-accredited professional degree in architecture
- Various amounts for other degrees and for units earned toward degrees, including: an undergraduate degree in architecture, a degree in a field related to architecture or in another field of study, and, to a limited extent, units earned toward some degrees
- Work experience under the direct supervision of a licensed architect[6]

Board for Professional Engineers and Land Surveyors

To obtain a license as an engineer in training and civil engineer, applicants must:

- Have completed three years of course work in a Board-approved engineering curriculum (any curriculum approved by the Engineering Accreditation Commission [EAC] of the Accreditation Board for Engineering and Technology [ABET]) or three years or more of engineering-related work experience anywhere in the world.
- Successfully pass the first division of the examination.
- The applicant shall be eligible to sit for the first division of the examination after satisfactory completion of three years or more of college or university education in a board-approved engineering curriculum or after completion of three years or more of board-approved experience.

The applicant for registration as a professional engineer shall comply with all of the following:

- Furnish evidence of six years or more of qualifying experience in engineering work satisfactory to the board evidencing that the applicant is competent to practice the character of engineering in the branch for which he or she is applying for registration.
- The applicant must successfully pass the second division of the examination. The applicant for the second division of the examination shall successfully pass the first division examination or shall be exempt therefrom.

Contractors State License Board

To obtain a C-27 landscape contractor's license a candidate must pass the written Law and Business Examination and a specific trade examination if required. Examination eligibility requires candidates to document at least four full years of journey-level or higher experience in the classification for which he or she is applying. This experience must have occurred within the last ten years. The Contractors State License Board may grant up to three years of credit toward the four-year requirement for completed education and/or apprenticeship programs.[7]

Education Equivalences

The LATC determined that in order to best ensure the critical thinking skills necessary to appropriately provide public health and safety protection, landscape architects should continue to be required to have both a formal education and direct experience. Fortunately, in comparison with many other member boards, California provides a number of recognized, as well as non-traditional opportunities to obtain formal education in landscape architecture. The LATC offers candidates flexibility in meeting the educational requirement for a landscape architectural degree by accepting bachelors, masters, or associate degrees, as well as approved extension certificate programs in landscape architecture.

As of January 2010, there are five accredited and four unaccredited landscape architecture bachelor and master degree programs in California. Additionally, there are two LATC approved UC Extension Programs, as well as four associate degree programs in landscape architecture from various community colleges. The following list illustrates the range of opportunities available within California to fulfill the education requirement:

Accredited Undergraduate Programs:
- California Polytechnic State University, San Luis Obispo (BLA)
- California State Polytechnic University, Pomona (BSLA)
- University of California, Davis (BSLA)

Accredited Graduate Programs:
- California State Polytechnic University, Pomona (MSLA)
- University of California, Berkeley (MLA)

Unaccredited Undergraduate Programs:
- University of California, Berkeley (BLA)

Unaccredited Graduate Programs:
- University of Southern California (MLA) (undergoing accreditation candidacy)
- New School of Architecture and Design, San Diego (MLA)

University of California Extension Programs:
- University of California, Berkeley
- University of California, Los Angeles

Associate Degree Programs:
- Mesa College, San Diego (AS)
- Mira Costa College, Oceanside (AA)
- Modesto Junior College, Modesto (AS)
- Southwestern College, Chula Vista (AS)
- West Valley College, Saratoga (AS)

Accredited Universities

The Landscape Architecture Accrediting Board (LAAB) recognized by the Council for Higher Education Accreditation, accredits educational programs leading to first professional degrees at the master's or bachelor's level. Therefore, in addition to assessing how well a program meets its own specific and institutional educational mission and objectives, LAAB evaluates all programs against standards that ensure programs contain the essential educational components leading to entry-level professional competence. These standards are developed by community-of-interest consensus and are regularly reviewed and assessed.

Accreditation has four constituencies: the public, the students, the institution, and the profession. To the public and to students, accreditation assures that the program has been independently reviewed and found to meet professional higher-education standards. It also assists in transfer of credit and acceptance into other programs. To the institutions, accreditation provides a consultative peer review and stimulus to continually improve their educational offerings. To the profession, accreditation provides the opportunity for participation in establishing entry-level skills.

A degree in landscape architecture from an accredited school is granted four years of educational credit towards licensure. Some programs offered by California schools lead to a degree in landscape architecture although they are not accredited. The latter are granted three years of educational credit. The LAAB does not currently review extension or community college programs in landscape architecture.

Extension Certificate Programs

Candidates for licensure receive credit for University of California Extension Programs that are approved by the LATC. To gain approval, these programs are reviewed by site teams appointed by the LATC. The teams conduct site visits to determine the program's compliance with California Code of Regulations Section 2620.5, Requirements for an Approved Extension Certificate Program.

Candidates who successfully complete an extension program in landscape architecture are granted two years of educational credit. Extension program certificate holders receive four years of educational credit when combined with a four-year degree in any subject, and three years of educational credit when combined with an associate degree in landscape architecture.

Community Colleges

Candidates with an associate degree in landscape architecture are granted one year of educational credit.

Out of State

Candidates' education degrees awarded outside of California are verified via the Accredited Programs in Landscape Architecture list and the Historical List of Programs Accredited by the LAAB.

Foreign Education in Landscape Architecture

Foreign education transcripts are submitted by the candidate to an approved foreign evaluation service for a general evaluation of the courses equating the degree to an accredited master or bachelor degree in the United States. Foreign education determined equivalent to an accredited master or bachelor degree in landscape architecture in the United States receive four years of educational credit. No credit is provided for unaccredited or other foreign degrees.[8]

EXPERIENCE

Through its examination eligibility review, the LATC has determined that maintaining flexibility in the combination of formal landscape architecture education with directed work experience, provides the greatest access to licensure *and* preparation for examination.

Types of Experience

Education and work experience credits are combined to achieve the required total of six years credit towards eligibility to examine for the landscape architect license. There are multiple training/experience variations for a candidate to qualify in California; however, the LATC requires candidates to have completed a minimum of one year education credit and two years of recognized work experience.

One year of training consists of 1,500 hours of qualifying employment. Training received under the following circumstances receives credit as indicated:

- Employment by a licensed landscape architect equals up to five years credit
- Self-employment as or employment by a licensed architect equals up to one year credit
- Self-employment as or employment by a registered civil engineer equals up to one year credit
- Self-employment as a licensed landscape contractor equals up to four years credit[9]

When is experience gained?

Candidates must possess a minimum of two years of training credits to be eligible for the examination. At least one year of training must be gained post graduation and under direct supervision of a landscape architect licensed in a United States jurisdiction. There is an exception to this post graduation requirement for candidates qualifying with experience as a self-employed landscape contractor and holding an extension certificate, master or bachelor degree in landscape architecture.

How is experience verified?

Candidates submit a Certification of Applicant's Experience and Qualifications signed under penalty of perjury from each licensed supervisor verifying the candidate's training and experience. The certifying person must have supervised the candidate directly and have knowledge of the candidate's qualifications. The certifying individual must hold a valid

license to practice landscape architecture, architecture and/or civil engineering.

Is an internship required?

There is no internship requirement for landscape architects at this time. The current work experience requirements shall be weighted with the same value as internships required for architects and civil engineers.

Experience Summary

As with the educational requirement, there are numerous variations of training experience permitted to achieve the minimum requirement. The LATC review and subsequent adjustment of California examination eligibility requirements has determined that at this time, the flexibility in training and education allowances that are provided, recognize a variety of personal and economic circumstances, and thereby offer wide access to licensure while maintaining the necessary assurances for public health, safety and well being.

CONCLUSION

Improving Access to Licensure

In 2004, the JLSRC recommended that the Department of Consumer Affairs review the six-year education and experience requirement to determine if it is justified. The LATC formed the Education Subcommittee to research and respond to this request. The results are presented here and suggest opening up entry to the LARE for applicants with partially completed landscape architect degrees and those with accredited degrees in architecture. All recommendations were based on current knowledge. In attempt to improve candidate success and retention rates, the LATC also recommends allowing candidates to sit for the multiple-choice sections of the LARE before acquiring the required experience.

The LATC thoroughly assessed the full spectrum of education and experience requirements and assessed that the following should remain unchanged. Some requirements were determined to be adequate, while others could not be assessed due to insufficient data. To counter this deficiency in the future, the LATC began collecting data and plans to interpret information as it becomes available and determine the best course of action.

- Retain the six-year education/experience requirements
- Retain credit for associate degrees in landscape architecture
- Retain current reciprocity requirements
- Not implement a rolling time clock to limit the number of years for a candidate to obtain licensure
- Not allow licensure with work experience alone
- Not provide credit for teaching and research experience

In addition to specific changes to the LATC education and experience requirements, outcomes of the review include several projects that have been identified for completion in the LATC strategic plan:

- Development of a tracking system for candidate data that will allow assessments to demonstrate whether experience and type of education reflect on the success of California candidates taking the LARE.
- Revision of the certificate of applicants experience form to provide both the candidate and the employer a better understanding of the experience required to pass the examinations.
- Development of criteria and recommend curriculum for an associate degree in landscape architecture.
- Development of a candidate/educator/employer expectations guide with the intent to improve examination success rates.

The guide will be used in conjunction with the LATC's strategic and communication plan objectives to communicate and provide outreach to university faculty, students, and practitioners in the field that mentor future licensees. By communicating required criteria, faculty, students and mentors will be able to better focus their efforts and assignments towards candidates' success.

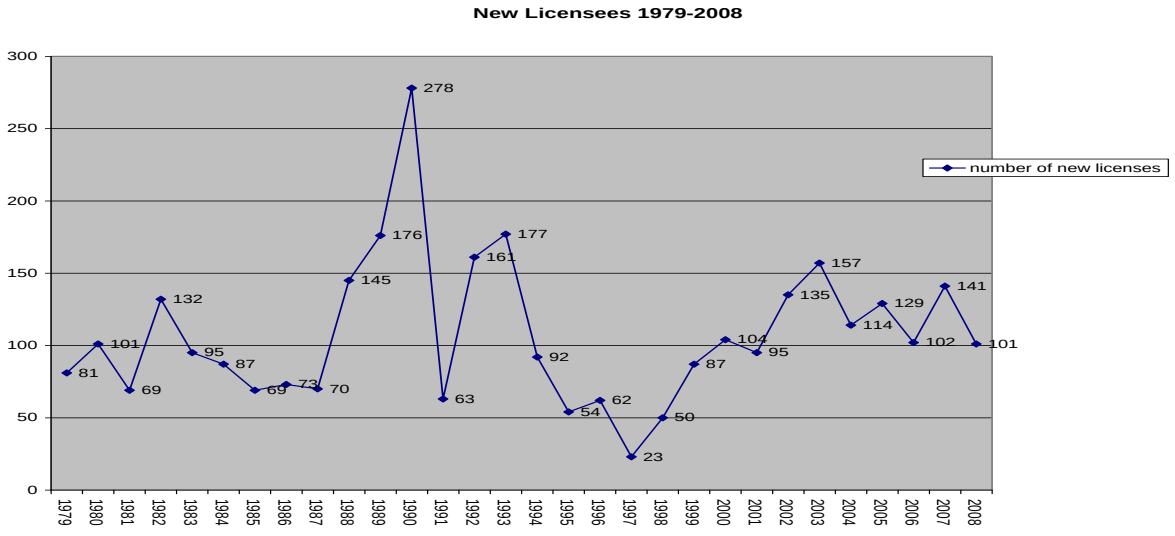
Draft regulatory language incorporating the recommended changes to examination eligibility is prepared. Once the regulatory language is approved by the LATC and CAB, the State's rulemaking process will ensue.

Growth and Demand in the Profession

The future holds the promise of new developments and challenges for the ever-broadening practice of landscape architecture. According to the December 11, 2008 of *U.S. News & World Report*, landscape architecture is projected to grow 18 to 26 percent by 2016 and is listed as one of the top thirty careers in 2009. *Outside* magazine (May 2008 issue) called landscape architecture one of the 50 best jobs in the United States in 2008.

With environmental concerns becoming increasingly important, landscape architects are being called upon to solve complex problems. Rural concerns are attracting landscape architects to farmland preservation, small town revitalization, landscape preservation, energy resource development, and water conservation. Trends in computer technology have streamlined plan preparation and consultant communication and coordination for the practice.

History of Licensees Chart



See endnote[10]

In comparison, the total number of licensed landscape architects has continued to increase as indicated.

Year - # of licensees:

- 2009 – 3706
- 2008 – 3501
- 2007 – 3438
- 2006 – 3338
- 2005 – 3289
- 2004 – 3189

Landscape architects who develop strong technical skills, such as computer design; communication skills; and knowledge of environmental codes and regulations will capture the best opportunities. Those with additional training or experience in urban planning increase their prospects for employment in landscape architecture firms that specialize in site planning, as well as landscape design.

The future also promises increased cooperation among landscape architects and other design professionals. As interest in the profession continues to grow, an increasing number of students desire to study the profession. Nearly 60 universities and colleges in the United States and Canada now offer accredited baccalaureate and post-graduate programs in landscape architecture.

During the past decades, landscape architects have responded to the increased demand and professional responsibilities with new skills and expertise. More and more businesses appreciate the profession and the value that it brings to a project. The public praises the balance achieved between the built and natural environments.[11]

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Appendix A

Approved Recommendations and Justification - Approved by the California Architects Board (CAB) and the Landscape Architects Technical Committee (LATC)

After reviewing the multiple studies addressed and referenced within this report, the following recommendations were approved by the LATC on May 4, 2007, and received final CAB approval on June 15, 2007.

1. Accept Accredited Professional Architecture and Civil Engineering Degrees

The LATC Education Subcommittee discussed the acceptance of various "related" degrees that are either recognized by other states or were identified by Subcommittee members and/or LATC staff. Consideration of accepting degrees related to landscape architecture was a result of the following: 1) the Joint Legislative Sunset Review Committee (JLSRC) previously raised concerns regarding the fact that, prior to 1997, California applicants could receive educational credit for holding any type of bachelors degree with a four-year curriculum;[12] 2) CAB grants educational credit for designated degrees related to architecture and unrelated degrees; 3) a review of the neighboring and larger landscape architectural licensing jurisdictions (New York, Florida, Texas, Arizona, Hawaii, Nevada, New Mexico, Oregon, and Washington) revealed that at least six out of those nine jurisdictions recognize degrees related to landscape architecture; [13] and 4) CLARB currently allows applicants to sit for the licensing examination with any type of bachelors degree, plus three years of diversified experience under the direct supervision of a licensed landscape architect.

In addition, a survey sent out by LATC staff in May 2005 to the landscape architectural licensing jurisdictions[14] listed above confirmed that: 1) many of the states accept various related degrees; 2) a few of the states accept any degree; and 3) most of the states that accept non-landscape architecture degrees accept architecture and civil engineering degrees.

After extensive review of the research material and discussion at the June 17, 2005 meeting, the Subcommittee gave preliminary approval to accept accredited bachelor degrees in architecture and civil engineering to satisfy the education requirement for examination eligibility with a caveat of conducting further research on other related degree programs. At the December 2, 2005 meeting, the Subcommittee discussed the additional research[15] and agreed to recommend acceptance of accredited professional degrees in architecture and civil engineering (undergraduate and graduate degrees), as those degrees emphasize the acquisition of critical thinking and technical skills that are necessary to address health, safety, and welfare issues and are essential to the practice of landscape architecture. The Subcommittee agreed to recommend one-year of educational credit be granted for completion of these degree programs.

The Subcommittee felt there was not clear and/or comparable rationale for granting similar credit for other related degree programs based on their insufficient curriculum and/or lack of accreditation standards. For example, urban design and horticulture degrees were considered and not

included in this recommendation because they are either non-accredited or the coursework is not specifically related to the practice of landscape architecture. One year of educational credit was agreed upon because the Subcommittee determined the curricula examined for such degree programs did not include sufficient specific exposure to landscape architecture related topics, but did address a certain measure of critical thinking and technical skills that are necessary to address health, safety and welfare issues related to the practice of landscape architecture.

The LATC presented the Final Findings and Recommendations to CAB at its meeting on June 7, 2006. At this meeting, CAB questioned education credit parity between architects and landscape architects. As a result of CAB's parity question, the Education Subcommittee reconvened on November 8, 2006 and agreed to research the parity issue as it pertained to education curriculum for architects and civil engineers. At its February 27, 2007 meeting, the Subcommittee discussed the education curriculum research [16] and decided to revise their earlier recommendation and recommend acceptance of accredited professional degrees in architecture and not in civil engineering. Along with their earlier belief in critical thinking and technical skills, the Subcommittee also believed there were similar curriculum elements in the architectural degree programs in comparison to the landscape architecture programs and that it would warrant educational credit. Accredited professional degrees in architecture would receive one-year of educational credit.

Recommendation:

- ***The Subcommittee recommends that the LATC accept accredited professional degrees in architecture towards satisfying the education requirement for examination eligibility and that one year of credit be granted for completion of such program.***

2. Grant Credit for Partial Completion of an Accredited Landscape Architecture Degree

At the March 4, 2005 Education Subcommittee meeting, it was noted that the LATC had previously granted credit for partial completion of accredited and unaccredited degrees in landscape architecture and that CAB currently grants credit for partial completion of various degree programs (i.e., accredited and unaccredited architecture degrees and related degrees with a four-year curriculum). During the June 17, 2005 meeting, some Subcommittee members voiced an interest in granting credit for partial completion of accredited degrees in landscape architecture; however, it was noted that they would need to take a closer look at how credit would be determined. At the December 2, 2005 meeting, the Subcommittee examined the issue further [17] and determined that one year of educational credit should be granted for partial completion of an accredited degree in landscape architecture. In addition, the Subcommittee determined that an applicant applying for examination under such circumstances must demonstrate that he/she has completed at least 80% of the total units required for the degree.

In addition to the former regulatory provision granting educational credit for partial completion of degree programs, the Subcommittee recognized that CAB accepts partial completion of various degree programs (i.e., architecture degrees and related degrees) and that granting educational credits would provide an expanded avenue to licensure.

Recommendation:

- *The Subcommittee recommends that the LATC grant credit for partial completion of an accredited degree in landscape architecture, that one year of educational credit be granted for such, and that an applicant demonstrate that he/she has completed at least 80% of the total units required for such degree program.*

3. Allow Early Eligibility for Examination with an Accredited Degree or Approved Extension Certificate in Landscape Architecture

At the June 17, 2005 Education Subcommittee meeting, it was noted that, under Council of Landscape Architectural Registration Boards (CLARB) current standards, candidates are allowed to take the multiple-choice sections of the LARE with either an accredited undergraduate or graduate degree in landscape architecture and no work experience. A number of CLARB member jurisdictions follow this standard and allow candidates to sit for the multiple-choice sections of the LARE upon receipt of an accredited degree in landscape architecture (a total of nine states were examined by the Subcommittee and staff, and four states allow candidates to sit for the examination under such circumstances [18]). At the meeting, the Subcommittee indicated that they were open to considering this option for California candidates and directed staff to obtain additional background information from CLARB to assist with a recommendation with respect to this issue. The background information [19] was reviewed and evaluated by two Subcommittee members and a recommendation to allow this option for California candidates was presented to the Subcommittee on December 2, 2005. The Subcommittee discussed the benefits of offering this option to candidates, and in the absence of contrary data relative to pass rates, supported allowing candidates to sit for the multiple-choice sections of the LARE prior to meeting the experience requirement for examination. No quantifiable evidence regarding pass-rate success was found to support either position, but the Subcommittee felt this option would encourage graduates to continue the path to licensure immediately after attaining their accredited degree. At the November 8, 2006 meeting, the Subcommittee agreed to also allow candidates with an approved extension certificate plus four-year degree to qualify for the multiple-choice sections of the examination based on the belief that extension certificate holders are equally qualified for early eligibility as accredited degree holders.

Recommendations:

- *The Subcommittee recommends that the LATC allow candidates with an accredited degree in landscape architecture or approved extension certificate plus four-year degree to sit for the three multiple-choice sections of the LARE (Sections A, B, and D) prior to meeting training/work experience requirements.*
- *If this option is approved, the Subcommittee recommends that the LATC closely monitor the success of these candidates on the examination via the proposed Candidate Education/Experience Tracking Chart (discussed under Recommendation 4).*

4. Implement a Candidate Education/Experience Tracking System and Reciprocity Candidate Tracking System

At the October 8, 2004 meeting, the Subcommittee directed staff to gather information pertaining to the most recent 100 individuals that became licensed in California and develop a chart to determine if there was a correlation between a candidate's number of attempts to pass each section of the licensing examination and: 1) the landscape architecture program attended; 2) the type of degree earned, and 3) the type of training/work experience earned. This request was made to assist the Subcommittee with its evaluation of California's eligibility requirements for examination. After a review of this information[20], it was noted by the Subcommittee that candidate data should be tracked on an ongoing basis so that the data is more readily available for future evaluation of eligibility requirements. It was also noted by the Subcommittee that similar information pertaining to reciprocity candidates should be tracked. At the December 2, 2005 meeting, the Subcommittee reviewed and approved the final Candidate Education/Experience Tracking Chart and the Reciprocity Candidate Tracking Chart.[21] The Subcommittee felt the candidate education/experience tracking charts would allow the LATC to analyze existing and future regulatory related decisions. The LATC would like the tracking to begin immediately, excluding candidates' names and social security numbers from the charts.

Recommendation:

- ***The Subcommittee recommends that LATC staff implement a Candidate Education/Experience Tracking System and Reciprocity Candidate Tracking System and collect data by utilizing tracking charts.***

5. Revise Certificate of Applicant's Experience Form

As part of the Subcommittee's charge, the eligibility requirements pertaining to the type and duration of training/ work experience were reviewed and discussed. The Subcommittee reviewed the current certificate of applicant's experience form, which is completed by a candidate's supervisor(s) to meet the training/work experience requirement for examination eligibility.

After discussion, the Subcommittee felt that, in an effort to aid candidates/employers with acquiring/providing appropriate knowledge and work experience for success on the examination, the form should be expanded to include a list or description of specific practice categories that are tested on the examination. This modification, as well as the new Candidate/Education/ Employer Brochure, would therefore be important tools in further ensuring success on the examination (discussed under Recommendation 6).

Staff obtained samples of employment verification forms from other regulatory boards, which will assist with revising the LATC's certificate of applicant's experience form that will be developed in the future.

Recommendation:

- ***The Subcommittee recommends that the LATC revise the certificate of applicant's experience form to include specific practice categories that are tested on the LARE.***

6. Develop Candidate/Educator/Employer Information

The Subcommittee discussed the need to create relatively detailed candidate/educator/employer information that discusses preparation for examination/licensure and recommends appropriate work experience in order to be successful on the examination. The brochure would assist candidates, educators and employers to ensure that candidates successfully prepare for examination and licensure as well as understand what is expected for their success. The candidate/educator/employer information would be made available by hardcopy, the LATC's website and email.

Recommendations:

- *The Subcommittee recommends that the LATC develop Candidate/Educator/Employer Information.*
- *The Subcommittee recommends that the LATC reference CAB's Comprehensive Intern Development Program Handbook when developing such information.*

7. Retain Six-Year Education/Experience Requirement

At the June 17, 2005 Subcommittee meeting, it was noted that: 1) the six-year combined education and experience requirement under Business and Professions Code Section 5650 has been in effect since 1953; 2) a review of the requirements of other states revealed that they have similar requirements with respect to combined education and experience [22]; 3) the traditional route to licensure in California, and in most other states, has been to obtain an accredited degree in landscape architecture and two years of experience under the direct supervision of a licensed landscape architect; 4) there appear to be no past or present issues with respect to the six-year requirement; and 5) the combination of education and experience appears to provide the greatest protection to the public's health, safety, and welfare.

Recommendation:

- *The Subcommittee recommends that the six-year combined education/experience requirement be retained at this time.*

8. Retain Existing Credit for Associate Degrees in Landscape Architecture

A thorough review of California associate degree curricula [23] was conducted by the Subcommittee at its March 4, 2005 meeting. Although some discrepancies were noted between the programs with respect to subject areas and required units, it was determined the LATC should not assume the responsibility of reviewing associate degree programs and that the discrepancies were not serious enough to reconsider the one year of educational credit currently granted for completion of such programs. The LATC noted: 1) education is a necessary component of licensure, 2) all criteria for landscape architecture requirements cannot be met solely with experience, and 3) one year of educational credit for an associate degree in landscape architecture provides an additional opportunity for licensure.

In the past, the California Community Colleges Chancellor's Office requested that LATC examine certification of their landscape architecture programs. The LATC determined as a consequence of the number of programs, variety, and indeterminate curricular approval and oversight, it was not practical

for the LATC to review community college programs for purposes of educational eligibility standards.

At the February 27, 2007 Subcommittee meeting, as part of CAB's parity question and discussion on education credits, the Subcommittee agreed the LATC should monitor the success of candidates receiving educational credit and qualifying for the licensing examination with an associate degree.

Recommendations:

- ***The Subcommittee recommends that the LATC should not take on the responsibility of reviewing associate degree programs at this time.***
- ***The Subcommittee recommends that one year of educational credit continue to be granted for completion of an associate degree in landscape architecture.***
- ***If this option is approved, the Subcommittee recommends that the LATC closely monitor the success of these candidates on the examination via the proposed Candidate Education/Experience Tracking Chart (discussed under Recommendation 4).***

9. Retain Current Reciprocity Requirements

At the June 17, 2005 meeting, the Subcommittee reviewed and discussed California, Nevada, Texas and Washington's current requirements for reciprocity [24] to determine if changes to California reciprocity requirements should be considered.

Currently, a reciprocity applicant must: 1) hold a current license in another U.S. jurisdiction, Canadian province, or Puerto Rico; 2) have passed a written examination equivalent to that which is required in California at the time of application; and 3) have passed the California Supplemental Examination if, at the time of application, it is required of all California applicants.

However, it was noted by the Subcommittee that changes to the current requirements could potentially present barriers for out-of-state candidates wanting to gain licensure in California and that, to date, there have not been any issues or problems identified. At the December 2, 2005 meeting, the Subcommittee confirmed its recommendation to retain California's current requirements for reciprocity and institute a reciprocity tracking system as part of Recommendation 4.

Recommendations:

- ***The Subcommittee recommends that the LATC retain its current requirements for reciprocity.***
- ***The Subcommittee instead recommends that LATC staff track reciprocity candidate information via the proposed Reciprocity Candidate Tracking Chart (discussed under Recommendation 4) and, once enough data is gathered, bring this issue back for the LATC to reconsider its position.***

10. Rolling Time Clock for Examination Candidates

At the June 17, 2005 Subcommittee meeting, it was noted that Texas and Washington have implemented a five-year time limit for candidates to complete the examination process and become licensed. It was also noted that CAB plans to adopt a five-year "rolling time clock" that applies only to examination scores. Finally, it was noted by LATC staff that, presently, most California landscape architectural candidates complete the examination process within a five-year period and that, currently, there does not appear to be a problem with respect to this issue. However, the Subcommittee agreed to recommend a tracking system to monitor this issue as part of Recommendation 4.

Recommendations:

- *The Subcommittee recommends that the LATC not implement a "rolling time clock" for examination candidates at this time.*
- *The Subcommittee instead recommends that LATC staff track candidates' number of attempts to pass each section of the LARE via the proposed Candidate Education/ Experience Tracking Chart (discussed under Recommendation 4) at this time and, after two years, gather data from CAB and other CLARB member jurisdictions and have the LATC reassess whether implementing a "rolling time clock" would be appropriate at that time.*

11. Eligibility for Examination with Experience Only

At the March 4, 2005 Subcommittee meeting, it was noted that a limited number of states allow candidates to sit for the examination with specified work experience alone (and no education). Data relative to pass rate differences between candidates with university level education in landscape architecture and those without has not been available. As comparative background, CAB allows architectural candidates to sit for its licensing examinations with work experience alone (and no education).[25] CAB has also recently implemented the national Intern Development Program (IDP) and Comprehensive IDP that require new candidates to obtain appropriate levels of work experience in specified areas of practice. Upon considering this information, reviewing eligibility requirements for the other states that require licensing, and the absence of pass-rate data, the Subcommittee agreed to maintain requiring appropriate educational experience, obtaining appropriate work experience, and then testing for minimal competency through the LARE. The Subcommittee felt that some form of formal education provides basic knowledge of landscape architecture and experience alone was not equivalent to that knowledge.

Recommendations:

- *The Subcommittee recommends that candidates not be allowed to sit for the examination with work experience alone at this time and notes that education of some form is required to succeed.*
- *The LATC recommends tracking data from reciprocal candidates and LARE success rates, then bringing this matter back for future consideration once enough data is*

gathered. In addition, data from other states should be analyzed if it is available.

12. Credit for Teaching and/or Research

At the March 4, 2005 Subcommittee meeting, it was noted that a few states accept teaching and/or research experience towards fulfilling examination requirements[26]. However, the Subcommittee felt teaching and/or research experience does not provide the same skills that are acquired while working under a licensed professional. Additionally, teaching and/or research experience varies significantly, thus making it difficult to assess the equivalent relationship to the practice of landscape architecture and the health, safety and welfare of the public.

Recommendation:

- *The Subcommittee recommends that credit not be granted for teaching and/or research experience at this time.*

Appendix B

Related Studies

October 2004 – Landscape Architects Body of Knowledge

The Landscape Architecture Body of Knowledge (LABOK) study was designed to address the core competencies that help define the landscape architecture profession and the fundamental body of knowledge that should be expected of all graduates from accredited landscape architecture degree programs. The approach used to answer these two questions consisted of several iterative steps that required input from incumbents in the field of landscape architecture. During these steps both detailed knowledge and competency statements identifying the components of the Body of Knowledge for consideration by the academic community or for post-graduation on-the-job learning were developed.

The LABOK Task Force was established in response to these questions raised through the Landscape Architectural Accreditation Board's regular review of accreditation standards. The Task Force consisted of representatives of the American Society of Landscape Architects (ASLA), the Canadian Society of Landscape Architects (CSLA), the Council of Educators in Landscape Architecture (CELA), the Council of Landscape Architectural Registration Boards (CLARB), and the Landscape Architectural Accreditation Board (LAAB). The Task Force authorized The Chauncey Group International to perform the Body of Knowledge study described in this part of the report. Chauncey Group's role was to facilitate the multiple interactions with landscape architect subject matter experts and/or incumbents in the field.

By building upon the information from the earlier task analysis for landscape architects and input from the Task Force, then augmenting that information through consultation with multiple panels of subject matter experts, the Task Force developed a survey that covered the body of knowledge thoroughly. The distribution of the survey reached the varied groups desired and resulted in a strong indication of the knowledge and competencies that are required upon graduation from a degree program and those that should be developed on the job. It was necessary for each of the contributing organizations to carefully examine the data and make the most efficient use of the information that is available. As suggested in

the cover letter to the survey respondents, this information may be used to make curricula determinations, to guide the development of continuing education activities, and to continue strong requirements for licensure through the regulatory bodies. Based on the apparent high agreement among the various subgroup responses and the process used to develop the Body of Knowledge in this study, it is reasonable to conclude that the goals of the study were obtained.[27]

2006 - Thompson Prometric National Task Analysis

The Council of Landscape Architecture Registration Boards contracted with Thomson Prometric to conduct a job analysis in order to maintain the currency of the Landscape Architects Registration Examination. Job analysis refers to procedures designed to obtain descriptive information about the tasks performed on a job and/or the knowledge, skills, or abilities thought necessary to adequately perform those tasks. The specific type of job information collected for a job analysis is determined by the purpose for which the information will be used. For purposes of developing workplace certification examinations, a job analysis should identify important tasks, knowledge, skills, and/or abilities. The use of job analysis (also known as task analysis, practice analysis, or role delineation) to define the content domain is a critical component in establishing the content validity of certification examinations. Content validity refers to the extent to which the content covered by an examination overlaps with the important components (tasks, knowledge, skills, or abilities) of a job. A well-designed job analysis should include the participation of a representative group of subject-matter experts who reflect the diversity within the job. Diversity refers to regional or job context factors and to subject-matter expert factors such as length and type of experience, gender, and race/ethnicity. Demonstration of content validity is accomplished through the judgments of subject-matter experts. The process is enhanced, when feasible, by the inclusion of large numbers of subject-matter experts who represent the diversity within the relevant areas of expertise. The job analysis involved a multi-method approach that included meetings with subject-matter experts and the conduct of a survey.

On November 12-13, 2004, a panel of landscape architects, selected by CLARB, attended a meeting with the primary purpose of developing an updated survey for distribution in first quarter, 2005. Prior to the meeting, participants received a Job Analysis Procedures Manual and selected information from the 1998 Job Analysis report and the Landscape Architecture Body of Knowledge Study.

The first topic of discussion at the meeting was a general description of the successful licensee. The group then talked about the places where a licensee might work and gave examples of what they might do. The task force agreed that is was important to keep all approaches to practice in mind when we proceed to design the job analysis tool. The key issue is maintaining health, safety and welfare within the practice. The group then turned their attention to defining the major domains for the survey. Following the identification of the domains, the full group assigned the tasks from the 1998 survey to the new domains. Teams were then recruited to work on specific domains to review, edit, and/or delete the tasks. The next activity was to review the knowledge statements that appeared in the 1998 survey. Each of the task force members was asked to indicate whether the knowledge topic appeared in the 2004 LABOK study. Only those knowledge statements that were not included in the LABOK were added to the survey. The development of the skills list and the background questions completed the work of the group at the meeting.[28]

The contents of the proposed survey were shared with CLARB staff for initial review. Following approval of the components, Thomson Prometric staff created the survey using Web-based software. The survey was shared with the development committee for initial review. Their suggestions were incorporated and the revised survey was presented to a pilot group to take. The responses and individual comments were shared with CLARB staff and final revisions to the survey were made.

In early May, the survey was officially closed and the data analysis begun. Preliminary results were shared with CLARB staff in preparation for the meeting to develop the test specifications. Decisions about the appropriate subgroup analyses were made prior to the meeting.

The completion of the job analysis process consisted of a review of the job analysis results. A committee reviewed the background questions and began the review of the tasks. The respondents were offered opportunities to suggest additional tasks. The whole panel reviewed these and suggested additional examples for current tasks or noted those that are emerging topics. Following the review of the tasks, the committee proceeded to the review of the knowledge statements and the skills.[29]

December 2006 – Department of Consumer Affairs Office of Examination Resources, California Validation Report

The Landscape Architects Technical Committee requested the Office of Examination Resources conduct a validation study to identify critical job activities performed by landscape architects licensed in California. The occupational analysis is part of the LATC's comprehensive review of the practice of landscape architecture. The purpose of the occupational analysis is to define practice for California licensed landscape architects in terms of actual job tasks that new licensees must be able to perform safely and competently. The result of the occupational analysis serves as a basis for the examination program for landscape architects in California.

OER followed testing standards and guidelines to develop a legally defensible examination outline for landscape architects in California and implemented a content validation strategy to describe the content of the landscape architect profession. OER conducted interviews with California licensed landscape architects, researched the profession, analyzed material prepared by CLARB, facilitated four focus groups California licensees, and sent a questionnaire surveying all California licensed landscape architects.

The initial two focus groups reviewed and refined task and knowledge statements of the landscape architecture profession in California. Based on these specific task and knowledge statements of the profession, Office of Examination Resources was able to develop a comprehensive survey to be sent to landscape architects throughout the state. The third focus group reviewed and approved the survey results and links specific job tasks with knowledge statements in order to construct the examination outline. The final focus group evaluated the examination outline for concurrence and to prepare for the development of examination questions.[30]

Appendix C

Meeting Note Summaries

May 9, 2006 – Landscape Architects Technical Committee

- Voted on the preliminary approval of the Education Subcommittee's response to the JLSRC recommendations.
- Approved retaining the six-year education/experience requirement.
- Approved maintaining eligibility for examination with current education requirements.
- Approved initiate tracking upon candidacy.
- Suggestions were made to look into accrediting standards and determining how schools are measured in order to clarify subject relationship to examination topics and into education standards as it relates to health, safety and welfare concerns.[31]

June 7, 2006 – California Architects Board

- The LATC's recommendations regarding the eligibility requirements for examination were presented to CAB.
- All recommendations were approved under the condition that the LATC review recommendation 1, Accept Accredited Professional Architecture and Civil Engineering Degrees, and provide an analysis to CAB on parity of the requirements to apply for examination between licensure of architects versus landscape architects prior to the recommendations moving forward. As a result of the preliminary approval, Strategic Planning objectives to 1) begin identifying variables that impact LARE pass rates by tracking and maintaining data, and 2) investigating potential reasons for low examination pass rates and develop an appropriate response to issue to the JLSRC were initiated.[32]

August 25, 2006 - Landscape Architects Technical Committee

- Discussed CAB's action and various related issues identified. The LATC voted to reconvene the Education Subcommittee in order to fully address all issues that were identified as a result of the proposed changes.[33]

November 8, 2006 – Education Subcommittee

- Met to discuss the renewed charges from the LATC, review existing reports and documentation, and develop a plan of action. Staff was tasked with: 1) incorporating revisions to the Report, 2) updating CCR 2620 – Education and Training Credits to reflect the discussion, 3) providing curriculum data for accredited degrees in architecture and civil engineering and documenting data to compare the two, and 3) revising the charts outlining education and experience credits given to architects and landscape architects, and drafting narrative explaining the differences.
- Finalize the Issues and Recommendations Report to proceed with preparing a draft report for the LATC and CAB to approve for forwarding to the DCA and the Legislature.[34]

January 16, 2007 – Education Subcommittee

- Held a teleconference and reviewed additional information illustrating the parity of educational requirements to architects and civil engineers.
- Expanded the information substantiating the recommendations and began a review of CCR 2620.
- Remaining agenda items to review: curriculum comparison for landscape architects with those of architects and civil engineers, completion of a review and proposed changes to CCR 2620, and a table of contents for the report to the Legislature were postponed.[35]

February 27, 2007 – Education Subcommittee

- Finalized recommendations to the LATC.
- Reconfirmed that education is a critical qualification in combination with work experience and examination.
- Recommendations were to: 1) maintain the educational credit requirement, 2) continue one year of educational credit for an associate degree in landscape architecture, 3) continue four years of educational credit for foreign education equivalent to an accredited master or bachelor degree in landscape architecture in the United States, 4) maintain two years of educational credit for an approved extension certificate in landscape architecture, 5) institute one year of educational credit for an accredited degree in architecture, 6) not grant educational credit for a degree in civil engineering, and 7) not grant experience credit for foreign/international experience.[36]

May 4, 2007 - Landscape Architects Technical Committee

- Approved the Subcommittee's recommended response and recommendations.[37]

June 15, 2007 – California Architects Board

- The parity issue and the recommendations were presented and approved by CAB. The full report to DCA and to the Legislature, containing the approved recommendations, will be presented for approval once complete.[38]

NOTES

[1] Landscape Architects Technical Committee 2003 Sunset Review Report response. Vol. 1, tab #4
[2] Landscape Architects Technical Committee, "Landscape Architects Practice Act with Rules and Regulations 2007", includes amendments through October 3, 2007. Vol. 3, tab #56
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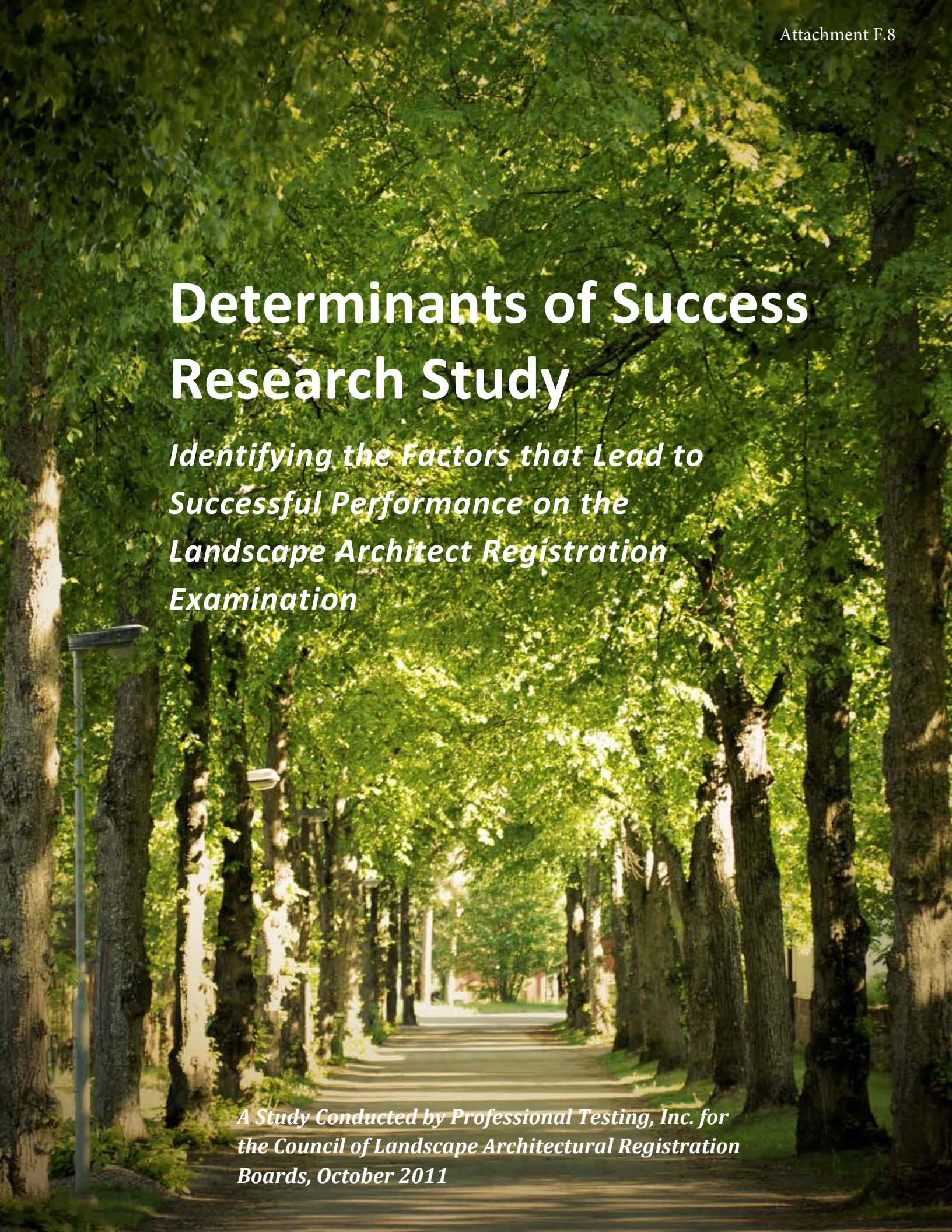

Determinants of Success Research Study

Identifying the Factors that Lead to Successful Performance on the Landscape Architect Registration Examination

A Study Conducted by Professional Testing, Inc. for the Council of Landscape Architectural Registration Boards, October 2011

Prepared by:
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EXECUTIVE SUMMARY

Purpose of the Project

At this time, there is a lack of quantitative/qualitative data that identifies the determinants of candidate success on the Landscape Architect Registration Examination (L.A.R.E). The principal goal of the research project is to define and, if possible, weigh the determinants for success on the L.A.R.E. and to provide greater insights for the profession and regulatory community on which to base policy, practice, and support decisions.

Research Methods

This study consisted of three phases. During the first phase, the research team interviewed members of three specific stakeholder groups via telephone. The results of the phone interviews were used to develop the survey in phase two of the study. The survey was administered after four separate administrations of the L.A.R.E. over the course of one year. The final stage of the study was the statistical analysis, whereby the data collected from the electronic survey was analyzed to determine what factors best predict successful performance on the L.A.R.E.

Overall, five statistical models were analyzed based on the five areas that were identified as contributing to successful performance on the L.A.R.E.: Education Factors, Work Experience Factors, Preparation Factors, Skills Factors, and Testing Environment Factors

Key Findings

Education and work experience factors seemed to have the greatest impact on candidates' performance on the L.A.R.E. Preparation and skills factors contributed to successful performance on some of the exams, while testing environment factors had little to no impact on candidates' performance.

Education Factors

The level of education obtained by exam candidates positively impacted both Sections A and B of the L.A.R.E. The higher the level of education obtained by exam candidates, the better they did on the Section A and B exams.

For the Section C exam, those who obtained a degree from a program accredited by the Landscape Architectural Accreditation Board (LAAB) or the Canadian Society of Landscape Architects* (CSLA) scored much higher (on average, 212.98 points higher) than those who obtained a degree from a nonaccredited program.

Candidates who took college courses in Planting Design or History of Landscape Architecture scored higher on the Section E exam.

Work Experience Factors

Work experience factors contributed to successful performance on all but the Section C exam. The number of years spent working in landscape architecture had a negative impact on both the Section A and B exams, indicating that the longer one waited to take the Section A or B exams after graduation, the lower the performance on those two exams.

Diversified work experience contributes positively to successful performance on the L.A.R.E. Experience in stormwater management and governmental work experience had a positive impact on the Section A exam, experience in planting design had a positive impact on the Section B exam, experience in institutional projects had a positive impact on the Section D exam, and experience in large-scale residential and land planning had a positive impact on the Section E exam.

Preparation Factors

Sections A, C, and E were impacted by preparation factors. Candidates who studied alone were more successful on the Section A exam, and candidates who split their time studying both alone and in groups performed better on the Section C exam. Those who utilized the ASLA practice problems** scored higher on the Section C exam than those who did not utilize the ASLA practice problems. Lastly, the longer the amount of time spent studying, the better the performance was on the Section E exam. For every one month increase in time spent studying, exam candidates scored on average 69.56 points higher.

* CSLA accredits programs through LAAC (Landscape Architecture Accreditation Council).

** When the L.A.R.E. was five sections, CLARB provided practice problems for Sections C and E to ASLA for ASLA's exam prep page. These practice problems no longer exist.

Skills Factors

In terms of perceived skill, those who considered themselves "technical thinkers" scored higher on both the Section B and D exams. Those who identified themselves as having good spatial reasoning skills performed higher on the Section B and E exams. More time spent drawing on a computer had a positive impact on the Section C exam, while more time spent designing by hand had a positive impact on the Section E exam.

Key Takeaway

Based on the findings of this study, candidates should consider the following actions to optimize their performance on the L.A.R.E.:

- Obtaining a landscape architecture degree from an LAAB- or CSLA-accredited institution.
- Taking the L.A.R.E. closer to college graduation rather than waiting to gain more years of experience in landscape architecture.
- Gaining *diversified* experience in the years spent working in landscape architecture.
- Increasing study time both alone and in groups.
- Utilizing the ASLA practice problems.ûû
- Spending time drawing on a computer, but designing by hand.

For more information, please contact the Council of Landscape Architectural Registration Boards at 571-432-0332 or info@clarb.org.

** When the L.A.R.E. was five sections, CLARB provided practice problems for Sections C and E to ASLA for ASLA's exam prep page. These practice problems no longer exist.

ACCREDITATION STANDARDS

For First-Professional Programs In Landscape Architecture

Landscape Architectural Accreditation Board

American Society of Landscape Architects
636 Eye Street, N.W.
Washington, D.C. 20001-3736

March 2016

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Introduction

The mission of the Landscape Architecture Accreditation Board (LAAB) is to evaluate, advocate for, and advance the quality of education in landscape architectural degree programs. To do that, the Board creates and applies ***Standards*** and ***Procedures***. The Standards are basis for decision-making and action for the Board. The Standards are reviewed and updated every five years through a process articulated in Board Procedures. The previous version of the Standards and Procedures (2010) were both a part of a single document. For this version, the Board has decided to create separate documents of Standards and of Procedures.

This document contains the Accreditation Standards.

Definitions, Interpretation, and Application

Accreditation: Accreditation is a voluntary process of peer review designed to evaluate programs on the basis of their own stated objectives and the accreditation standards that follow.

Administrative Probation Status: Administrative Probationary Accreditation status is assigned when an institution or program does not meet its administrative obligations. LAAB assigns this status if the institution or program fails to comply with one or more of the following requirements:

- paying annual fees within 90 days of the invoice date,
- paying a late fee by the due date,
- submitting reports or other required information within 45 days of the due date, or
- agreeing to a reasonable on-site evaluation visit date at or near the time established by LAAB staff.

Administrative Probationary Accreditation is an accreditation category not subject to appeal. The program is recognized and listed as accredited with this designation until the requirement(s) that was not met has been fully satisfied. Failure to completely remedy the situation by the date specified in the probationary letter may result in revocation of accreditation.

***Assessment*:** Assessment is the process by which a program or institution's level of compliance with or achievement of the criteria relevant to its accreditation is evaluated.

Candidacy Status: Candidacy is an accreditation classification granted to a program that is in the planning or early stages of development or an intermediate stage of program implementation.

Compliance: Compliance with a standard is achieved when LAAB concludes, after review of relevant indicators or other evidence, that the standard is met or met with recommendation, as defined below. To achieve LAAB accreditation, a program must demonstrate to LAAB, through the self-evaluation report, site visit, and technical accuracy review of the visiting team's report, that it complies with all standards.

Considerations for Improvement: Considerations for Improvement are informal counsel offered to a program as a part of the Visiting Team's Report but not included in the final action letter from LAAB to the program. These may areas where the program can build on a strength or address an area of concern that does not directly affect accreditation at the time of the LAAB review.

Criteria: Each LAAB standard has one or more criteria statements that define the components needed to satisfy the standard. Not satisfying a criterion does not automatically lead to the assessment of a standard as not met. To be accredited, a program must demonstrate progress toward meeting the criteria. In this document, criteria are identified by letters (for example: **A. Program Mission**).

Faculty Full-Time Equivalence (FTE): The FTE is a figure representing the aggregated time committed by full- and part-time faculty members to teaching in a department or program, including faculty who have their duties or teaching assignments split between an undergraduate and a graduate program and faculty who have their assignments split between disciplines. For purposes of calculation, a faculty member with a part-time appointment of 50 percent (and, presumably, a teaching/scholarship/service assignment roughly equivalent to half that of a full-time faculty member) would be assigned a 0.5 FTE. A full-time faculty member with duties in only one department would be assigned an FTE of 1.0 for that department.

Final Action Letter: A final action letter is an official communication from LAAB to a program reporting its accreditation status and any recommendations affecting accreditation.

First-Professional Program: A first-professional program in landscape architecture encompasses the body of knowledge common to the profession and promotes acquisition of the knowledge and skills necessary to enter its professional practice. At the bachelor's level, such a program is typically conducted in a context enriched by the liberal arts and natural and social sciences. At the master's level, such a program also provides instruction in and application of research and scholarly methods.

Initial Accreditation: The first period of accreditation for a program leading to a degree in landscape architecture is its initial accreditation; LAAB initial accreditation applies to degrees awarded within two years prior to initial accreditation by LAAB.

Intent: A statement of intent explains the purpose of a standard.

Program*:* A program comprises the coursework and other learning experiences leading to a degree as well as the supporting administration, faculty, staff, facilities, and services that sponsor and provide those experiences.

Recommendations Affecting Accreditation: Recommendations Affecting Accreditation are issues of serious concern, directly affecting the quality of a program. Recommendations Affecting Accreditation are issued when a visiting team assesses a standard as met with recommendation or not met. Recommendations are derived from the identified areas of weakness in meeting a standard as described in the rationale sections of a visiting team's report. The program is required to report progress regularly on these issues. Recommendations Affecting Accreditation identify issues; they do not prescribe solutions.

Self-Evaluation Report (SER): An SER is a document prepared by a program that describes its expectations, operations, and resources; assesses its progress toward meeting its mission, goals, and objectives; and measures its performance against the criteria for accreditation.

Shall: In official LAAB standards and criteria, "shall" indicates mandatory actions for a program or institution.

Should: In official LAAB standards and criteria, "should" indicates prescriptive recommendations for a program or institution.

Standards: Standards are qualitative statements of the essential conditions an accredited program must meet to achieve accreditation.

Standard Met: A "Standard Met" designation indicates that overall program performance in the relevant area meets LAAB minimum standards. LAAB may judge a standard as met even though one or more indicators within the standard are not minimally met.

Standard Met with Recommendation: A “Standard Met with Recommendation” designation indicates that deficiencies exist in an area directly bearing on accreditation. The problem or problems have observable effects on the overall quality of the program.

Standard Not Met: A “Standard Not Met” designation means that a cited deficiency is so severe that the overall quality of a program is compromised and the program’s ability to deliver adequate landscape architecture education is impaired.

Minimum Requirements for Achieving and Maintaining Accredited Status

1. The program title and degree description must incorporate the term "landscape architecture."

2. An undergraduate first-professional program must be a baccalaureate program of at least four academic years' duration.

3. A graduate first-professional program must be a master's program equivalent to at least three academic years' duration.

4. Faculty instruction full-time equivalence (FTE) requirements are as follows:
   a. An academic unit that offers a single first-professional degree program at the emerging or Initial Accreditation status has at least three FTE instructional faculty who hold professional degrees in landscape architecture, at least one of whom is full-time.
   b. An academic unit that offers a first-professional degree program at both the bachelor’s and master’s levels at the emerging or Initial Accreditation status has at least six FTE instructional faculty, at least five of whom hold professional degrees in landscape architecture, at least two of whom are full-time in the department.
   c. An academic unit that offers a single first-professional degree program at the continuing full accreditation status has an FTE of at least five instructional faculty, at least four of these faculty members hold a professional degree in landscape architecture, at least three of whom are full-time in the department.
   d. An academic unit that offers first-professional degree programs at both the bachelor’s and master’s levels with continuing full accreditation status has an FTE of at least seven instructional faculty, at least five of whom hold professional degrees in landscape architecture and are full-time in the department.

Program Status	Number of Full-time Equivalent Instructional Faculty*	Number of Faculty with a Professional Degree in Landscape Architecture (could be part-time or adjunct)	Number of Full-time Faculty with a Professional Degree in Landscape Architecture
Programs seeking Initial Accreditation			
Single Program	3	3	1
Bachelor’s & Master’s Program	6	5	2
Programs seeking re-accreditation			
Single Program	5	4	3
Bachelor’s & Master’s Program	7		5

5. The parent institution must be accredited by a recognized institutional accrediting agency (such as the U.S. Department of Education or CHEA).

6. There must be a designated program administrator responsible for the leadership and management functions for the program under review.

7. The program must provide a comprehensive public information disclosure about the program's status and performance within a single-click link from the program's website.

8. The program must:
    - continuously comply with accreditation standards,
    - pay the annual sustaining and other fees as required, and
    - regularly file complete annual and other requested reports.

The program administrator shall inform LAAB if any of these factors fail to apply during an accreditation period. The program administrator is responsible for reporting any substantive changes to the program when they occur. (Substantive changes are those that may affect the accreditation status of the program, addressed on page 16 of the LAAB Accreditation Procedures.)

STANDARDS

Standard 1: Program Mission and Objectives

The program shall have a clearly defined mission supported by goals and objectives appropriate to the profession of landscape architecture and shall demonstrate progress toward their attainment.

INTENT: *Using a clear, concise mission statement, each landscape architecture program shall define its core values and fundamental purpose for faculty, students, prospective students, and the institution. The mission statement shall summarize why the program exists and the needs that it seeks to fulfill. It shall also provide a benchmark for assessing how well the program is meeting the stated objectives.*

A. Program Mission. The mission statement expresses the underlying purposes and values of the program.

Assessment: The program has a clearly stated mission reflecting its purpose and values, which relate to the institution's mission.

B. Educational Goals. The program shall have clearly defined and formally stated academic goals that reflect the mission and demonstrate that attainment of the goals will fulfill the program mission.

Assessment: The program has an effective procedure to determine progress in meeting its goals and is it used regularly.

C. Educational Objectives. The program shall have educational objectives that specifically describe how each of the academic goals will be achieved.

Assessment: The program has clearly defined, achievable educational objectives and an effective, regularly used procedure to determine progress in meeting them.

D. Long-Range Planning Process. The program shall engage in an effective long-range planning process.

Assessment 1: The long-range plan describes how the program mission, goals, and objectives will be met, and the program documents the review and evaluation process.

Assessment 2: The long-range plan (along with the mission, goals and objectives) is reviewed and revised periodically, and it presents realistic and attainable methods for advancing the program's academic mission.

Assessment 3: The program's SER responds to recommendations and considerations for improvement from the previous accreditation review (if applicable), and it reports on efforts to rectify identified weaknesses.

E. Program Disclosure. Program literature and promotional media shall accurately describe the program's mission, objectives, educational experiences, accreditation status, goals, student achievement, costs for a full-time student per academic year, estimated housing costs per year, average costs of books and materials per year, student retention and graduation rates, number of degrees granted per year, and

percentage of students with timely graduation (master's students graduating within four years, bachelor's students graduating within six years).

Assessment 1: The program information is accurate, understandable, and accessible to the public.

Assessment 2: The public disclosure information can be found with a single-click link from the program's website.

Standard 2: Program Autonomy, Governance, and Administration

The program shall have the authority and resources to achieve its mission, goals and objectives.

INTENT*: Each landscape architecture program shall be recognized as a discrete professional program with the resources, institutional support, and authority to enable achievement of the stated program mission, goals and objectives.*

A. Program Administration. The landscape architecture program shall be administered as an identifiable, discrete program within its institution.

Assessment 1: The program is seen as a discrete and identifiable program within the institution.

Assessment 2: The program administrator holds a faculty appointment in landscape architecture.

Assessment 3: The program administrator exercises effective leadership of and management functions for the program. (Where the program administrator is not the primary administrator for the academic unit, as in a landscape architecture program within a multidisciplinary department or school, the landscape architecture leader has the authority to significantly influence the management of resources, including budget, faculty review, tenure and promotion outcomes, and the direction of the program.)

B. Institutional Support. The institution shall provide sufficient resources to enable the program to achieve its mission and goals, and it supports individual faculty members' development and advancement.

Assessment 1: Funding is available to assist faculty and other instructional personnel with continued professional development, including support in developing funded grants and attendance at conferences. Funding is sufficient to maintain computers and appropriate software, other types of equipment, and technical support.

Assessment 2: Funding is adequate for student support, such as scholarships and work-study jobs.

Assessment 3: Adequate support personnel are available to accomplish the program's mission and goals.

C. Commitment to Diversity. The program shall demonstrate a commitment to diversity through its recruitment and retention of faculty, staff, and students.

Assessment: The program demonstrates its commitment to diversity in the recruitment and retention of students, faculty, and staff.

D. Faculty Participation. The faculty shall participate in program governance and administration.

Assessment 1: The faculty makes recommendations on the allocation of resources and has the responsibility to develop, implement, evaluate, and modify the program's curriculum, and to contribute to operating practices.

Assessment 2: The faculty participates, in accordance with institutional guidelines, in developing criteria and procedures for annual evaluation, promotion, and tenure of faculty members.

Assessment 3: The faculty participates, in accordance with institutional guidelines, in developing and applying criteria and procedures for the appointment and assessment of program and academic unit leadership.

Assessment 4: The program or institution adequately communicates and mentors faculty regarding policies, expectations, and procedures for annual evaluations, tenure, and promotion to all ranks.

E. Faculty Number. The faculty shall be of a sufficient size to accomplish the program's goals and objectives; to teach the curriculum; to support students through advising and other functions; to engage in research, creative activity, and scholarship; and to be actively involved in professional endeavors such as presenting at conferences. The faculty FTE shall be assessed by the institutional culture for faculty development across the closely related academic units (such as other departments and programs within a college). The workload (number, type, and sizes of courses assigned) and responsibilities (such as a split of time for teaching, research, and service activities) for a typical tenured or long-term faculty member within the college shall be considered the template for assessing the FTE resources assigned to the landscape architecture program. Where landscape architecture faculty members have their responsibilities split between programs (such as bachelor's and master's or between landscape architecture and another discipline), the FTE assessment must be prorated.

Faculty instruction full-time equivalence (FTE) shall be as follows:

a. An academic unit that offers a single first-professional degree program at the emerging or Initial Accreditation status has at least three FTE instructional faculty who hold professional degrees in landscape architecture, at least one of whom is full-time.
b. An academic unit that offers a first-professional degree program at both the bachelor's and master's levels at the emerging or Initial Accreditation status has at least six FTE instructional faculty, five of whom hold professional degrees in landscape architecture, at least two of whom are full-time.
c. An academic unit that offers a single first-professional degree program at the continuing full Accreditation status has an FTE of at least five instructional faculty. At least four of these faculty members hold a professional degree in landscape architecture and at least three of them are full-time.
d. An academic unit that offers first-professional degree programs at both the bachelor's and master's levels with continuing full Accreditation status has an FTE of at least seven instructional faculty, at least five of whom hold professional degrees in landscape architecture and are full-time

Program Status	Number of Full-time Equivalent Instructional Faculty*	Number of Faculty with a Professional Degree in Landscape Architecture (could be part-time or adjunct)	Number of Full-time Faculty with a Professional Degree in Landscape Architecture
Programs seeking Initial Accreditation			
Single Program	3	3	1
Bachelors & Masters Program	6	5	2
Programs seeking re-accreditation			
Single Program	5	4	3
Bachelors & Masters Program	7		5

* In determining FTEs and the pro-rata contribution some faculty may make to teaching in a program, we acknowledge that variations do exist among institutions regarding how standard teaching loads are determined. Please provide in the SER any commentary that you believe appropriate to demonstrate how your program achieves the required faculty numbers within your institution's particular administrative and staffing model.

Assessment 1: Student/faculty ratios in studios are typically not greater than 15:1.

Assessment 2: There are sufficient faculty FTE to carry out the mission of the program (such as duties in teaching, research, service, program administration, academic advising, and creative professional development).

Standard 3: Professional Curriculum

The first-professional degree curriculum shall include the core knowledge, skills, and applications of landscape architecture.

a. ***In addition to the professional curriculum, a first-professional degree program at the bachelor's level shall provide an educational context enriched by other disciplines, including but not limited to liberal and fine arts, natural sciences, and social sciences, as well as opportunities for students to develop other areas of interest.***

b. ***In addition to the professional curriculum, a first-professional degree at the master's level shall provide instruction in and application of research and scholarly methods.***

c. ***A first-professional degree at the master's level that does not require all students to have an undergraduate degree before receiving the MLA shall meet the requirements for both a and b, above.***

INTENT*: Each landscape architecture curriculum shall be designed to achieve the learning goals stated in the mission and specific educational objectives of the program. The curriculum shall encompass both coursework and other co-curricular opportunities intended to develop students' knowledge and skills in landscape architecture.*

A. Curricular Expression of the Mission and Objectives. The program's curriculum shall address and express its mission, goals, and objectives. (This criterion is directed not toward the evaluation of the mission and objectives, but rather toward the way the curriculum is developed and delivered in carrying out the expectations of the mission and objectives.)

Assessment: The program identifies the knowledge, skills, abilities, and values it expects students to possess at graduation.

B. Professional Curriculum. The program curriculum shall be guided by, but not limited to, coverage of:

History, theory, philosophy, principles, and values
- design history
- design theory
- criticism
- sustainability, resiliency, stewardship
- health, safety, welfare

Design processes and methodology
- critical thinking
- analysis
- ideation
- synthesis
- site program
- iterative design development
- design communication

Systems and processes—natural and cultural (related to design, planning, and management)
- plants and ecosystems sciences
- built environment and infrastructure
- human factors and social and community systems
- human health and well-being

Communication and documentation
- written communication
- oral communication
- visual and graphic communication
- design and construction documents
- numeracy, quantitative problem-solving, and communication
- community and client engagement

Implementation
- construction technology and site engineering
- site materials
- use and management of plants and vegetation
- policies and regulation

Computer applications and advanced technologies
- visualization and modeling
- communication (conceptual and construction drawings)
- geospatial analysis

Assessment and evaluation
- site assessment
- pre-design analysis
- landscape performance
- post-occupancy evaluation
- visual and scenic assessment

Professional practice
- values
- ethics
- practice
- construction administration

Research and scholarly methods (for master's-level degree programs)
- quantitative and qualitative methods
- establishing a research hypothesis
- framing research questions
- literature/case study review/precedent review
- research integrity and protection of human subjects
- communication of research

Assessment 1: The curriculum addresses the designated subject matter in a sequence that supports the degree program's goals and objectives.

Assessment 2: Student work and other accomplishments demonstrate that the curriculum is providing students with the appropriate content to enter the profession.

Assessment 3: Curriculum and program opportunities enable students to pursue academic interests consistent with institutional requirements and entry into the profession.

C. Syllabi. Appropriate syllabi shall be maintained for courses.
Assessment 1: Syllabi include educational objectives, course content, and the criteria and methods that will be used to evaluate student performance.

Assessment 2: Syllabi identify the various levels of accomplishment students need to achieve to successfully complete the course and advance in the curriculum.

D. Curriculum Evaluation. At both the course and curriculum levels, the program shall evaluate how effectively the curriculum is helping students achieve the program's learning objectives in a timely way.

Assessment 1: The program demonstrates and documents ways of:

a. *assessing students' achievement of course and program objectives within the length of time to graduation stated by the program;*
b. *reviewing and improving the effectiveness of instructional methods in curriculum delivery; and*
c. *maintaining currency with the evolving technologies, methodologies, theories, and values of the profession.*

Assessment 2: Students participate in evaluation of the program, courses, and curriculum.

E. Augmentation of Formal Educational Experience. The program shall provide opportunities for students to participate in co-curricular activities, internships, off-campus studies, research assistantships, or practicum experiences.

Assessment 1: The program provides opportunities for students to augment the formal educational experience and documents students' use of these opportunities.

Assessment 2: The program identifies the objectives of co-curricular activities and evaluates the effectiveness of these opportunities.

Assessment 3: Student participants are given the opportunity to report on their cocurricular experiences to their fellow students.

F. Coursework (Bachelor's Level). In addition to the professional curriculum, students shall also pursue coursework in other disciplines in accordance with institutional and program requirements.

Assessment: Students take courses in the humanities, arts, technologies, mathematics, natural sciences, social sciences, and/or other disciplines.

G. Areas of Interest (Bachelor's Level). The program shall provide opportunities for students to pursue special interests.

Assessment 1: The program provides opportunities for students to pursue independent projects, focused electives, optional studios, certificates, minors, and the like.

Assessment 2: Student work incorporates academic experiences reflecting a variety of pursuits beyond the basic curriculum.

H. Research/Scholarly Methods (Master's Level). The program shall provide an introduction to research and scholarly methods.

Assessment 1: The curriculum provides instruction in research and scholarly methods and their relation to the profession of landscape architecture.

Assessment 2: The program requires that theses or terminal projects exhibit creative and independent thinking and contain a significant research/scholarly component.

Standard 4: Student and Program Outcomes

The program shall prepare students to pursue careers in landscape architecture.

***INTENT**: Each landscape architecture program shall prepare students—through educational programs, advising, and other academic and professional opportunities—to pursue careers in landscape architecture upon graduation. The program shall foster knowledge and skills in creative problem solving, critical thinking, communications, design, and organization.*

A. Student Learning Outcomes. The program shall qualify students to pursue careers in landscape architecture.

Assessment 1: Student work demonstrates the competencies required for entry-level positions in the profession of landscape architecture.

Assessment 2: Students demonstrate their achievement of the program's learning objectives, including critical and creative thinking, and their ability to understand, apply, and communicate the subject matter of the professional curriculum as evidenced through project definition, problem identification, information collection, analysis, synthesis, conceptualization, and implementation.

B. Student Advising. The program shall provide students with effective advising and mentoring throughout their educational careers.

Assessment 1: Students receive effective advising regarding academic development.

Assessment 2: Students receive effective advising regarding career development.

Assessment 3: Students are made aware of professional opportunities, advanced educational opportunities, licensure requirements, and continuing education requirements associated with professional practice.

Assessment 4: Students are satisfied with academic experiences and their preparation for the landscape architecture profession.

C. Participation in Extracurricular Activities. The program shall encourage students to participate in professional activities and institutional and community service.

Assessment 1: Students participate in institutional/college organizations, community initiatives, or other activities.

Assessment 2: Students participate in events such as LABash, ASLA Annual Meeting, local ASLA chapter events, and the activities of other professional societies or special-interest groups.

Standard 5: Faculty

The program shall advance its academic mission and objectives by means of promoting the qualifications, academic position, professional activities, and individual professional development of its faculty and instructional personnel.

INTENT*: Each landscape architecture program shall have qualified, experienced faculty and other instructional personnel to instill the knowledge and skills that students will need to pursue a career in landscape architecture. Equitable faculty workloads and compensation, and overall support for career development contribute to the success of the program.*

A. Credentials. The qualifications of the faculty, instructional personnel, and teaching assistants shall be appropriate to their roles.

Assessment 1: The faculty has a balance of professional practice and academic experience appropriate to the program mission.

Assessment 2: Faculty assignments are appropriate to the course content and program mission.

Assessment 3: Adjunct and/or part-time faculty (if present) are integrated into the program's administration and curriculum evaluation/development in a coordinated and organized manner.

Assessment 4: Faculty qualifications are appropriate to responsibilities of the program as defined by the institution.

B. Faculty Development. The faculty members shall be continuously engaged in activities leading to their professional growth and advancement, the advancement of the profession, and the effectiveness of the program.

Assessment 1: Faculty activities such as scholarly inquiry, research, professional practice, and service to the profession, university, and community are documented, peer-reviewed, and disseminated through appropriate media such as journals, professional magazines, community, and university publications.

Assessment 2: Teaching and administrative assignments allow sufficient opportunity for faculty to pursue advancement and professional development. Expectations for faculty workload and distribution of responsibilities (of teaching, research, service, and professional engagement) are similar to expectations in related academic units.

Assessment 3: The development and teaching effectiveness of faculty and instructional personnel are systematically evaluated, and the results are used for individual and program improvement.

Assessment 4: Faculty seek and make effective use of available funding for conference attendance, equipment, technical support, and other professional needs.

Assessment 5: The activities of faculty are reviewed and recognized by faculty peers.

Assessment 6: Faculty participate in university and professional service, student advising, and other activities that enhance the effectiveness of the program.

C. Faculty Retention. The faculty shall hold academic status, have workloads, and receive compensation, mentoring, and support that promote productivity and retention.

Assessment 1: Faculty salaries and support are evaluated and are appropriate to promote faculty retention and productivity.

Assessment 2: The rate of faculty turnover does not undermine the mission and goals of the program.

Standard 6: Outreach to the Institution, Communities, Alumni, and Practitioners

The program shall have a plan for and a record of interaction with its alumni, the larger institution, the professional community, the local community, and the public at large.

INTENT*: Each landscape architecture program shall establish an effective relationship with the larger institution, its alumni, practitioners, the local community, and the public at large in order to provide a source of service learning opportunities for students, scholarly development for faculty, and professional guidance and financial support. Documentation and dissemination of successful outreach efforts shall enhance the image of the program and educate its constituencies regarding the program and the profession of landscape architecture.*

A. Interaction with the Profession, Institution, and Public. The program shall represent and advocate for the profession by interacting with the larger institution, the local community, practitioners, and the public at large.

Assessment 1: Service-learning activities are incorporated into the curriculum.

Assessment 2: Service activities are documented on a regular basis.

Assessment 3: The program community interacts with the institution, practitioners, the local community, and the public at large.

B. Alumni and Practitioners. The program shall recognize alumni and practitioners as a resource.

Assessment 1: The program maintains or has access to a current registry of alumni that includes information pertaining to current employment, professional activity, post graduate study, and significant professional accomplishments.

Assessment 2: The program engages its alumni and other practitioners in activities such as service on a formal advisory board, student career advising, potential employment, curriculum review and development, fundraising, and continuing education.

Assessment 3: The program acknowledges and celebrates the significant professional accomplishments of its alumni and benefactors.

Standard 7: Facilities, Equipment, and Technology

The program shall provide faculty, students, and staff access to facilities, equipment, libraries, and other resources necessary for achieving the program's mission and objectives.

INTENT: *Each landscape architecture program shall occupy space in designated, code-compliant facilities that support the achievement of the program's mission and objectives. Students, faculty, and staff shall have the required tools and facilities to enable achievement of the program's mission and objectives.*

A. Facilities. The program shall provide designated, code-compliant, adequately maintained spaces to serve the professional requirements of the faculty, students, and staff.

Assessment 1: Faculty, staff, and administration are provided with appropriate office space.

Assessment 2: Students are assigned permanent studio workstations adequate to meet the program's needs.

Assessment 3: Facilities are adequately maintained and in compliance with the Americans with Disabilities Act (ADA), the Life Safety Code, and applicable building codes. (Acceptable documentation includes reasonable-accommodation reports from the university ADA-compliance office and/or facilities or risk-management office.)

B. Information Systems and Technical Equipment. The program shall provide information systems and technical equipment needed to achieve its mission and objectives to students, faculty, and other instructional and administrative personnel.

Assessment 1: The program's participants have sufficient access to computer equipment and software.

Assessment 2: The frequency of hardware and software maintenance, updating, and replacement is sufficient.

Assessment 3: The hours of use of information systems and equipment are sufficient to serve faculty and students.

C. Library Resources. The program shall provide library collections and other resources sufficient to support its mission and educational objectives.

Assessment 1: Collections are adequate to support the program.

Assessment 2: Courses integrate library and other resources.

Assessment 3: Library hours of operation are convenient and adequate to serve the needs of faculty and students.

CER Inc.
Construction Engineering Resource

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Construction Engineering
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9-17-16
California Architects Board
2420 Del Paso Road, Suite 105
Sacramento, CA 95834-9673
Initial Statement of Reasons

Attn: Landscape Architects Technical Committee
Subject: Business and Professional Code (BPC) 5650
Affecting California Code of Regulations (CCR). Title 16, Division 26, Section 2615
General Provision 2615 Form of Examinations (c)(1)
Hearing Date: September 27, 2016

Dear Committee Members;

I present the following for your consideration at the referenced hearing regarding changes to CCR Section 2615(c)(1). The focus of these change are about educational requirements, experience requirements and reciprocity.

I am a California Registered Engineer since 1981. I received my Bachelor of Science in Civil Engineering by attending classes at my local junior college and the final 2 years at Sacramento State University. I have owned and operated 2 separate State of California Civil engineering firms. The first one was sold in 2015 to an employee who gained an engineering license through a degree in architecture and the second one is still in operation. Thru the second firm I work with a corporation in Houston that operates engineering branches in 32 separate states. I hold engineering licenses in all of those states and 4 provinces in Canada. All of those licenses except California were applied for thru reciprocity. I readily acknowledge that Landscape Architecture is a different discipline than Civil Engineering and only speak here to what I consider to be common to the two disciplines.

I am currently 67 years old and have 35 years of experience in the practice of engineering. This experience has provided me with a thorough knowledge of issues regarding licensure reciprocity, the value of education in engineering subjects versus the value of obtaining knowledge thru work experience. I also have a fundamental understanding of the economic and legal issue involving free trade, protectionism, interstate commerce, and Federal and NAFTA regulations governing these issues.

I have reviewed the **California Architect Board's, Landscape Architects Technical Committee, Initial Statement of Reasons.** This document is well stated and clear. The Factual Basis/Rational is just that, factual and rational. I am not criticizing in anyway the findings of this document, I am just providing here what I believe is a more compelling and important view of what needs to be considered at the hearing stage.

To summarize the language in the purpose statement of this document, essentially the purpose of the hearing and legislative change is to;

- Add provisions that candidates applying for California licensure based on licensure in another jurisdiction, (reciprocity), have education and experience equivalent to that required of California applicants.

The solution is to;

- Add provisions to waive California education requirements and allow reciprocity applicants that have been engaged in in the industry in good standing for 10 years to take the California Supplemental Exam and thereby become a California Landscape Architect.

To be clear the **problem today** is that there is no pathway to the California Landscape Architect License without with some form of approved formal college education. In fact if the reciprocity applicant gets the initial exam waived due to having passed the test elsewhere he/she is currently faced with this in order to take the CSE:

> (1)(A) Candidates shall possess at least two years of training/practice credit to be eligible for the examination.
> (B) At least one of the two years of training/practice credit shall be under the direct supervision of a landscape architect licensed in a United States jurisdiction, and shall be gained in one of the following forms:
> 1. After graduation from an educational institution specified in subdivisions (a)(1), (2), (3) or (4) of this section.
> 2. After completion of education experience specified in subdivisions (a)(7) and (8) of this section. *((a)(7) and (8) refer to college extension programs.)*

This essentially doubles down the education requirements. The exam and education required here is supposed to be on "more complicated settings for the conduct of architectural practice in the state specific to California". My observation of this additional education and exam is that the bulk of it is a repeat of the material covered in the initial statewide approved Licensed Landscape Architecture Exam. Granted that large population and seismic events are unique to a small handful of states and should be considered, however all of the supplemental state exams I have taken for my reciprocity licenses have focused on state and local regulations, ethics, climate and seismic variations that are not common in other states. All of the supplemental exam knowledge could be obtained **thru on line courses or purchased self-study material** and easily learned in weeks, not months or a year. In my opinion the current requirement, "candidates shall possess at least two years of training/practice credit" has been hijacked in order to direct all applicants to a California Institution of higher education with the attendant financial benefits to the universities, supply and demand benefits for current licensed landscape architects and exclusionary and financial effects that it has on the hard working talented young aspiring landscape architects doing the bulk of the work. Furthermore since when have the words training/practice meant

education requirements, where I come from first you learn the material, (schooling) then you train (take what you learned and perfect it to a standard of quality) and then practice, meaning do the work as your profession on a daily basis. This is an exclusionary tactic that should not have been be allowed when the requirement was penned back in the day. We have an opportunity to fix that now. We owe it to the citizens of California, and the working men and women in the landscape architecture industry to take the time and effort to do it right.
This takes me to the proposed solution that we are considering. 10 years is a long period of time after completing 4 years of college education and/or 3 to 12 years of essentially apprenticeship before licensure. That is 16 years before obtaining a reciprocity license in California. The other thing the solution does not take into consideration is a 4 year bachelor's degree in another discipline. To be fair, there should be at least 3 paths to licensure;

1. college education in the discipline + experience	6 years total
2. college education in any discipline + experience	Longer time than item 1, maybe 8 years
3. experience	Longer time than items 1 and 2, maybe 10 years (not 16 years)

The current state of affairs is Item 1 at 6 years, the proposed is item 3 at 16 to 22 years depending experience requirements of the original state.

College education with a degree signifies that an individual has 2 years of general education and 2 years of education in a specific subject; however, far more importantly it signifies that the student is capable of accomplishing a major adult task and can endeavor to learn anything they take an interest in. Some individuals simply do not have the time or the money to attend college; however, they do have the ability to learn anything they want. College educated people should understand that that degree does not make them any better or worse than any other human being, it simply means that they may have taken a different path to where they now stand equally beside another person. In my own practice of engineering working with many, many engineers I have learned that college education or the institution they came from has little to do with their ability rise up and do outstanding work within the field. They are good at it because they have a passion for what they do and self-educate beyond their college work. The idea that we are elevating the quality and workmanship of the California Landscape Industry by allowing only college educated or non-college educated individuals after 16 years of practice to obtain a California Landscape license is preposterous.

Typically within the engineering and other professional disciplines the three paths to licensure I listed above are available within the states and through reciprocity. I believe that these three paths are in keeping with Federal and NAFTA intent to provide fair and equal treatment so that professionals can work travel, move and reside where they choose within the region.

I urge you to consider the following language that would result in reasonable and fair approach to amending CCR Section 2615(c)(1), (the changes are in bold underline):

(1) A candidate who is licensed as a landscape architect in a U.S. jurisdiction, Canadian province, or Puerto Rico by having passed a written examination substantially equivalent in scope and subject matter required in California as determined by the Board shall be eligible for licensure upon passing the California Supplemental Examination**. Provided that the candidate submits verifiable documentation to the Board indicating:**

(A) Candidate possess education and experience equivalent to that required of California applicants at the time of application:

Or

(B) Candidate holds a valid license or registration in good standing, possesses a Bachelor's degree from a recognized accredited institution, and has been practicing or offering professional services for at least 2 of the last 5 years

Or

(C) Candidate holds a valid license or registration in good standing, and has been practicing or offering professional services for at least 6 of the last 10 years

This language provides for three separate paths and reasonable amounts of experience. This hearing and the work being done on this issue is important. Please get it right. I ask that this change be approved at your next committee meeting.

In conclusion I would like to point out my reason for taking time here to offer this plea. As you might expect, I do have a horse in this race. The old adage, follow the money and you will understand what you are being pressured to do, is true here. As I see it, in the name of public safety and quality of life Californian's are being asked to spend more money on the product and bolster the coffers of our colleges that provide landscape architecture education at the expense of outsiders that apply for reciprocity and individuals without college education that earned landscape architect licenses outside the state. Excluded individuals with a four year degree in who have practiced engineering and been practicing landscape architecture for over 10 years should be able to apply for the license. The future of our children and grandchildren are at stake. Furthermore, as a lifetime 67 year old California resident and business man I am part of a generation that has perpetrated the constant erosion of ethics, fairness, and opportunity that once existed here. College educations have become affordable to the privileged few, our colleges have become businesses that prey on those that can and cannot afford them and our businesses have learned how to profit from exclusionary tactics of the less fortunate. I see here an opportunity to combat this trend and do the right thing for the youth of our State.

Please just ignore the rhetoric here and focus on the purpose of the hearing and consider the changed language I have proposed.

Best Regards
Joe Turner, RCE

Elizabeth Turner
1837 Wright Street
Santa Rosa, CA 95404
September 17, 2016

California Architects Board
Landscape Architects Technical Committee
2420 Del Paso Road, Suite 105
Sacramento, CA 95834

Dear Board and LATC Members:

I am writing to you as a third generation Californian who cares deeply about my state. I am very concerned regarding some of your proposed actions. It has been announced you will be holding a hearing on this matter on September 27, 2016; so, I have decided to share my thoughts with all of you.

As a tax paying resident of the state of California, I would prefer to see a more inclusive set of requirements for CA licensure in the field of landscape architecture. I would like to see your requirements include more varying types of approaches for entry into this field. The regulations you propose continue to severely limit the types of approach one might take to enter this field. These proposed regulations will create an additional 10 year requirement and look more like you are trying to keep even qualified people out. The only benefit these proposed regulations seem to have, for anyone, are for people already holding a CA state landscape architect license and a very limited number of educational institutions in the state of CA. Even people with no knowledge of economic theory do understand the effects and affects of artificial manipulation of the supply and demand curve.

I do understand, and support, the need for industry standards and regulations; having run the business end, (i.e. bookkeeping, financing, HR, etc.), of my husband's engineering firm for several years. I just think the requirements you are proposing, for reciprocity and to even qualify to take the examination, are onerous and unnecessary. In my opinion, if people do not have the knowledge the state requires of them to pass an examination, then she or he should not be allowed to practice in the field. As to how a person acquires the knowledge to think, or feel, he or she is prepared to take the examination , that should allow for many approaches.

Being political appointees to a board or committee asked to oversee rules, regulations, and laws, governing any industry or profession is a huge responsibility. In the case of the Architects Board and the LATC, I understand this does involve safety of the general public, good stewardship of our land and our economy. I do understand that the regulations you adopt have a very real impact on people's lives, both in your industry and as members of the general public. It would be my guess, and it is just a guess, that possibly all of you have obtained your success through some degree of higher education. I came from a family where formal education is highly valued. My grandmother was one of the first women to graduate from normal school in San Francisco. She took the boat from Elk, now usually called Greenwood, once a week. She taught school, public and private, for 70 years of her life. She lived to be 93. I have been the recipient of higher education, for which I am grateful. I submit to you that not every intelligent, hard working person in our great state or country can avail themselves of this opportunity for a myriad of reasons . I am asking you not to burden an already cumbersome system with undue regulation.

Thank you for your time,

Elizabeth Turner

Association of Professional Landscape Designers
APLD California Chapter

September 26, 2016

California Architects Board
Landscape Architects Technical Committee
2420 Del Paso Road, Suite 105
Sacramento, CA 95834

Re: Public Comment and Support for Revised Language to amend California Code of Regulations, Title 16, Division 26, Section 2615.

Dear Landscape Architects Technical Committee:

I am writing to express the APLD California Chapter's support for the Revised Language to amend California Code of Regulations section 2615 Form of Examinations. We believe that in order to address the current environmental crisis in California, a diverse and well-qualified body of landscape professionals is needed. For this reason, we support the proposal of Dustin Maxam and other out-of-state registered landscape architects' alternative to the Committee's Proposed Regulatory Language amendment to § 2615.

The revised language will expand pathways to Landscape Architecture Licensure in California. Primarily, the proposed language further aligns the California Landscape Architects Practice Act with those in the 50 States, and is inclusive to licensed individuals with diverse combinations of education and experience.

The revised language takes important small steps toward correcting California's existing barriers to the legal, ethical, and responsible practice of landscape design in our state. We recognize the positive change the LATC has started by addressing these issues, and thank you for the opportunity to comment on this improved language. We ask that you please accept the proposed language for approval at your next meeting.

Sincerely,

Mary Fisher, APLD
Association of Professional Landscape Designers (APLD)
APLD California Chapter President

sent 9/26/16

shawn@meltondg.com | 530-899-1616
www.meltondg.com

Public Comment: Proposed Regulatory Language Hearing September 27, 2016

Attn: Kourtney Nation
California Architects Board
Landscape Architects Technical Committee
2420 Del Paso Road, Suite 105 Sacramento, CA 95834
latc@dca.ca.gov

Dear Landscape Architects Technical Committee,

I am a Licensed Professional who understands the importance of Landscape Architecture. There are currently members of the profession who are as qualified as their California licensed counterparts that are being barred from obtaining licensure due to existing exclusionary regulations. Also, due to increasingly restrictive policies, over time, there are currently CA Licensed Landscape Architects practicing who would not qualify for licensure today.

The Committee's proposed Regulatory Language change, though taking steps in the right direction, borrows precedent from New York and Arizona, however this precedent is out of context because these States have a multitude of paths to licensure not available in California. California fails to recognize education outside of Landscape Architecture, however both States upon which the proposed language is based allow Licensure for individuals with varying degrees and combinations of experience.

The proposed change is also out of step with standards shared by California's Architects and Civil Engineers who are entrusted with responsibilities as critical to ensuring the public's health, safety, and welfare.

I oppose the following inequities in the current and proposed regulations:

- The proposed regulation will require any out-of-state licensed individual, regardless of education or experience, to obtain an additional 10 years of post-licensure practice experience to be granted California reciprocity. These individuals are already licensed and by definition are competent and capable of ensuring the health, safety, and welfare of public – the primary concern of licensure.
- In California a person may become a Licensed Landscape Architect if they have earned a 2 year Associates Degree or Certificate in Landscape Architecture along with proper work experience and passing the national Exam. Currently a person with a 4 year Bachelor's Degree, regardless of related subject matter, who is licensed in another state by having passed the same Exam and having the same work experience, is not eligible for licensure.
- Nearly all states require experience for initial licensure and the majority of states allow licensure on the basis of examination and experience alone. Persons are generally eligible for out of state licensure upon demonstrating an average of 8 years experience prior to examination. The current proposed regulation will tack on an additional 10 year post-licensure experience requirement for a total (average) of 18 years needed for California reciprocity. This change will continue to marginalize many talented professionals.
- While California Architects and Civil Engineers who are not college educated or who have degrees in related subjects may obtain their licensure, candidates for Landscape Architecture are not afforded that privilege. It seems clear that if we deem our Architects and Engineers who are not college educated to be as qualified as those who are, the same should hold true for Landscape Architects.

I request the following revised language to amend California Code of Regulations, Title 16, Division 26, Section 2615 be implemented and approved by the California Architect's Board:

§ 2615 Form of Examinations

(1) A candidate who is licensed as a landscape architect in a U.S. jurisdiction, Canadian province, or Puerto Rico by having passed a written examination substantially equivalent in scope and subject matter required in California as determined by the Board shall be eligible for licensure upon passing the California Supplemental Examination provided that the candidate submits verifiable documentation to the Board indicating:

(A) Candidate possesses education and experience equivalent to that required of California applicants at the time of application; or

(B) Candidate holds a valid license or registration in good standing, possesses a Bachelor's degree from a recognized accredited institution, and has been practicing or offering professional services for at least 2 of the last 5 years; or

(C) Candidate holds a valid license **or registration** in good standing, and has been practicing or offering professional services for at least **6** of the last **10** years.

Sincerely,

Shawn Rohrbacker

RLA Nevada #816
Melton Design Group
309 Wall Street
Chico, CA 95928
530.899.1616
shawn@meltondg.com

CC:
California Architects Board, cab@dca.ca.gov
Department of Consumer Affairs, dca@dca.ca.gov
Senator Jim Nielsen, senator.nielsen@senate.ca.gov
Assemblyman James Gallagher, Assemblymember.Gallagher@assembly.ca.gov
Senator Mike McGuire, senator.mcguire@senate.ca.gov
Assemblyman Jim Wood, assemblymember.wood@assembly.ca.gov
Office of the Governor, Governor Edmund G. Brown Jr.

Public Comment: Proposed Regulatory Language Hearing September 27, 2016

Dustin Maxam, RLA
325 Carrillo Street, Santa Rosa, CA 95401
707-569-6739 dmaxam@EBAgroup.com
File #: 4021 (2012 Reciprocity Application)

September 27, 2016

Members of the Committee and Staff
California Architects Board
Landscape Architects Technical Committee
2420 Del Paso Road, Suite 105
Sacramento, CA 95834

Dear Landscape Architects Technical Committee,

I applaud you for taking steps to correct the inequity in the current system. The existing regulatory language is exclusionary to professional level Landscape architects who gained licensure out of state and do not meet the precise education requirement of California's first time candidates. As a result there are currently members of the public who are as qualified as their California licensed counterparts that are being barred from obtaining licensure due to these existing discriminative regulations. These out-of-state licensed individuals, having passed the national exam, are by definition competent and capable of ensuring the health, safety, and welfare of public – the primary concern of licensure.

In California (CA) a person may become a Licensed Landscape Architect if they have earned a 2 year Associates Degree or Certificate in Landscape Architecture along with proper work experience and passing the national Landscape Architects Registration Exam (LARE). Currently a person with a 4 year Bachelor's Degree, regardless of related subject matter, who is licensed in another state by having passed the same Exam and having the same work experience, is not eligible for licensure.

The current Business and Professions Code (BPC) and California Code of Regulations (CCR) are extremely narrow in the Path to Landscape Architect Licensure when compared to the Paths available to licensees in most other States as well as to the paths of Licensure for California Architects and Civil Engineers. California's education requirement essentially cuts off whole swaths of potential candidates from ever being able to gain licensure. The fact that existing regulations allow architecture in place of landscape architecture education further illustrates how the governing regulations arbitrarily deem the education of one allied discipline more capable of ensuring the health, safety, and welfare of Californians over another.

> *Please refer to Appendix A of this letter for a summary of the existing regulatory background preceding the proposed change.*

The Landscape Architects Technical Committee's (LATC) proposed regulatory change to amend California Code of Regulations (CCR), Title 16, Division 26, Section 2615, Form of Examinations is

a misguided step toward addressing the inequities created from increasingly restrictive policies over time. These progressively constraining licensure requirements are illustrated by the fact that many currently practicing CA Licensed Landscape Architects would not qualify for licensure under today's policies. These professionals became licensed under the previous Landscape Architect's Board (LAB) and have varied educational backgrounds, which are no longer deemed acceptable by the LATC. The fact that these California licensed individuals are currently competently practicing and contributing to the profession is proof not only that there are many successful ways to obtain the knowledge and experience to pass the national landscape architecture registration exams (such as the LARE), but that they are not compromising the public safety, the primary concern of the LATC.

Per the LATC Notice and Initial Statement of Reasons, the purpose of the proposed regulation change is to expand "opportunities to become licensed in California while still protecting the health, safety, and welfare of California consumers." The LATC would do this by allowing "candidates who are licensed and have extensive experience practicing in another jurisdiction but do not meet the education requirements of California candidates to obtain California licensure."

However, the proposal is a misstep because it only appears to expand "opportunities to become licensed" and when implemented would only benefit a few individuals. These individuals would already be established out of state, hold senior or principal positions, and be nearing the ends of their careers. It would do little to address the majority of licensed candidates who do not meet California's initial licensure requirements due to existing exclusionary education requirements. These education requirements are <u>not</u> shared by the majority of other States or by California's licensure pathways for Architects and Civil Engineers (who offer licensure to those with and without discipline specific education). The proposed change would do little for those individuals who unfortunately, like most people (myself included), did not even know Landscape Architecture (LA) existed when in college and as a result possess a bachelor's degree in a subject not accepted by the LATC.

<u>Semantics</u>

Licensure requirements for Reciprocity are difficult to convey, partly because experience gained before and after licensure is treated differently. With this in mind the following analysis categorizes landscape architecture experience as either:

1. Pre licensure, meaning experienced gained before licensure and used to satisfy a state's requirements for initial licensure.
2. Post (gaining) licensure, meaning experienced acquired after initial licensure and while holding a valid license and practicing or offering services.

In addition, in the context of reciprocity between states, licensee, licensed, and licensure are assumed to be equivalent to registrant, registered, and registration in the field of landscape architecture – as is the industry standard practice.

The LATC's Proposed Regulatory Language
Relies on Precedent Taken out of Context

The Committee's proposed Regulatory Language to amend California Code of Regulations, Title 16, Division 26, Section 2615, Form of Examinations would allow reciprocity to Candidates who hold "a valid license in good standing, and [have] been practicing or offering professional services for at least 10 of the last 15 years." This language borrows precedent from New York and Arizona, however **this precedent is out of context because these States have a multitude of paths to licensure not available in California;** these states allow:

1. Licensure for candidates with varying degrees and combinations of experience, while California fails to recognize education except Landscape Architecture & Architecture.
2. Licensure for candidates with experience only, while California fails to recognize experience only pathways.

The following code excerpts, from New York and Arizona, and commentary will demonstrate how the LATC has mistakenly applied precedent to its own regulations.

Precedent Borrowed from New York Education Law, Article 148
Section 7324. Requirements for a Professional License

(3.) In lieu of degree, experience and examination requirements specified in subparagraphs (2), (3) and (4) of subdivision one of this section, ten years of lawful practice of landscape architecture outside the state satisfactory to the board may be accepted by the department upon the passing of a practical examination satisfactory to the board.

Precedent Not Borrowed from New York Education Law, Article 148
Section 7324. Requirements for a Professional License

(4.) On recommendation of the board, the department may exempt from examination an applicant who holds a license or certificate to practice landscape architecture issued to him upon examination by a legally constituted board of examiners in any other state or political subdivision of the United States, provided the applicant`s qualifications met the requirements in this state at the time such license was issued.

It is clear that borrowing precedent from New York's paragraph (3.) for the 10 years licensed experience is taken out of context because paragraph (4.) allows licensure by alternate pathways (not available to CA applicants), as described below:

(2.) In lieu of degree and experience requirements specified in subparagraphs (2) and (3) of subdivision one of this section, twelve years of practical experience in landscape architecture of a grade and character satisfactory to the board may be accepted by the department provided that each complete year of study satisfactory to the department may at the discretion of the board be accepted in lieu of two years of experience but not to exceed eight years toward the required total of twelve years. Eight years of such experience satisfactory to the board may be accepted by the department for admission to that portion of the examination related to fundamental landscape architecture theory.

According to the New York State Office of the Professions, the Department upon review accepts education toward their 12 year education and/or experience requirement as follows:

Units assigned to each educational category below are the maximum that the Department may grant. After evaluating the degree or courses you successfully completed, the Department may grant less than the maximum number of units. Credit will not be awarded for multiple categories; the highest professional education level attained determines the maximum credit to be awarded. If you completed:

A. Landscape Architectural Accreditation Board (LAAB) accredited undergraduate program and graduated with a degree from a:
4-year program - 8 units
5-year program - 9 units
NOTE: Partial credit will be considered for incomplete degree-granting LAAB accredited programs based on review of transcripts (2 units per year for a maximum of 6 units).

B. A graduate degree in landscape architecture AND an LAAB accredited undergraduate program and graduated with a degree from a:
4-year program - 9 units
5-year program - 10 units
C. A 4-year non-landscape architecture degree AND a degree from an LAAB accredited graduate program.
- 8 units
D. A degree in landscape architecture from an undergraduate or graduate curriculum that is NOT ASLA accredited
- 7 units (maximum)
An Accreditation Board for Engineering and Technology (ABET) accredited civil engineering program or National Architectural Accrediting Board (NAAB) accredited architecture program
- 6 units (maximum)
E. A 2-year landscape architecture-related technical program, you will be awarded one unit for each year successfully completed (or the equivalent in course credit)
- 4 units (maximum)
F. A 2-year landscape architecture-related technical program, you will be awarded one unit for each year successfully completed (or the equivalent in course credit)
- 4 units (maximum)
⇨ ***G. A non-landscape architecture program (other than above) and have earned:***
An Associate's Degree - 2 units
A Bachelor's Degree or higher - 4 units
H. A certificate of study or individual courses in landscape architecture, design or technology
- 0 units

Source: http://www.op.nysed.gov/prof/larch/larchlic.htm

Using New York as precedent, in fact, supports accepting both 'non-landscape architecture' degrees and experience only toward the combination of experience needed for licensure. However, this is not what the LATC is proposing. In my personal scenario, I could be given 4 units for a 'non-landscape architecture' Bachelor's degree and using 8 years work experience under a licensed landscape architect would be eligible for New York Licensure by meeting its 12 Year requirement.

To further illustrate how New York's paragraph (C.), borrowed by the LATC, is taken out of context: An individual with experience only would be eligible, in New York, for licensure upon demonstrating 12 years (including pre-licensure) experience per paragraph (4.). Why would a candidate want to demonstrate 10 years lawful practice per paragraph (3.) in addition to 6-12 years pre-licensure experience required for licensure in other states? The answer is simple: New York's board uses this method to allow licensure, in lieu of degree and experience requirements, for unforeseen circumstances such as individuals licensed under currently non-existent regulations that would not meet the initial experience requirements of paragraph (4.).

The following code excerpt, from Arizona, will demonstrate how the LATC again has mistakenly applied precedent to its own regulations.

Precedent Borrowed from Arizona Administrative Code, Title 4, Section R4-30-203. Waiver of Examination

(A.) The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who holds a valid professional or registration, or license...
(2.) The applicant submits verifiable documentation to the Board that the applicant has been actively engaged as a professional or occupational registrant, certificant, or licensee in another state or jurisdiction for at least 10 years in the

category for which registration, certification, or licensure is sought. For purposes of this subsection, "actively engaged as a professional registrant" means that the applicant holds a valid professional or occupational registration, certification, or license in good standing, and has been practicing or offering professional services for at least 10 of the last 15 years.

Precedent Not Borrowed from Arizona Administrative Code, Title 4, Section R4-30-203. Waiver of Examination

(A.) The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who holds a valid professional or registration, or license...

⇨ *(1.)* ***The applicant submits verifiable documentation to the Board that the education, experience, and examination requirements under which the applicant was registered in the original state or jurisdiction were substantially identical to those existing in Arizona at the time of the applicant's original registration, certification, or licensure;*** *or*

As you can see the LATC again borrows precedent from paragraph (2.), but fails to account for paragraph (1.) which allows for licensure with 8 years experience only as outlined in:

A.R.S. § 32-122.01 Qualifications for professional registration

2. Be actively engaged in education or experience, or both, in the profession for which registration is sought for at least eight years.

Source: https://www.azleg.gov/FormatDocument.asp?inDoc=/ars/32/00122-01.htm&Title=32&DocType=ARS

To further illustrate this inconsistency, ***A.A.C. Section R4-30-203*** also allows grants reciprocity to individuals with CLARB Council Records per:

(B.) The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who submits verifiable documentation to the Board ***that the applicant holds one of the following professional records,*** *issued by a national registration body, and is registered in good standing in another state or jurisdiction. The Board recognizes the following national registration body records:*

3. Council of Landscape Architectural Registration Boards Council Record and Certification.

Individuals may obtain CLARB Council Certification with "any bachelor's degree" and 3 years experience per CLARB Certification Standards (2.2) thus demonstrating how Arizona allows reciprocity candidates with bachelor's degrees other than landscape architecture to gain licensure. Like New York, using Arizona as precedent, in fact, supports accepting both 'non-landscape architecture' degrees and experience only toward the combination of experience needed for licensure. However, this not what the LATC is proposing.

Please refer to Appendix B of this letter for a copy of the CLARB Standards of Eligibility.

The way the LATC is adopting these States' as precedent to amend CCR § 2615 is dramatically different from the context in which they were created and implemented. The LATC's proposed language requires candidates to demonstrate 10 years of lawful practice in conjunction with 6 to 12 years pre-licensure experience gained for initial licensure in another state. The proposed regulation change essentially results in a requirement of 16-22 years of experience and is incongruent with every other state.

The below chart illustrates the experience required by borrowing precedent out of context:

Pre-Licensure Experience Only Required by other States (for Initial, first time, Licensure by Examination)			The LATC's Proposed Reciprocity Requirement: Post-Licensure Experience Required (Professional Practice, After Becoming Licensed)	Total Years of Experience Required
6	Years	- Most lenient	10 Years	16
8	Years (AZ)**	-Average	10 Years	18**
12	Years (NY)	- Most conservative	10 Years	22

**Thirty-one states grant licensure to candidates on the basis of examination and experience alone, with an average of eight years of experience required.

Nearly all states require experience for initial licensure (there are four states that allow licensure with only a degree in landscape architecture and passing the LARE). The majority of states (thirty one) allow licensure on the basis of examination and experience alone. In these states persons are generally eligible for out of state licensure upon demonstrating an average of 8 years of experience prior to examination. The minimum experience requirement is 6 years and the longest is 12 years. As illustrated in the above chart the current proposed regulation will tack on an additional 10 year post-licensure experience requirement for a total (average) of 18 years needed for California reciprocity.

Please consider that the LATC's proposed experience only pathway averaging 18 years, for reciprocity, is double the experience requirements of the California Architects and Civil Engineers I work alongside every day. To become a licensed Architect in California requires a combination of 8 years education and work experience (The Architect's Board deems a multitude of combinations of time acceptable: including a high school diploma and experience <u>or</u> 1 yr of education credit for any 'other four year accredited degree' and the remainder credit for working under a licensed Architect and a Contractor, Engineer, or Landscape Architect). Also, please consider that it is less stringent to become a Licensed Civil Engineer in California than a Landscape Architect (the BPELSG outlines 3 years of experience to become an EIT and then 6 years to become a PE; a total of 9 years of experience with no degree). Reciprocity (comity) is granted to out of State applicants, with no engineering degree and proper experience, by simply retaking the FE Exam.

The LATC's proposed change will continue to marginalize many talented professionals and will do little to accomplish its intended purpose of creating "opportunities to become licensed in California while still protecting the health, safety, and welfare of California consumers."

<u>The LATC's Proposed Regulatory Language Would Not Accomplish its Intended Purpose</u>

Per the LATC, the purpose of the proposed regulation change is to expand "opportunities to become licensed in California while still protecting the health, safety, and welfare of California consumers." However, the LATC's proposal will not accomplish its intended purpose because it would only allow licensed candidates whose experience is so extensive that they would have already been eligible for Reciprocity in California at the time they gained initial licensure in another state. This is because Senate Bill 821 amended BPC, Section 5651, effective January 1,

2010, "requiring both California initial and reciprocity candidates to qualify for licensure by the same standard of experience [including education]." Thus anyone with 10 years licensed experience (today, or in the near future) previously had an opportunity to gain CA licensure.

Please see Appendix A for additional background information.

In my personal experience, while I could currently gain licensure in both states upon which the precedent is based (NY and AZ) I would still not be eligible for Reciprocity in California under the proposed change. I would need to gain an additional 5 years professional experience - I became a Registered Landscape Architect in the State of Nevada in 2011. In Nevada I was able to take the LARE by demonstrating the proper work experience and by having an accepted degree in a related subject to Landscape Architecture. I have a Bachelor's Degree in Geography, from the University of California, which covered coursework in the physical and environmental sciences, spatial mapping and analysis, urban planning, and many other overlapping subjects.

In addition, **the LATC's proposed regulation change essentially equates the minimum education requirement for CA initial licensure candidates (a 2 year Associates degree in Landscape Architecture) to 10 years licensed experience**, as that is the only eligibility difference between CA initial licensure candidates and reciprocity candidates. I agree with the Committee's past assertion "that a substantial number of years of post-licensure experience would demonstrate an individual's competence to practice safely, even though they may not have met California's minimum educational experience requirements." However, the proposal's equation of **10 years of licensed experience equaling a two year degree in landscape architecture is unreasonable, lacks logic, and is unintentionally exclusionary**. This again illustrates how the proposed language is unable to accomplish its intended purpose.

Our Proposed REVISED Regulatory Language

Great effort and thoughtful consideration have gone into the preparation of the following 'Revised Regulatory Language' to present a reasonable and more equitable alternative to the change to California Code of Regulations, Title 16, Division 26, Section 2615, Form of Examinations. The authors of the following have consulted or attempted to consult LATC staff, LATC appointed members, CA Architects Board staff, the Office of Administrative Law staff, CLARB, and private legal counsel.

I believe I have worked diligently, in the spirit of collaboration, with LATC staff in order to prevent introducing any language that would result in eambiguity, require interpretation, or be burdensome. Along that vein, I spoke off the record with LATC Program Manager, Trish Rodriguez, and made every attempt to create an alternative that can be acceptable to all parties and move swiftly through review by the LATC, approval by the California Architects Board (CAB), and be implemented as soon as possible.

I along with other past reciprocity applicants and hundreds of concerned CA residents request the following revised language, to amend California Code of Regulations, Title 16, Division 26, Section 2615, be implemented and approved by the California Architect's Board:

§ 2615 Form of Examinations
(1) A candidate who is licensed as a landscape architect in a U.S. jurisdiction, Canadian province, or Puerto Rico by having passed a written examination substantially equivalent in scope and subject matter required in California as determined by the Board shall be eligible for licensure upon passing the California Supplemental Examination provided that the candidate submits verifiable documentation to the Board indicating:

(A) Candidate possesses education and experience equivalent to that required of California applicants at the time of application; or
(B) Candidate holds a valid license or registration in good standing, possesses a Bachelor's degree from a recognized accredited institution, and has been practicing or offering professional services for at least 2 of the last 5 years; or
(**C**) Candidate holds a valid license **or registration** in good standing, and has been practicing or offering professional services for at least **6** of the last **10** years.

Our Proposed Revised Language adds one intermediary pathway (B) to grant reciprocity to those licensed candidates possessing an accredited bachelor's degree and 2 years post licensure experience; and retains the LATC's proposed 'experience only' pathway as (C) which has been modified to grant reciprocity to licensed candidates possessing 6 years post licensure experience rather than 10 years. Both options (B) and (C) are based on defensible precedent and logic as detailed below.

Precedent for Our Proposed REVISED Regulatory Language

Washington, Oregon, Nevada, and Arizona are our neighbors and share interstate commerce, clients, and climates. In addition, Texas is a significant partner in commerce and the State with the most similar population, size, and economy. Therefore these States seem like the most logical sources of precedent.

Precedent for Revised (B) Option
Reciprocity for Licensees with a Bachelor's Degree & Experience

Landscape architecture is a broad profession drawing from many different disciplines. Work undertaken by landscape architects bridges the gaps between planners and residents, architects and engineers, contractors and owners, as well as the bottom line and the public's benefit. Because landscape architecture is such a vast field, overlapping many other disciplines, it makes sense to license those with diverse varying backgrounds in order to bring a more comprehensive breadth of knowledge to the profession.

As a landscape architect I work with a multitude of consultants and interested parties every day; my diverse background of nearly 5 years Civil Engineering experience, over 9 years (pre and post licensure) Landscape Architecture experience, and my unique education all allow me to bridge gaps between disciplines and facilitate creative problem solving that occurs when multiple

disciplines work together. It is hard for colleagues to believe that, under the current and proposed regulations, I am more qualified to begin the process of Civil Engineering licensure than Landscape Architecture in CA.

The following supports a reciprocity option based on holding any Bachelor's degree and 2 years professional (post licensure) practice experience:

The State of Nevada (NV) grants Reciprocity to those who are licensed in another jurisdiction, **actively engaged in the practice of LA for 2 or more years,** or who fulfil the (pre-licensure) education and experience requirements of NV. Nevada statute accepts not only degrees in landscape architecture, but also bachelor's degrees in related fields, as well as architecture and civil engineering. In addition, the State accepts CLARB council records which as previously described create a licensure pathway for those with any bachelor's degree. In NV, matching our proposed Revised Regulatory Language, those who meet the pre-licensure eligibility requirements are not subject to the 2 years of professional practice for reciprocity:

N.A.C § 623A.222 Eligibility based on reciprocity

1. *An applicant is eligible for a certificate of registration by reciprocity if the applicant:*
   (a) Holds an active certificate or license in good standing to practice landscape architecture in any other state of the United States, any province of Canada or any other jurisdiction approved by the Board:
   (e) Has:
   (1) Been actively engaged in full-time practice as a registered landscape architect for 2 or more years; *or*
   (2) Fulfilled the requirements for education and work experience as set forth in NAC 623A.220.

N.A.C § 623A.220 Eligibility based on combination of education and experience

1. *Except as otherwise provided in NAC 623A.222 and 623A.226, an applicant for a certificate of registration must:*
   (a) Have 6 years of education and experience in landscape architecture:
2. *The Board will accept the following combinations of education and experience to fulfill the requirements contained in paragraph (a) of subsection 1:*
   (c) A bachelor's degree in architecture or civil engineering *from an institution that is accredited by an accrediting body approved by the Board and 3 years of postgraduate work experience under the direct supervision of a landscape architect who is registered in this State, any other state in the United States, any province of Canada or any other jurisdiction approved by the Board. A master's degree in architecture or civil engineering will be deemed equivalent to 1 year of postgraduate work experience.*
   (d) Any other combination of education and experience which is deemed by the Board to be equivalent *to the requirements set forth in paragraphs (a), (b) and (c).*

While the State of Texas (TX) has similar restrictive initial licensure education requirements, as CA, they set precedent by offering additional paths to licensure specific to reciprocity applicants. In TX reciprocity applicants, who do not meet the requirements of initial licensure, must have passed the LARE or an equivalent exam and **have 2 years of post licensure experience** or have a CLARB certification. Though Texas' pre-licensure education requirements are similar to CA, Texas accepts CLARB council records and therefore allows a licensure pathway for any bachelor's degree (as previously explained). In Texas, matching our proposed Revised Regulatory Language, those who meet the pre-licensure eligibility requirements are not subject to the 2 years of professional practice for reciprocity:

T.A.C § 3.22 Registration by Reciprocal Transfer

(a) A person may apply for landscape architectural registration by reciprocal transfer if the person holds a landscape architectural registration that is active and in good standing in another jurisdiction and the other jurisdiction:
   (1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or
   (2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b) In order to obtain landscape architectural registration by reciprocal transfer, an Applicant must demonstrate the following:
   (1) the Applicant has:

(A) successfully completed the Landscape Architect Registration Examination (LARE) or another landscape architectural registration examination which the Council of Landscape Architectural Registration Boards (CLARB) has approved as conforming to CLARB's examination standards or as being acceptable in lieu of the LARE; and
(B) acquired at least two (2) years of acceptable landscape architectural experience following registration in another jurisdiction; or
(2) the Applicant currently holds a Council Certificate from CLARB that is in good standing.

In addition, Oregon accepts degrees in related fields with experience for initial licensure and de facto allows the same requirements for reciprocity. The States of Washington and Arizona accept candidates with any bachelor's degree and experience by accepting CLARB Certificates or using their own standards (§ W.A.C. 38-13-050). Also, because these States do not require the additional 2 years post-licensure experience for reciprocity our Revised Language is more conservative, yet still closer in precedent than the LATC's proposal.

Furthermore, based on my verification of LATC Staff's prior analysis, approximately 29 States grant reciprocity to those with degree's other than Landscape Architecture this is done either explicitly in their licensure requirements or by their acceptance of CLARB certificates.

From the perspective of the LATC, **the most problematic State** for this reciprocity solution is Nebraska, which allows those with any bachelor's the shortest pre-licensure experience requirement of 3 years. Our revised (B) option will offset this shortfall by requiring 2 years of post-licensure experience and **will essentially match the California 5 year experience requirement for CA initial applicants with 1 year education credit** (meeting the LATC's minimum standard).

One other concern mentioned by the LATC was how those with unaccredited degrees or unrecognized foreign degrees, not accepted under the proposed (A) option (the education in landscape architecture path), will apply for reciprocity. This can be answered simply; reciprocity applicants have already been screened by other states and I was unable to find an example of one that accepts unaccredited or unrecognized bachelor's degrees in any subject. Therefore those candidates, in this rare instance, will need to apply for reciprocity under the revised (C) option because those degrees cannot be verified.

Using Texas and Nevada precedent, and with the majority of States accepting bachelor's degrees and experience, the **LATC should accept our Revised (B) Option for reciprocity applicants as it is more effective** at achieving the goal of expanding pathways to licensure and it is more equitable to college educated licensed individuals.

Precedent for Revised (C) Option
Reciprocity for Licensees with Experience Only

Pre LATC research "31 states allow candidates to take the examination [and gain licensure] on the basis of experience alone, with a range of 6 to 12 years required." Not a single state grants licensure to candidates with zero experience; the only exception is a few states that allow examination upon completion of a degree in landscape architecture. In addition, California Architecture and Engineering licensing boards offer examples of pathways to licensure for non-college educated individuals. The LATC falls under the domain of the CA Architects Board and it only make sense that CAB would serve as precedent for its own Committee.

Our revised (C) option allows licensure eligibility to out of state licensed professionals if a Candidate had been practicing or offering services for at least 6 of the last 10 years. The basis of this rationale is that 6 years professional (licensed) experience would make up the difference between the states with the shortest and longest requirements for experience only initial licensure.

Six years is the shortest initial experience only requirement
- Twelve years is the longest initial experience only requirement
Six year difference

It is reasonable to argue that those individuals licensed in another state with the shortest pre-licensure experience of six years and who also possess an additional six years post-licensure professional practice will be as qualified, if not more so, than a CA initial candidate with an Associate's Degree in LA, four years of experience as a landscape contractor, and only one year experience under the supervision of a licensed landscape architect, as is currently allowed in CA.

Under our revised (C) option: 6 years pre + 6 years post-licensure = 12 total years of experience.

The current minimum standard for Licensure in California is examination with an associate degree in landscape architecture (1 year of educational credit) and 5 years training/experience. Once a candidate has demonstrated this and successfully passed the examinations, "he/she is deemed to be minimally competent for entry level practice."
Therefore, another equation can be established:

Twelve years of pre and post licensed experience for reciprocity
- Five years training/experience required for CA initial licensure
Seven years of additional experience

In effect this seven years of additional experience (1 pre + 6 post-licensure) equals the missing variable of 1 year of educational credit, such as an associate's degree in LA. We can examine this even more detail by considering the following.

At San Diego Mesa College, a school that recently hosted and presented to the LATC, to earn a 2 year Associates degree in landscape architecture requires 9 classes totaling 31 (lower division, undergraduate) Units. Students earn credit for educational classes and work on the basis of the 'Carnegie Unit.' California's Title V code, section 55002 defines a semester unit of credit as equal to a minimum of three hours of work per week for a semester. While semester lengths vary, the "Carnegie definition is based upon a minimum length of 16 weeks" and the "unit of credit equates to three hours of student work per week (1 hour lecture plus 2 hours of homework or 3 hours of lab) for the 16 weeks."

The following chart summarizes the units needed for an Associate's Degree in Landscape Architecture, excluding general education breadth requirements.

San Diego Mesa College Units	Course Required for the Major	Approx. No. of Weeks	Estimated Lecture Time	Estimated Lab Time	Estimated Study/ Homework	Total Min. Hours
2	ARCH 100 - Graphic Design Communication I	16	0	6	0	96
3	ARCH 135 - Tree Identification	16	1.5	4.5	3	144
3	ARCH 136 - Shrubs, Vines, Groundcover Identification	16	1.5	4.5	3	144
5	ARCH 155 - Environmental Design I: Creating Exterior Spaces	16	3	6	6	240
5	ARCH 190 - Environmental Design II: Urban and Community Design	16	3	6	6	240
2	ARCH 220 - Graphic Design Communication I	16	0	6	0	96
2	ARCH 221 - Graphic Design Communication II	16	0	6	0	96
5	ARCH 230 - Sustainability in the Built Environment	16	3	6	6	240
4	ARCH 250 - Site Design, Topography and Grading	16	1.5	7.5	3	192
Total Units: 31	**Lecture & Lab times defined by CA Title V code, section 55002				**Total Hours:**	1488

The total hours of lecture, lab, and homework sum to 1,488 hours – this the defined amount of time needed to acquire the knowledge specific to a Landscape Architecture associate's degree.

From the perspective of the LATC, **the most problematic concern is how does an individual acquire this knowledge without defined study?** The answer is yet again very simple, the knowledge is acquired exponentially over time. The fundamental skills and knowledge are learned by exposure and mentoring early on – with more abstract knowledge gained as one's career responsibilities and experience grows. This was the method used for passing along a profession's skills, knowledge, and ethics for the majority of our history. It is a tried and true model for producing great minds and talented individuals, some of whom founded the discipline of Landscape Architecture.

To look at this concept in more depth: if one year of full time professional practice is 2,080 hours (the accepted standard). Seven years of experience, as previously calculated, multiplied by 2,080 working hours per year is 14,560 hours of professional experience. Now we have the opportunity to look at a new equation, by creating a ratio of the education hours to the experience hours:

1,488 hours of study for an AA degree
/ 14,560 hours of professional experience
10%

We see that the education hours are equal to about 10% of the time required for the reciprocity candidates experience requirement. If we extrapolate this to a typical work day (10% of 8 hrs), we see that equates to about 45 mins. As a licensed professional I believe that I easily spend 45 mins a day researching, learning, practicing and acquiring the skills listed in the Mesa College chart. In addition, this learning is directly related to practice at the highest levels of our

profession – not undergraduate fundamentals; it is also in addition to the 5 years already accounted for.

So, under our revised (C) option for reciprocity, a licensed professional's twelve years of pre and post-licensure experience will more than make up for any deficiency resulting between different states' initial licensure requirements for experience only candidates. This is a more than reasonable and adequate amount of time to gain the knowledge found in a landscape architecture associate's degree program.

Precedent for using experience only as a path to licensure, without formal education, is readily available from the majority of States. **Precedent can be borrowed from the LATC's own examples of New York and Arizona**, as well as Nevada, Oregon, and Washington – all states that allow licensure on the basis of experience only (with NY and OR having the longest requirements of 12 and 11 years). **The LATC should accept our Revised (B) Option for reciprocity applicants as is for more effective** at achieving the goal of expanding pathways to licensure, is more equitable to licensed individuals with experience only, and more closely matches the precedent set by the California Architects Board for its licensees.

Our Proposed REVISED Regulatory Language is a More Effective Reasonable Alternative

The California Architects Board and the Landscape Architects Technical Committee must consider reasonable alternatives to the proposed regulation. It is my objective, with the help of my colleagues and the public, to demonstrate that our **proposed revised language for the regulation** is:

1. More effective at carrying out the purpose for which the action is proposed.
2. Is as effective and less burdensome to affected private persons.
3. Is more cost-effective to private persons and equally effective in implementing the statutory policy or other provision of law.

I believe it is a disservice to the public to exclude those capable of contributing to the profession, simply because of arbitrary requirements that have been proven not to be necessary in California and the majority of other jurisdictions. As stated, by the LATC, the purpose of amending § 2615 is to expand opportunities to become licensed in California while still protecting the health, safety, and welfare of the public. I have demonstrated how this can be accomplished with precedent and logic. **Allowing multiple paths to reciprocal licensure is a more effective way of carrying out the purpose of the LATC's proposed language change because it is inclusive of more individuals with diverse backgrounds**. Allowing licensure for these individuals will increase our professions collective knowledge base, stimulate innovation, and increase the number of licensed landscape architects – all clear benefits to the public.

Landscape Architects, such as myself, are needed in order to draw attention to and mitigate unintentional practices limiting fair competition and causing loss of benefit to the public and consumers. It has been mentioned in previous LATC meeting summary reports there is a concern that allowing reciprocity for those who recently gained licensure in other states, and who do not meet the requirements for initial licensure (i.e. education in Landscape Architecture), will somehow subvert the California process. This sentiment, along with the

proposed reciprocity requirement of 10 years professional experience, is a clear indication of the power the Committee wields to limit competition and benefit institutions of higher learning. It is also evidence of the pressing need for licensees with different backgrounds to be part of California's professional practice and licensing regulations.

Our revised regulatory language for § 2615 is as effective and less burdensome to affected private persons because individuals seeking reciprocity to California will no longer have to submit verifiable documentation that they have education equivalent to that required of California initial applicants. The LATC's proposed language essential continues to exclude qualified candidates by equating 10 years professional practice to the education obtained from a two year degree in landscape architecture. This regulatory proposal is unreasonable, lacks defensible logic, and is unintentionally exclusionary. Our revised regulatory language is far less burdensome to affected parties and will continue to protect the health and welfare of California residents. Our revised language accomplishes this while also allowing "individuals who have extensive experience practicing in another jurisdiction to obtain California licensure."

While I'm in no way discounting the importance of higher education, we do live in a society where it is simply not obtainable, financially or otherwise, for all individuals to earn a degree, extension certificate, or even a second degree in the 'proper' major. I implore you to continue on the path of reducing this burden by bringing Landscape Architecture Licensure closer to those requirements adopted by our State's Architects and Engineers whose disciplines have had much more time to evolve regulations that protect the public and are inclusive to all our Citizens.

Our revised regulatory language is more cost-effective to private persons and equally effective at implementing the statutory policy because reciprocity candidates are already experienced, licensed, and established in their careers and therefore should not have to bear undue expense and time pursuing education they, by licensure and examination definition, have already acquired. At this point in my career with financial obligations and a family it no longer makes sense or is feasible to spend $23,000 and countless hours driving to gain an Extension Certificate or $65,000 on an Online Master's Degree from a private art university (currently the only landscape architecture education options available to working professionals) to learn what I already know and have demonstrated knowledge of by passing the LARE and engaging in professional practice.

Our Proposed Regulatory Language Also Takes Into Account The Following

Business Impact

While there is no anticipated fiscal impact to Public Agencies our revised language considers the impacts to business and private persons not addressed by the LATC. We live in a time where "roughly 10,000 Baby Boomers will turn 65" every day for the next 13 years. California businesses will benefit from this regulation because they will be able to attract qualified individuals from other states in order to compensate for the loss of landscape architects leaving the field for retirement.

Source: http://www.pewresearch.org/daily-number/baby-boomers-retire/

Economic Impact Assessment
Our revised language will encourage the creation of new businesses within the State of California because it will allow qualified out-of-state licensed landscape architects who are living and working in California to gain licensure and start businesses of their own. It will also allow for the expansion of businesses currently doing business within the State of California because, as is my personal case, the multidisciplinary firm I work for can begin offering Landscape Architectural services to its California clients if I am able to gain CA licensure.

Consideration of Alternatives
I have presented the case for a more "reasonable alternative to the regulation" and have demonstrated that our revised regulatory language for **§ 2615 Form of Examinations** would be more effective at "carrying out the purpose for which the action is proposed" and "would be as effective and less burdensome to affected private persons than the proposed regulation."

Closing

My colleagues and I are members of the public directly affected by the Committee's Proposed Regulatory Language amendment to § 2615. We have presented a more equitable and reasonable alternative that must be considered. I have strived to work in partnership with as many affected parties as possible and I am dismayed by the LATC's lack of public outreach in the form of meetings or mailers to those directly affected. I am sure reciprocity is a minor issue on the LATC's plate, but I believe more discussion with those affected was warranted as evidenced by the public's response to this important issue.

I am concerned that over the years I have observed that the LATC and its members have had an understandably very close relationship with California colleges and universities. I would like to see more diversity of backgrounds appointed to the Committee in order ensure a fair regulatory environment for our small but important discipline. I urge you to consider the benefit to the public, the potential gain to the profession, the value to the industry and not just the potential loss in revenue to Institutions' degree and extension certificate programs.

I am a Registered Landscape Architect in the State of Nevada who lives and works in California; as a lifelong native Californian it is my goal to become a Licensed Landscape Architect here. I would like the proposed Regulations to be equitable to all reciprocity candidates and truly widen the path to licensure. With nearly 10 years of experience in Landscape Architecture, and significant experience in Civil Engineering and Planning, I know I am a valuable asset to the industry and our clients. I am as qualified as my California licensed counterparts and I should not be barred from obtaining licensure due to these existing discriminatory regulations.

I request the following revised language to amend California Code of Regulations, Title 16, Division 26, Section 2615 be implemented and approved by the California Architect's Board:

§ 2615 Form of Examinations
(1) A candidate who is licensed as a landscape architect in a U.S. jurisdiction, Canadian province, or Puerto Rico by having passed a written examination substantially equivalent in scope and subject matter required in California as determined by the Board shall be eligible for licensure upon passing the California Supplemental Examination
provided that the candidate submits verifiable documentation to the Board indicating:

(A) Candidate possesses education and experience equivalent to that required of California applicants at the time of application; or
(B) Candidate holds a valid license or registration in good standing, possesses a Bachelor's degree from a recognized accredited institution, and has been practicing or offering professional services for at least 2 of the last 5 years; or
(C) Candidate holds a valid license **or registration** in good standing, and has been practicing or offering professional services for at least **6** of the last **10** years.

With all things considered I commend the LATC's effort to widen the path to licensure; it is clearly time to incorporate all the incredible talent and synergy available to the profession by broadening the acceptable reciprocity requirements for out of state licensed landscape architects. **I respectfully request that you adopt our revised proposed language, approve it at your next meeting, and implement the change as soon as possible.**

Thank you very much for your time and consideration.

Sincerely,

Dustin T. Maxam, RLA
Nevada #862

325 Carrillo Street
Santa Rosa, CA 95401
707-569-6739

Appendix A

Regulatory Background

Currently many landscape architects who are licensed or registered out of state and who apply for reciprocity per California Code of Regulations (CCR), Title 16, Division 26, Section 2615, Form of Examinations, (c)(1) are ineligible for California Licensure even though they meet the following prescribed requirements.

> 2615 Form of Examinations
>
> (a)(1) A candidate who has a combination of six years of education and training experience as specified in section 2620 shall be eligible and may apply for the Landscape Architect Registration Examination.
> (2) Notwithstanding subdivision (a)(1), a candidate who has a Board-approved degree in landscape architecture in accordance with section 2620(a)(1) or an extension certificate in landscape architecture from a Board-approved school in accordance with section 2620(a)(3) shall be eligible and may apply for Sections 1 and 2 of the Landscape Architect Registration Examination (LARE). Such candidates shall not be eligible for Sections 3 and 4 of the LARE until the candidate has a combination of six years of education and training experience as specified in section 2620.
> A candidate's score on the LARE shall not be recognized in this State if at the time the candidate took the LARE, the candidate was not eligible in accordance with California laws and regulations for the examination or sections thereof.
> (b) A candidate shall be deemed eligible and may apply for the California Supplemental Examination upon passing all sections of the Landscape Architect Registration Examination.
> **(c) All candidates applying for licensure as a landscape architect shall pass all sections of the Landscape Architect Registration Examination or a written examination substantially equivalent in scope and subject matter required in California, as determined by the Board, and the California Supplemental Examination subject to the following provisions:**
> **(1) A candidate who is licensed as a landscape architect in a U.S. jurisdiction, Canadian province, or Puerto Rico by having passed a written examination substantially equivalent in scope and subject matter required in California as determined by the Board shall be eligible for licensure upon passing the California Supplemental Examination.**
> (2) A candidate who is not a licensed landscape architect and who has received credit from a U.S. jurisdiction, Canadian province, or Puerto Rico for a written examination substantially equivalent in scope and subject matter required in California shall be entitled to receive credit for the corresponding sections of the Landscape Architect Registration Examination, as determined by the Board, and shall be eligible for licensure upon passing any remaining sections of the Landscape Architect Registration Examination and the California Supplemental Examination.

This is because BPC section 5651 which waived this examination requirement specified in section 5650 (which requires candidates for licensure to have a combination of six years education and training in landscape architecture to qualify for the licensing examination) was amended by Senate Bill 821, effective January 2010, changing Business and Professions Code Section 5651 (b)(1), to requiring reciprocity candidates to qualify for licensure by submitting proof of job experience equivalent to California first time (initial) applicants, thus creating an exclusionary loophole with § 2620, Education and Training Credits.

> 5651. Examination of Applicants
>
> (a) The board shall by means of examination, ascertain the professional qualifications of all applicants for licenses to practice landscape architecture in this state and shall issue a license to every person whom it finds to be qualified on payment of the initial license fee prescribed by this chapter.
> **(b) The examination shall consist of a written examination. The written examination may be waived by the board if the applicant meets both of the following requirements:**
> **(1) Is currently licensed by a United States jurisdiction, Canadian province, or Puerto Rico, has passed a written examination equivalent to that which is required in California at the time of application and has submitted proof of job experience equivalent to that required of California applicants at the time of application.**
> (2) Has passed the California supplemental examination if, at the time of application, it is required of all California applicants.

This loophole occurs because the Landscape Architects Technical Committee (LATC) interprets the job experience of § 5651 under § 2620 (c)(1)(b) which requires one year of 'training/ practice credit' to be gained after satisfying the education requirement which excludes those

with other forms of education. It is interesting to point out that the experience requirement of (c)(1)(A) can be obtained under the supervision of a person licensed in any jurisdiction who may not be compliant with the education requirements.

2620 Education and Training Credits

The Board's evaluation of a candidate's training and educational experience is based on the following table:
[*Table omitted for brevity, see http://www.latc.ca.gov/laws_regs/pa_all.shtml#2620.*]

(b) Education Credits

(1) Candidates shall possess at least one year of educational credit to be eligible for the examination.

(2) A degree from a school with a landscape architecture program shall be defined as one of the following:

(A) Bachelor of Landscape Architecture.

(B) Bachelor of Science in landscape architecture.

(C) Bachelor of Arts in landscape architecture.

(D) Masters degree in landscape architecture.

(3) The maximum credit which may be granted for a degree or combination of degrees from an approved school shall be four years of educational credit.

(4) A degree from a school with a landscape architecture program shall be deemed to be approved by the Board if the landscape architectural curriculum has been approved by the Landscape Architectural Accreditation Board (LAAB) as specified in its publication: "Accreditation Standards And Procedures" dated February 6, 2010 or the Board determines that the program has a curriculum equivalent to a curriculum having LAAB accreditation.

(5) For purposes of subdivisions (a)(7) and (8), "partial completion" shall mean that the candidate completed at least 80 percent of the total units required for completion of the 4-year degree or extension certificate program.

(6) Except as provided in subdivisions (a)(7) and (8), no credit shall be granted for academic units obtained without earning a degree or extension certificate under categories of subdivisions (a)(1), (2), (3) or (4) of this section.

(7) A candidate enrolled in a degree program where credit earned is based on work experience courses (e.g., internship or co-op program) shall not receive more than the maximum credit allowed for degrees under subdivisions (a)(1), (2) or (3) of this section.

(8) Except as specified in subdivision (a)(5) and (6) of this section, candidates with multiple degrees shall not be able to accumulate credit for more than one degree.

(9) The Board shall not grant more than four years of credit for any degree or certificate or any combination thereof for qualifying educational experience.

(c) Training Credits

(1)(A) Candidates shall possess at least two years of training/practice credit to be eligible for the examination.

(B) At least one of the two years of training/practice credit shall be under the direct supervision of a landscape architect licensed in a United States jurisdiction, and shall be gained in one of the following forms:

1. After graduation from an educational institution specified in subdivisions (a)(1), (2), (3) or (4) of this section.

2. After completion of education experience specified in subdivisions (a)(7) and (8) of this section.

(C) A candidate shall be deemed to have met the provisions of subdivision (c)(1)(B) if he or she possesses a degree from a school specified in subdivision (a)(1) and has at least two years of training/practice credit as a licensed landscape contractor or possesses a certificate from a school specified in subdivision (a)(3) and has at least four years of training/practice credit as a licensed landscape contractor.

(2) Candidates shall be at least 18 years of age or a high school graduate before they shall be eligible to receive credit for work experience.

(3) A year of training/practice experience shall consist of 1500 hours of qualifying employment. Training/practice experience may be accrued on the basis of part-time employment. Employment in excess of 40 hours per week shall not be considered.

(d) Miscellaneous Information

(1) Independent, non-licensed practice or experience, regardless of claimed coordination, liaison, or supervision of licensed professionals shall not be considered.

(2) The Board shall retain inactive applications for a five (5) year period. Thereafter, the Board shall purge these records unless otherwise notified by the candidate. A candidate who wishes to reapply to the Board, shall be required to re-obtain the required documents to allow the Board to determine their current eligibility

Appendix B

CLARB Standards of Eligibility for Council Certification

Standards of Eligibility for Council Certification

Certification by the Council of Landscape Architectural Registration Boards is formal recognition that the Certificate holder's education, experience, examination and professional conduct meet or exceed CLARB's Certification standards. These standards are approved by CLARB's member boards and are recommended nationally as the minimum standards for licensure.

Certificate records consist of verified documentation of the qualifications of the Certificate holder and carry CLARB's recommendation to all registration boards that the individual be granted reciprocal registration without further examination.

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1. CLARB Certification Standards

To be granted CLARB Certification, an applicant must demonstrate through current, verified documentation that he/she satisfies all of the following requirements in accordance with the evaluation criteria listed in Sections 2, 3, and 4.

> **Note:** Any applicant who does not satisfy the Certification standards listed in Section 1 may be issued a Certificate if he/she has sufficient other qualifications which, while not considered to be equal to the Certification requirements, are accepted in lieu of these requirements. Alternative qualifications are identified in Sections 2, 3, and 4.

- Education: A first professional degree in landscape architecture from a program which has been accredited by the Landscape Architectural Accreditation Board (LAAB). (See Section 2.)

- Experience: 3 years of diversified experience in landscape architecture under the direct supervision of a licensed landscape architect. (See Section 3.)

- Examination: Successful completion of the CLARB registration examination where the examination administration and grading were conducted in accordance with CLARB's standards in effect at the time. (See Section 4.)

- Licensure: Current licensure by a CLARB member board.

- Professional Conduct: History of acceptable professional conduct as verified by employers, landscape architects, and member boards. Applicants may be denied Certification if, in the practice of landscape architecture, they have violated the law or if they have intentionally provided erroneous information on their application for Certification.

---

2. Education

2.1 A first professional degree in landscape architecture from a program which has been accredited by the Landscape Architectural Accreditation Board (LAAB) or the Canadian Society of Landscape Architects Accreditation Council is required.

2.2 In lieu of the degree specified in 2.1 above, satisfaction of 5.0 years of education credit as follows:

	Activity	***Percent Allowed***	***Maximum Credit***
2.2.1	Non-accredited B.L.A. or M.L.A.	100%	4 years
2.2.2	NAAB-accredited B.Arch. or M. Arch.	100%	4 years
2.2.3	ABET-accredited degree in Civil Engineering	100%	4 years
2.2.4	Any Bachelor's degree	100%	2 years
2.2.5	Diversified experience in landscape architecture under the direct supervision of a licensed landscape architect	100%	3 years
2.2.6	Diversified experience in landscape architecture under the direct supervision of a licensed landscape architect if the applicant was licensed prior to January 1, 1991.	100%	5 years

2.3 Evaluation Criteria

2.3.1 Degrees listed in 2.2.1 - 2.2.4 cannot be combined to satisfy the education credit requirement.

2.3.2 The work experience applied as education credit may not also be used to satisfy experience requirements.

2.3.3 Any degree awarded less than two years prior to the accreditation of the program will be accepted as an accredited degree.

2.3.4 Any degree awarded after a program has ceased to be accredited will not be accepted as an accredited degree.

3. Experience

3.1 Three (3) years diversified experience directly related to landscape architecture under the direct supervision of a licensed landscape architect is required.

3.2 In lieu of 2.0 years of the experience in 3.1 above, 2.0 years of experience credit as follows:

	Activity	***Percent Allowed***	***Maximum Credit***
3.2.1	Diversified experience in landscape architecture practicing as a principal	100%	N/A
3.2.2	Diversified experience directly related to landscape architecture under the direct supervision of a civil engineer, architect or credentialed planner	100%	2 years
3.2.3	Teaching in an LAAB-accredited program	50%	1 year
3.2.4	Experience in landscape architecture directly related to on-site construction, maintenance or installation procedures	50%	1 year
3.2.5	Non-diversified experience in landscape architecture under the direct supervision of a licensed landscape architect, civil engineer, architect or credentialed planner	50%	1 year

3.3 Evaluation Criteria

3.3.1 Every applicant for Certification must have at least one year of diversified experience in landscape architecture (acquired after the satisfaction of the education requirement) under the direct supervision of a licensed landscape architect; or

3.3.2 Applicants who have acquired six (6.0) years of diversified experience in landscape architecture after the satisfaction of the education requirement practicing as a principal shall be deemed to have satisfied the experience requirement.

3.3.3 Work experience in category 3.1 above will only receive credit as follows:

3.3.3.1 If it is at least 35 hours per week for at least 2 continuous months--100%
3.3.3.2 If it is at least 20 hours per week for at least 4 continuous months-- 50%

3.3.4 Work experience in any alternative category will receive the credit indicated only when the experience is at least 35 hours per week and at least 2 continuous months in duration.

3.3.5 No experience credit may be earned prior to satisfaction of the education requirement.

3.3.6 Experience received outside the United States or Canada is limited to 1 year maximum.

3.3.7 No additional education or experience credit will be awarded for obtaining more than one degree.

---

4. Examination

Note: For candidates not licensed by January 1, 2008, any sections of the exam completed prior to 1992 will no longer be accepted for transition credit towards satisfaction of the examination standard for CLARB Certification.

4.1 Successful completion of the CLARB registration examination where the examination administration and grading were conducted in accordance with CLARB's standards in effect at the time is required.

4.2 In lieu of passing the CLARB registration examination, satisfaction of one of the following (4.2.1. - 4.2.6):

4.2.1 For applicants initially licensed without successfully completing a written examination, satisfaction of both 4.2.1.1 and 4.2.1.2:

4.2.1.1 10 years of diversified experience in landscape architecture; at least 7 years of which must occur after licensure

4.2.1.2 Successful completion of the CLARB Reciprocity Validation Examination between the years of 1997 to 1999.

4.2.2 Successful completion of written examination prepared by a member board prior to 1970 and 10 years of diversified experience in landscape architecture after licensure.

4.2.3 Successful completion of a written examination prepared by a member board between the years 1970 to 1975.

4.2.4 Successful completion of the British Columbia Society of Landscape Architects' written examination, 5 years of diversified experience in landscape architecture after licensure and satisfaction of the education and experience requirements.

4.2.5 Successful completion of the California P.E.L.A., satisfaction of the licensure, education and experience requirements, as well as successful completion of L.A.R.E. Sections D & E.

4.2.6 For applicants initially licensed in British Columbia or Ontario without successfully completing the L.A.R.E., satisfaction of 4.2.6.1 and 4.2.6.2 as follows:

4.2.6.1 10 years of diversified experience in landscape architecture; at least 7 years of which must occur after licensure.

4.2.6.2 Successful completion of the CLARB Reciprocity Validation Examination between the years 1997 to 1999.

---

5. Requirements for Maintaining a CLARB Council Record/Certificate

- A CLARB Certificate holder must maintain registration in good standing with a CLARB member board. If the Certificate holder fails to maintain registration with at least one CLARB member board, the Certificate will be revoked until such time as a verification of current registration from a member board is received.

- The CLARB Council Record/Certificate is valid for one year from the date of the initial application and must be updated annually with a completed annual activity report and payment of the annual renewal fee.

- Failure to renew the CLARB Council Record/Certificate will cause the Record/Certificate to become inactive and ineligible for transmittal.

6. Revocation of CLARB Certification

- The Council may revoke a landscape architect's Certification when a member board revokes the landscape architect's registration or when a member board or court issues findings of fact regarding the professional conduct of a Certificate holder that indicate a breach of the CLARB Standards of Eligibility for Certification.

- The Council may suspend a landscape architect's Certification when a member board suspends the landscape architect's registration, issues findings of fact regarding the professional conduct of a Certificate holder that indicate a breach of the CLARB Standards of Eligibility for Certification or when the landscape architect fails to satisfy the other requirements for listed in the CLARB Standards of Eligibility for Certification. The suspension will remain in effect until such time as the cause for suspension has been removed, corrected, or otherwise remedied.

- Such matters shall be inserted in the Council Record of the individual in question for the information of member boards who may consider the individual for registration and rely upon information in the Council Record or the recommendation of the Council Certificate.

Nation, Kourtney@DCA

From:	Stephanie Landregan <landregan@att.net>
Sent:	Tuesday, September 27, 2016 2:58 PM
To:	Nation, Kourtney@DCA
Subject:	Amend Title 16 CCR Section 2615 – Form of Examinations
Follow Up Flag:	Follow up
Flag Status:	Completed

Dear Ms. Nation,

I am in complete support of the change to Title 16 CCR Section 2615, by adding the provision that candidates applying for California licensure based on licensure in another jurisdiction must submit verifiable documentation that they possess both education and experience equivalent to that required of California applicants or, if they do not meet the education requirement, that they hold a current license in good standing in another jurisdiction where they have been actively engaged in the profession for at least 10 of the last 15 years.

My question is this, this will apply to good standing in Canada and the US or will foreign licensure count?

Thank you for that clarification.

All my best,

Stephanie Landregan, FASLA
CA Licensed Landscape Architect #4093
Wild by Design
phone: 818.967.8095

Agenda Item G

COUNCIL OF LANDSCAPE ARCHITECTURAL REGISTRATION BOARDS (CLARB)

1. Update on Landscape Architect Registration Examination (LARE) Administration
2. Review and Ratify 2016-2017 Board of Directors and Committee on Nominations Elections Ballot
3. Update on 2016 CLARB Annual Meeting

The next administration of the LARE is December 5-17, 2016 and the Landscape Architects Technical Committee's (LATC) eligibility deadline for this administration is October 21, 2016. LATC continues to track pass rates for the LARE. Pass rates for the August 1-13, 2016 LARE administration are attached (see attachment G.1).

On June 28, 2016, LATC received a mail-in ballot and the final slate of candidates for the CLARB 2016-2017 Board of Directors and Committee on Nominations Elections. Mail-in ballots were due to CLARB by September 16, 2016. Since ballots were due prior to the LATC meeting, LATC Chair Andrew Bowden, and LATC member Patricia Trauth selected the following candidates:

Christine Anderson - President-Elect
Phil Meyer - Vice President
Allison Fleury - Secretary
Julia Gambrel - Committee on Nominations
Nicole Crutchfield - Committee on Nominations

The LATC's ballot was submitted on July 25, 2016. At today's meeting, the Committee is asked to review and ratify LATC's 2016-2017 Board of Directors and Committee on Nominations Elections Ballot (see attachment G.2).

The CLARB Annual Meeting was held on September 22-24, 2016. LATC member, Patricia Trauth and Program Manager, Trish Rodriguez were in attendance. The meeting included sessions on trends in regulation, CLARB's Model Law update, and the results of the recent Task Analysis. Election results for the 2016-2017 Board of Directors and Committee on Nominations are attached (see attachment G.3). Also attached is a copy of the most recent (August 2016) publication of CLARB Member Board E-News (see attachment G.4).

<u>ATTACHMENTS:</u>
1. LARE California and National Pass Rates
2. 2016-2017 Board of Directors and Committee on Nominations Elections Ballot
3. CLARB 2016-2017 Election Results
4. CLARB Member Board E-News (August 2016)

Landscape Architect Registration Examination (LARE) California and National Pass Rates

LARE Sections

1 - Project and Construction Administration
2 - Inventory and Analysis
3 - Design
4 - Grading, Drainage and Construction Documentation

2014	March 31-April 12							August 18-30							December 1-13							Total						
	California			National				California			National				California			National				California			National			
Section	Total	Pass	%	Total	Pass	%	Diff	Total	Pass	%	Total	Pass	%	Diff.	Total	Pass	%	Total	Pass	%	Diff.	Total	Pass	%	Total	Pass	%	Diff.
1	46	33	72%	351	260	74%	-2%	59	40	68%	303	203	67%	1%	53	39	74%	296	219	74%	0%	158	112	71%	950	682	72%	-1%
2	47	26	55%	326	222	68%	-13%	46	32	70%	271	192	71%	-1%	58	40	69%	314	223	71%	-2%	151	98	65%	911	637	70%	-5%
3	28	22	79%	275	215	78%	1%	34	17	50%	251	175	70%	-20%	37	28	76%	250	180	72%	4%	99	67	68%	776	570	73%	-5%
4	48	28	58%	338	210	62%	-4%	46	24	52%	271	159	59%	-7%	37	14	38%	301	163	54%	-16%	131	66	50%	910	532	58%	-8%

2015	April 6-18							August 3-15							November 30 - December 13							Total						
	California			National				California			National				California			National				California			National			
Section	Total	Pass	%	Total	Pass	%	Diff	Total	Pass	%	Total	Pass	%	Diff.	Total	Pass	%	Total	Pass	%	Diff.	Total	Pass	%	Total	Pass	%	Diff.
1	61	41	67%	420	327	77%	-10%	42	27	64%	258	185	72%	-8%	77	62	81%	373	283	76%	5%	180	130	72%	1051	795	76%	-3%
2	64	37	58%	380	269	70%	-12%	45	32	71%	286	208	73%	-2%	66	42	64%	349	258	74%	-10%	175	111	63%	1015	735	72%	-9%
3	50	37	74%	343	260	75%	-1%	39	22	56%	285	208	73%	-17%	47	28	60%	317	228	72%	-12%	136	87	64%	945	696	74%	-10%
4	50	25	50%	348	201	57%	-7%	53	35	66%	301	201	67%	-1%	52	32	62%	346	218	63%	-1%	155	92	59%	995	620	62%	-3%

2016	April 4-16							August 1-13							December 5-17						
	California			National				California			National				California			National			
Section	Total	Pass	%	Total	Pass	%	Diff	Total	Pass	%	Total	Pass	%	Diff.	Total	Pass	%	Total	Pass	%	Diff.
1	78	53	68%	426	307	72%	-4%	52	38	73%	327	229	70%	3%							
2	78	44	56%	420	302	72%	-16%	77	52	68%	323	249	77%	-9%							
3	65	43	66%	377	271	72%	-6%	55	39	71%	254	201	79%	-8%							
4	54	19	35%	370	226	61%	-26%	59	35	59%	281	180	64%	-5%							

CLARB

1840 Michael Faraday Drive
Suite 200
Reston, Virginia USA 20190
571-432-0332
www.clarb.org

2016-2017 Board of Directors & Committee on Nominations

Elections Ballot

MEMBER BOARD: California Landscape Architects Technical Committee

COMPLETED BY: Patricia Trauth, Member Board Member

Please note- Ballots may only be completed by a Member Board Member who has been authorized on the credentials letter to represent the member board's vote. Member Board Executives and staff are not eligible to complete this ballot.

Each Member Board may vote for one candidate per office, unless noted.

Please check the boxes to cast your vote:

President-Elect

- [x] **Christine Anderson**

Vice President

- [x] **Phil Meyer**

Secretary

- [x] **Allison Fleury**

Committee on Nominations (select 2)

- [ ] **Adrianne Weremchuk**
- [x] **Julia Gambrel**
- [ ] **Mark Arigoni**
- [x] **Nicole Crutchfield**

Please submit your board's ballot and credentials letter together as one voting package.

You may choose any of the following options to submit your voting package to CLARB:

- *Mail* – Mailed submissions must be received at the CLARB office by **Friday, September 16.**
- *Email* – As an attachment (Word or PDF) to Veronica Meadows by **Friday, September 16.**
- *In-person* – At CLARB's Annual Meeting registration table by **noon, Friday, September 23.**

CLARB

2016-2017

Board of Directors

President	Christopher Hoffman
President-Elect	Christine Anderson
Vice President	Phil Meyer
Secretary	Allison Fleury
Treasurer	Stan Williams
Region 1 Director	Rick Picatagi
Region 2 Director	Patrick Beam
Region 3 Director	Bob Mercier
Region 4 Director	Michael Beresnak
Region 5 Director	Cary Baird
Past President	Randy Weatherly
MBE Director	Melissa Cornelius
CEO (ex officio)	Joel Albizo

Committee on Nominations Members

Randy Weatherly, Committee Chair

Mark Arigoni

Nicole Crutchfield

Dennis Bryers

Terry DeWan

Bob Gunderson

COUNCIL OF LANDSCAPE ARCHITECTURAL REGISTRATION BOARDS

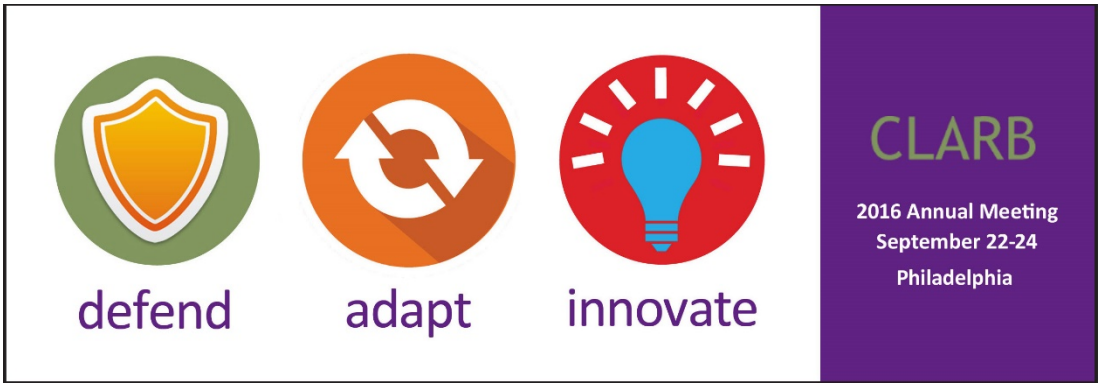
Member Board E-News

August 2016

Important Dates and Reminders

- **August 29** -- Region 3 virtual meeting
- **August 30** -- Annual Meeting hotel registration deadline
- **August 31** -- Region 1 virtual meeting
- **September 1** -- Region 5 virtual meeting
- **September 2** -- Annual Meeting attendee registration deadline
- **September 16** -- Mailed voting package due date (ballot + credentials letter)
- **September 22-24** -- Annual Meeting in Philadelphia, Pennsylvania
- **October 13** -- In the Know - Enhanced Member Services
- **October 27** -- In the Know - How Oversight and Antitrust relate to you

Visit the CLARB website for information about Board of Directors' meetings and minutes.



Only One Week Remains to Register for the Annual Meeting

The Annual Meeting is just around the corner! If you haven't registered or made your hotel reservation, there's still time but you must hurry. The deadlines to make your hotel reservation and register for the meeting are next week!

President Randy Weatherly and the CLARB Community hope to see you in Philadelphia September 22-24! Join us for member-led discussions and workshops that will address how to **defend** boards' ability to protect the public, **adapt** to changes and **innovate** for the future to ensure regulation not only survives but thrives. This meeting will provide you the opportunity to:

- Hear results of this year's Task Analysis and how the L.A.R.E. will change;
- Share your thoughts about the proposed Model Law revisions;
- Learn how regulators are successfully working with legislators;
- And more!

Meeting To-Do's:

- Make your hotel reservation by next Tuesday, August 30. Use this link to ensure you get

the CLARB room rate.

- MBEs, register attendees by next Friday, September 2. Contact Missy Sutton via **email** or phone (703-949-9466 direct) for assistance.
- Book flights if you haven't already done so.
- **Visit the Annual Meeting website** to view all meeting-related materials.

Your Vote Matters

"Your vote is your voice. Be heard." - Ben Sargent

Now is the time!

Elections are an exciting time as new leadership brings in fresh ideas, new perspectives and renewed support for continuing success. This is your opportunity to ensure your Board's voice is heard. Visit the **elections page** on the CLARB website to see this year's slate of candidates, hear their thoughts and views, and review the elections guidelines including ballot and credentials letter requirements.

Please return your Board's **ballot and credentials letter** by September 16 via **email** or by noon on September 23 at the CLARB Annual Meeting.

Regional Updates:

- Region 2 will elect its Regional Director, in person, during the regional lunch at the Annual Meeting.
- Congratulations to Michael Beresnak on his re-election as the Region 4 Director. Thank you, Michael, for your continued service!

Two "In the Know" Webcasts Coming in October

Exploring Enhancements to Member Services

In September, CLARB is launching enhanced member services such as Council Record transmittals and the CLARB disciplinary database to make it easier for your board to not only access applicant information needed to make important regulatory decisions but also share relevant information with the CLARB community. Member Board Executives at the Annual Meeting will get a sneak peek at these enhancements during the MBE session, and all members are invited to join us on Thursday, October 13 to see how these enhanced tools will help you and the CLARB community.

Mark your calendar and plan to join us on Thursday, October 13 at 3 p.m. EDT / 2 p.m. CDT / 1 p.m. MDT / Noon PDT. Access details will be provided closer to time.

Oversight, Antitrust and the Supreme Court -- Learning from FARB's Regulatory Law Seminar

The U.S. Supreme Court's decision in the case of the North Carolina State Board of Dental

Examiners v. Federal Trade Commission (FTC) has created uncertainty in the regulatory law community and has created the potential for increased risk and antitrust claims. Regulatory boards depend heavily on their legal counsel to stay up-to-date on regulatory law issues especially in today's environment.

In late September, FARB is holding its Regulatory Law Seminar with experts and attorneys from across the country to discuss the latest trends, cases and impacts to those representing regulatory boards and developing administrative law.

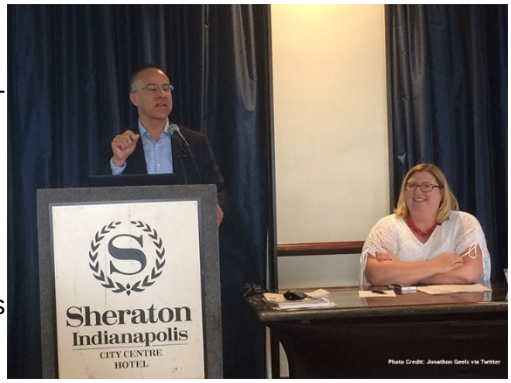
Arizona MBE Melissa Cornelius will attend this seminar on behalf of the CLARB Community and will share key takeaways and lessons learned on Thursday, October 27.

Mark your calendar and plan to join us on Thursday, October 27 at 3 p.m. EDT / 2 p.m. CDT / 1 p.m. MDT / Noon PDT.

About CLARB's "In the Know" Series

This series is designed to ensure that you are "in the know" about key issues, programs, activities and processes that are part of CLARB's work on behalf of you, our members. The events are prepared for your benefit and exclusive use and we respectfully ask that access information for these events not be shared with the public. **Visit the "In the Know" archive** to access recordings and documents from previous events.

ASLA Advocacy Summit Recap



ASLA hosted its Annual Advocacy Summit on August 12-14, bringing together 29 ASLA chapters and partners to meet and discuss ways to advance advocacy.

Joel Albizo, CEO, and Melissa Cornelius, Arizona Member Board Executive, were in attendance representing CLARB. At a session focusing on the reaction to the North Carolina Board of Dental Examiners vs Federal Trade Commission Supreme Court decision, Joel presented on the impact to regulatory boards and provided an update on next steps. A full recap on the Summit is available from ASLA **here**.

Agenda Item H

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO ADOPT NEW METHODS AND IDENTIFY NEW RESOURCES TO EFFECTIVELY EDUCATE CONSUMERS REGARDING HEALTH, SAFETY, AND WELFARE ISSUES WITHIN LANDSCAPE ARCHITECTURE

As part of its 2015-16 Strategic Plan, the Landscape Architects Technical Committee (LATC) identified an objective to "Adopt new methods and identify new resources to effectively educate consumers regarding health, safety, and welfare issues." Over the last year, staff and Committee members worked in collaboration on the development of a new *Consumer's Guide to Hiring a Landscape Architect.*

The two publications the LATC currently has available for consumer education, the *Consumer's Guide for Hiring a Landscape Architect* and *Consumer Tips for Design Projects*, are attached. At this meeting, the Committee is asked to discuss and provide direction to staff on other possible means to enhance consumer outreach to further educate consumers.

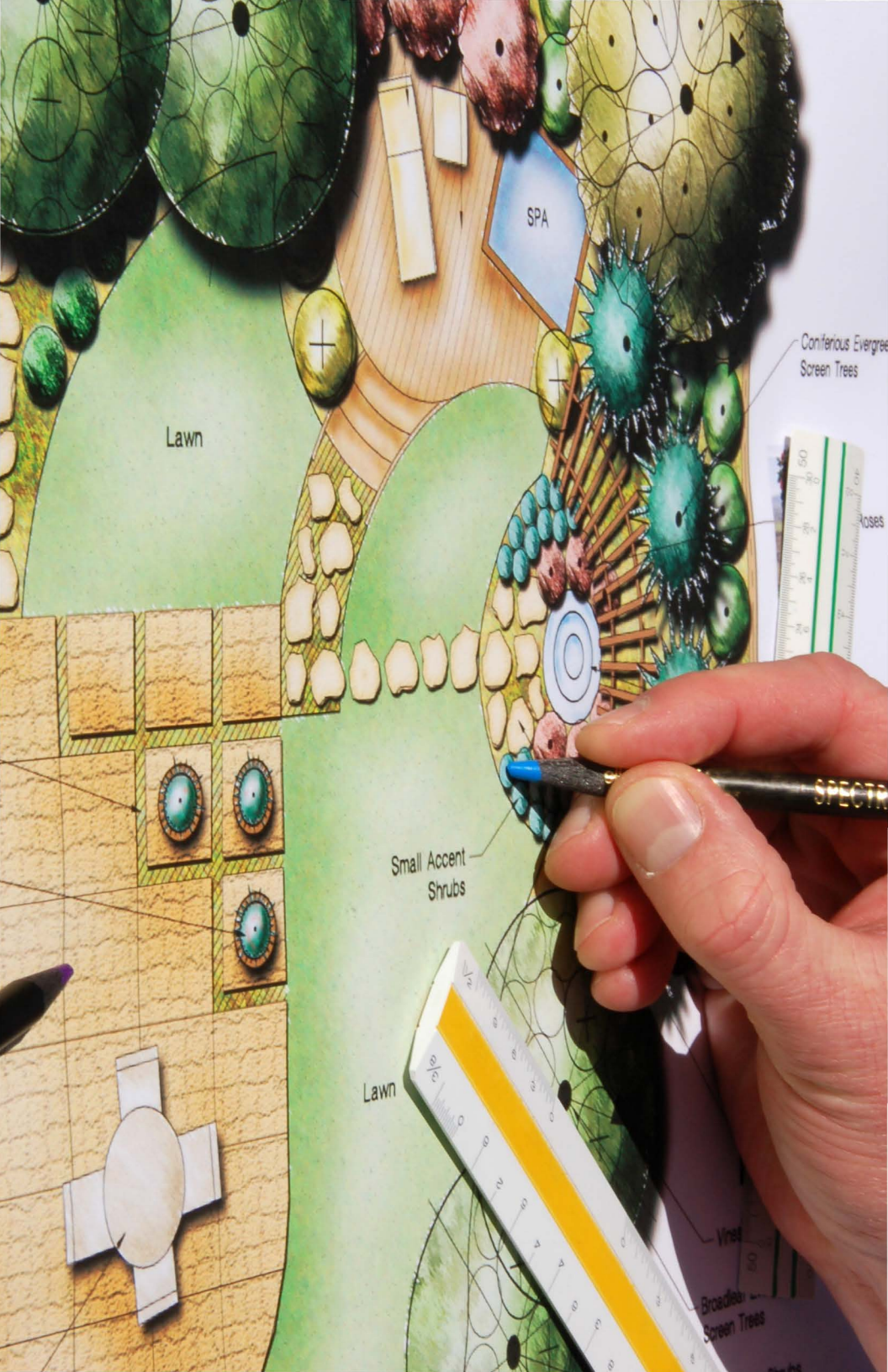
ATTACHMENTS:

1. *Consumer's Guide for Hiring a Landscape Architect*
2. *Consumer Tips for Design Projects*

Attachment H.1

LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE
CALIFORNIA ARCHITECTS BOARD

CONSUMER'S GUIDE TO HIRING A LANDSCAPE ARCHITECT


SPA
Lawn
Coniferious Evergree
Screen Trees
Roses
Small Accent
Shrubs
Lawn
Vines
Broadlea
Screen Trees

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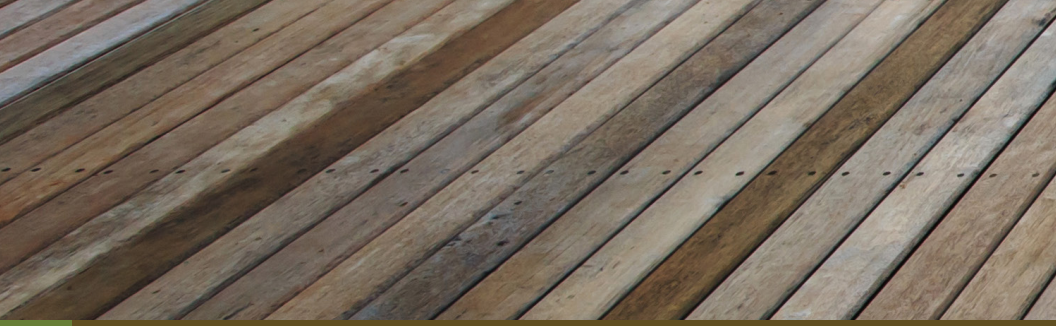

INTRODUCTION

Are you thinking about hiring a landscape architect? Consumers and businesses often wish to construct or modify landscapes for the purpose of preservation, development, and enhancement. The best approach is to hire a landscape architect to plan, design, and observe the construction of these projects. Working with a landscape architect helps ensure that your project is designed properly.

The Landscape Architects Technical Committee (LATC) examines, licenses, and regulates more than 3,500 landscape architects in California. Its mission is to protect the public.

LATC has produced this *Consumer's Guide to Hiring a Landscape Architect* to help consumers understand the sometimes complex and technical nature of landscape architectural services. It provides information on:

- What types of projects require a landscape architect.
- How to find and select a landscape architect.
- What the written contract between you and your landscape architect should contain.
- How to manage budgeting and construction of your project.

By following the suggestions contained in this guide and carefully planning and thoroughly discussing your project beforehand with your landscape architect, you will help ensure a successful project.

THE PRACTICE OF LANDSCAPE ARCHITECTURE

California law defines the practice of landscape architecture as 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. Any person who uses the title of landscape architect or advertises to provide landscape architectural services in California must be licensed as a landscape architect by LATC.

Obtaining a landscape architect's license requires an individual to demonstrate competence by passing a national examination, a California Supplemental Examination (CSE), as well as providing evidence of at least six years of a combination of education and experience. Applicants are tested for competence in the following areas:

- 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.

LANDSCAPE ARCHITECTURE ISSUES IN CALIFORNIA

While designing aesthetic and functional landscapes is second nature to landscape architects, they also play a crucial role in environmental issues in California–including fire safety, erosion control, and drought tolerance.

Our state is prone to periods of drought, yet the public demands areas of thriving vegetation. Landscape architects utilize water conservation ordinances such as the California Model Water Efficient Landscape Ordinance (MWELO) to ensure that new and renovated landscapes meet current water-saving mandates. Landscape architects use technical skills related to site detailing, landform, plant material selection, and irrigation to develop beautiful and safe environments throughout the state.

Urban growth into the natural habitats of California has led to the destruction of property and loss of life due in part to the prevalence of wildfires. California experiences more than 10,000 wildland fires per year. These fires assist the natural landscapes in revitalizing and recycling aging plant material. Landscape architects develop vegetation management zones and minimum safety distances to assist in fire safety for property owners. California's expansive natural environments have created scenarios where large-scale grading is also required. Landscape architects are educated and tested on grading, drainage, and slope stabilization.

SHOULD I HIRE A LANDSCAPE ARCHITECT FOR MY PROJECT?

For a successful project, it is generally recommended that you hire a landscape architect; however, not every project requires a landscape architect's services. California law provides that persons who are not licensed as landscape architects may provide some landscape design and related services such as preparation of:

- Plans, drawings, and specifications for the selection, placement, or use of plants for single-family dwellings.
- Drawings for the conceptual design and placement of tangible objects and landscape features.
- Any plans, drawings, or specifications for any property owned by that person.

Additionally, when determining whether you need a licensed landscape architect, architect, or civil/structural engineer, consider whether existing state laws pertaining to public health, safety, welfare issues, and/or local environmental and geographical conditions (such as snow loads, winds, earthquake activity, tidal action, flood hazard zones, and soil conditions) might need to be considered.

The table on the following page provides information on the qualifications of the different landscape professionals in California.

Professional Qualifications and Requirements of Landscape Architects, Landscape Contractors, Architects, Civil Engineers, Irrigation Consultants, Nurserypersons, and Unlicensed Practitioners*				
	POSTSECONDARY EDUCATION	EXPERIENCE	NATIONAL EXAMINATION	STATE EXAMINATION
Landscape Architect	Four-year professional degree in landscape architecture	Two years**	Landscape Architect Registration Examination	California Supplemental Examination–Landscape Architect
Landscape Contractor	Not required	Four years	None	Contractors State Licensing Board (CSLB) Exam CSLB License Exam–Landscape Contractor (C-27)
Architect	Five-year professional degree in architecture or equivalent education and/or experience	Eight years (can be supplemented by education)**	Architect Registration Examination	California Supplemental Examination–Architect
Civil Engineer	Three years engineering education or equivalent education and/or experience	Three years engineering experience or equivalent experience and/or education	Fundamentals of Engineering	California Civil Exams in Seismic Principles and on Engineering Surveying
Irrigation Consultant	Three years of irrigation-related experience or education in an irrigation-related field	Three years actively engaged as independent irrigation consultant, technician, or water resource manager	General Landscape/ Turf Exam #1 & 2, Landscape/ Turf Specialty Irrigation Exam	None
Nurserypersons	Not required	18 months full-time at a California nursery	None	California Certified Nursery Pro Examination
Unlicensed	None	None	None	None

*Information regarding the exempt area of practice can be found in the Landscape Architects Practice Act, Business and Professions Code Section 5641 et seq. and in the LATC's Permitted Practices in California chart available online at **latc.ca.gov/laws_regs/permittedpractices.shtml**.

**One year required to be under the direct supervision of a licensed practitioner.

FINDING AND SELECTING A LANDSCAPE ARCHITECT

Start by obtaining the names of several landscape architects from more than one source. You can ask for recommendations from people you know or check online for California landscape architects, landscape architectural firms, and professional associations. You can also receive more information about the practice of landscape architecture and referrals from professional associations, such as the American Society of Landscape Architects (ASLA) and its local chapters. More information about ASLA is available online at asla.org.

Landscape architects often specialize in areas such as master planning, environment planning, site planning, residential design, public facilitation and mediation, historic preservation, and visual analysis. You may find it to your advantage to contact several landscape architects to inquire about the types of projects they have experience with and what services they provide.

After receiving referrals and recommendations from various sources, you will need to determine which landscape architect will be able to provide the type of services you need at a cost that is within your budget. The following information will assist you with this process.

BASIC PROJECT CRITERIA

Prior to selecting a landscape architect, you should define basic criteria for your project and prepare to share this information with the landscape architects you are considering. The basic criteria for your project should include, but not necessarily be limited to:

- Desired size, appearance, and functional requirements of your project.
- Services you expect the landscape architect to perform.
- Proposed total budget including fees, permits, construction costs, and contingencies.
- How the project will be financed and, if known, by whom.
- Important milestone dates such as anticipated starting and completion dates of your project.

Request for Information/Qualifications

To make sure you hire a qualified landscape architect for your project, you should request that the landscape architect provide information about their qualifications and experience. After reviewing this information, you may want to interview a number of landscape architects to determine their understanding of your project and your compatibility. During the selection process, you may want to ask some or all of the following questions:

General Information

- How long have you been in business?
- How many persons are employed by your firm, and do you have the available staff to take on my project?
- Do you have a valid California landscape architect's license? If so, what is your license number? Licenses can be verified online at **latc.ca.gov/consumers/search**.
- How have you kept current in your practice?
- Do you intend to use consultants for this project? If so, who do you propose to use? What are their qualifications? What has been your experience with them? Are they insured?

- What percentage of your practice involves the type of work required for my project?
- Do you carry insurance? If so, what type(s)? How long have you carried each type and what are the policy limits?

Experience

- Have you recently completed similar types of work required for my project?
- What were your most recent project(s)?
- May I see examples of your previous projects that are similar to my project (sketches, photos, plans)?
- May I have the names, addresses, and phone numbers of the clients for these previous similar projects for references on your work?
- What was the actual construction cost versus budgeted cost for these projects?

Services

- What services did you provide for these clients during the design, bidding, and construction phases?
- What services do you propose to provide for my project during each of these phases?
- Which services are “basic” and which are “extra or additional” services?
- Who will provide these services, you or your employees? If your employees will be providing the services, will you be directly supervising them?
- What services will not be provided? What services will be provided by others?
- What does construction observation services entail? How often will you be on site?
- What is your role during site visits and during construction?
- At the conclusion of the project, will I receive a record copy of all plans? Who retains ownership of the plans once the project is completed?

Fees

- How will your fees for my project be determined and what services do the fees cover?
- Will you provide opinions of probable construction costs for my project?
- If consultants (civil, structural, mechanical, electrical, geotechnical, testing and inspection, architecture, etc.) are necessary, are their fees included in your “basic” services fee or are they separate services?
- What additional costs (e.g., permit and other governmental fees) or services (e.g., time spent obtaining necessary permits and other approvals) do you anticipate for my project?
- How do you establish your fees for additional services and reimbursable expenses?
- Will there be a charge for redesign if it is necessary to meet the construction budget?
- Will there be additional charges for changes required by the building department or other government agency?
- How are additional charges computed for design changes requested by me or requested by a contractor?
- Will you provide a list of the hourly service fees?

Time

- Can you meet my proposed schedule?
- What happens in the event that the project does not meet the proposed schedule?
- Is overtime for your employees covered in your set fee amount or is that an additional fee?

Disputes

- How will we handle any dispute that may arise between us?

MAKING THE FINAL DECISION

It is wise to check the references that each landscape architect gives you and ask the following questions:

- Did the landscape architect adhere to required schedules and budgets?
- Were you pleased with the landscape architect's services and your working relationship with him or her?
- Did the landscape architect listen to your concerns and attempt to resolve them?
- Would you hire the landscape architect again?
- What problems surfaced during the project? How were they handled? Were they resolved to your satisfaction?
- Did the landscape architect have a productive relationship with the landscape contractor and others involved in the construction of your project?

If possible, visit the projects the landscape architects have used as examples of their services.

Although the LATC does not maintain a referral service and cannot recommend landscape architects, it can advise if a landscape architect is currently licensed and whether the LATC has taken any enforcement and/or disciplinary action against that landscape architect. You can contact the LATC by phone at (916) 575-7230 or visit online at **latc.ca.gov**.

THE CONTRACT FOR DESIGN SERVICES

California law requires that any landscape architect who agrees to provide landscape architectural services to a client must have a written contract. The contract must be signed by the landscape architect and client prior to commencing services, unless the client knowingly states in writing that the services can be started before the contract is signed, or the client states in writing, after being informed about the statutory provision, that he or she does not require a written contract. Although there are these few exceptions to the requirement for a written contract, the LATC recommends that you always insist upon a written contract with the landscape architect to document the terms and conditions that will govern your relationship. Many landscape architects prepare their own contracts or have them prepared by an attorney; others use standard form agreements published by ASLA.

Whatever contract is used for professional services, it is a legal document that binds you and the landscape architect to certain obligations for the life of the project and, in some cases, beyond project completion. It should include the specific services that you and the landscape architect have agreed upon and the conditions under which these services are to be rendered. Otherwise, issues could arise that may be both expensive and time consuming to resolve.

Review the contract carefully. It is your responsibility, along with the landscape architect's, to understand the provisions included within it and to follow them. You have the right to question and negotiate changes in the terms of the contract before signing it, even if it is a printed standard form. Because it is a binding legal document, you may wish to have your legal counsel review the contract before you sign it. You should retain an original copy of the signed contract. In addition, you should not make agreements with other parties regarding your project without first notifying the landscape architect.

MANDATORY ITEMS FOR THE WRITTEN CONTRACT

Business and Professions Code Section 5616 (Landscape Architecture Contract—Contents, Notice Requirements) requires that a written contract for landscape architectural services contain, at a minimum, the following items:

1. A description of services to be provided by the landscape architect to the client.
2. A description of any basis of compensation applicable to the contract, including the total price that is required to complete the contract and method of payment agreed upon by both parties (e.g., hourly rate, flat fee, percentage of construction cost).
3. A notice that reads: “Landscape architects are licensed by the state of California.”
4. The name, address, and license number of the landscape architect and the name and address of the client.
5. A description of the procedure that the landscape architect and the client will use to accommodate additional services.
6. A description of the procedure to be used by either party to terminate the contract.

ADDITIONAL RECOMMENDED ITEMS IN THE WRITTEN CONTRACT

Beyond those items required by law for landscape architects, the LATC recommends that a contract for landscape architectural services be as clear and complete as possible in defining the goals and the expectations of both parties for the project. Since this venture is a collaboration of client and landscape architect, the contract should clearly define the client’s responsibilities as well as those of the landscape architect.

Basic client responsibilities generally include providing the following:

- Project information and decisions in a relevant and timely manner.

- Property-related information including legal descriptions, boundary and topographic surveys showing existing conditions, soils testing and reports, unless otherwise defined or authorized in the agreement.
- Description of desired project requirements, especially related to size, uses, and appearance.
- Definition of critical project milestones such as funding cycles, third-party approvals, and anticipated or required completion/ occupancy dates.

A basic contract could be expanded to include some or all of the following:

- The address of the project and, if applicable, the project's title.
- A narrative description of the project, including any unique or special requirements.
- The project schedule with critical time frames for events such as funding cycles, third-party approvals, completion of design services, start and completion of construction, etc.
- An estimated construction budget and a description of what it includes.
- A provision for fee and construction budget cost escalation or contingencies for changes in the project scope during design and construction phases or for delays to schedules.
- An understanding of when the client's approval must be given in order for the landscape architect to proceed to the next phase.
- An itemized listing and description of the landscape architect's basic services and the proposed fee.
- A definition of additional services and procedures for authorization and compensation.
- A definition of reimbursable expenses and the procedures for authorization and compensation.
- A definition of the procedure for documenting all changes in project scope, cost, and schedule.
- A listing of the project consultants, if known, that may be needed (i.e., engineering, geotechnical, architect, etc.) and the procedure for hiring and compensating them.
- A schedule of when fee payments are due and in what amounts.

- A definition of the amount of any required retainer fee and how and when it will be applied to the total fee for services.
- How final payment is computed if the contract is terminated.
- A clarification of who is responsible for keeping project account records and when they may be reviewed.
- Whether construction observation services are included and a description of the intent and scope of these services; and if they are part of basic or additional services.
- Whether assistance with bidding and/or establishing a contract between a contractor and owner will be provided, and if it is part of basic or additional services.
- A clarification of who owns, can use or reuse the project documents, including electronic files, upon completion of the project or if the landscape architecture contract is terminated.
- A procedure for handling disputes between the parties should the need arise (for example, arbitration, mediation, or civil action). Be aware a landscape architect has a right to file a mechanics' lien in the event the agreed-upon fees are not paid (see page 19).

KEEPING RECORDS

It is important to keep the written contract and a written record of all verbal communication with the landscape architect related to the project. Do not assume the landscape architect will interpret everything you discuss with him or her the same way you do. When you have a meeting or discussion with the landscape architect about your project, write the landscape architect a memo or e-mail confirming your understanding of that meeting or discussion. These memos can help to prevent misunderstandings from occurring and may prove invaluable should a problem or dispute occur. Include the date and time of your conversation in the memo or e-mail, as well as the date you write it.

You may also want to maintain written documentation about the progress of the project. Photographs or videos taken at regular intervals with the date taken notated can be very useful in establishing a historical record of the project.

Keep detailed financial records by ensuring the landscape architect provides detailed invoices. Also keep records of the date and amount of each payment you make. Require the landscape architect to obtain your written approval at designated phases and before additional costs are incurred.

Make sure that you receive a copy of all documents you sign, and keep a copy of all documents you give to the landscape architect.

FINANCIAL ISSUES

Before you sign the written contract, clearly establish the total amount of money (including contingency funds) you are willing to pay for the design and construction of your project, the frequency of progress payments you will make to the landscape architect, and the amounts and schedule for these payments. Make sure this fee schedule is recorded accurately in the written contract, and that you make each payment to the landscape architect as called for in the contract. If you have obtained a loan for your project, ensure that it covers both the cost of the landscape architect's services and the construction cost.

Payment schedules should reflect the services to be provided on your project. Be wary of excessive advances or retainer fees to begin services. Make the final payment when the services are complete in accordance with the contract and you are satisfied with the services the landscape architect has provided you.

Careful planning and discussion with the landscape architect regarding services and payments, along with accurate record keeping, will develop open communication and lead to a successful working relationship.

CONSTRUCTION HINTS

Unless you are experienced in construction, you might consider hiring a licensed contractor. The Contractors State License Board can be contacted at (800) 321-2752 or **cslb.ca.gov** to verify a contractor's license and access consumer information.

A building permit does not guarantee that the plans the landscape architect gives you are sufficient for construction. Discuss the plans with the landscape architect and contractor to ensure they are suitable for bidding and construction purposes.

WHAT TO DO IF A PROBLEM OCCURS WITH YOUR PROJECT

You have a right to receive competent and professional service from the landscape architect you have hired. However, even if you have read and followed this guide and have done everything possible to prevent problems, you may still encounter difficulties.

In the event a problem should arise, you should first discuss the problem thoroughly and calmly with the landscape architect. If you believe the landscape architect is violating your written contract, review the contract and other relevant documentation with the landscape architect. If your contract has a dispute resolution procedure, you should comply with it or take civil action as appropriate. You may also file a complaint with LATC.

PRE-CONSTRUCTION MECHANICS' LIENS

Design professionals have a right to record a mechanics' lien before construction begins. A pre-construction mechanics' lien is a remedy available only to architects, landscape architects, professional engineers, and land surveyors who provide services during the planning phase of a private work project under a written agreement with the owner. The lien is on the property for which the project is planned and may not be recorded until a building permit or other governmental approval associated with the project has been obtained in connection with the services rendered by the design professional. Pre-construction mechanics' liens may be converted to regular mechanics' liens within 30 days of commencement of the work of improvement.

MECHANICS' LIENS

Once construction commences, a landscape architect may have the right to record a mechanics' lien against your property for any unpaid fees. A mechanics' lien is a remedy available to certain persons who bestow labor, services, materials, etc. to a private project. The law governing mechanics' liens is very complex. In the event of a dispute with your landscape architect that results in the recording of a mechanics' lien, you may wish to consult legal counsel.

WHAT CONSTITUTES A COMPLAINT?

The LATC investigates alleged violations of the provisions of the Landscape Architects Practice Act (Act). The LATC has the authority to receive and investigate complaints against landscape architect licensees and discipline violators accordingly. Do not hesitate to call or write the LATC about any questions or concerns you may have. The LATC may take action against landscape architects for:

- Fraud or misrepresentation in obtaining a license.
- Impersonation or use of an assumed or corporate name.
- Aiding or abetting unlawful practice.
- Signing another individual's plans or permitting the misuse of their name.
- Fraud or deceit in the practice of landscape architecture.
- Negligence or willful misconduct.
- Failure to accurately represent qualifications.
- Gross incompetence.

Disciplinary and enforcement actions may include license revocation, license suspension, license probation, citations, civil injunctions, and/or referral to local district attorneys for criminal prosecution.

The LATC may also investigate complaints about unlicensed individuals attempting to provide landscape architectural services.

HOW TO FILE A COMPLAINT

You may contact LATC at the address listed in this booklet. If you contact LATC via phone, you will be sent a complaint form with instructions for filing a complaint against a landscape architect or unlicensed person.

Further complaint information and forms are available on LATC's website at **latc.ca.gov**. Complete the form and return it to LATC along with any evidence to support your complaint. If you submit a letter, fully describe your complaint. Submit copies of all documentation that you believe will substantiate your complaint. Keep the originals of these documents, as well as a copy of your complaint letter. Include your name, address, and phone number so that LATC may contact you if more information is required.

You have the right to remain anonymous by requesting it at the time you file your complaint. However, anonymity may add some difficulty or may prevent LATC from fully investigating your complaint and/or prosecuting the case.

HOW WILL LATC RESPOND?

You are encouraged to notify LATC as early as possible so that its staff can help you resolve the problem.

After LATC receives your complaint, you will be formally notified of its receipt and that LATC has begun the review process. If necessary, you will be asked to provide additional information. If LATC believes the complaint has merit, it will begin the investigation by evaluating the professional and/or technical aspects of your complaint. A letter will be sent to the landscape architect or unlicensed individual approximately 10 days after receipt of your complaint requesting a response to the allegations.

LATC may only take action where there is a violation of the Act. If your complaint concerns something outside the LATC's jurisdiction, you will be notified if another state or local agency might be able to assist you. If you are seeking recovery of money for alleged damages, you should consider other avenues of redress (i.e., arbitration, small claims court, civil, or criminal action) as LATC does not have the authority to recover monetary damages for you. The Department of Consumer Affairs has several publications available at **dca.ca.gov** concerning small claims court.

LATC gives the highest priority to complaints involving a person's life, health, safety, or welfare.

LATC CONTACT INFORMATION

Landscape Architects Technical Committee

2420 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 575-7230

latc@dca.ca.gov

www.latc.ca.gov

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DEPARTMENT OF CONSUMER AFFAI

Landscape Architects Technical Committee

CALIFORNIA ARCHITECTS BOARD

Public Protection Through Examination, Licensure, and Regulation

(916) 575-7230

www.latc.ca.gov

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DESIGN SUCCESS

A design project can be one of the most significant investments that consumers make. Enhancing your property can have a wide range of benefits. But a project that goes wrong can be costly and frustrating. There are a number of basic steps that consumers can take to help keep their projects on track.

CALIFORNIA ARCHITECTS BOARD

Public Protection Through Examination, Licensure, and Regulation

2420 Del Paso Road, Suite 105
Sacramento, CA 95834
(916) 574-7220
www.cab.ca.gov

Consumer Tips for Design Projects

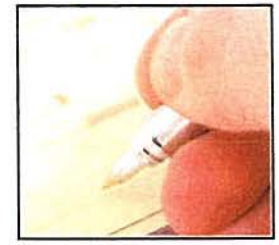
The California Architects Board and the Landscape Architects Technical Committee believe that following these basic tips will help you avoid problems with your project.

Check

Check references from recent clients with similar projects. Check with the Better Business Bureau. And, of course, check with the California Architects Board (Board) and Landscape Architects Technical Committee (LATC) to see if there are any enforcement actions against the architect, landscape architect, or unlicensed individual.

Contract

Any business transaction should be spelled out in a contract. Basic required elements are: a description of services; the basis of compensation; name, address, and license number of the architect or landscape architect, and address of client; procedure to accommodate additional services; and a description of the procedu to terminate services. While these elements are required by law fo architects and landscape architects, the Board and LATC recommend that they be utilized for any project.



Costs

Work with the architect or landscape architect to develop a realistic budget for your project. Make sure to account for the specific materials and features noted in your design.

Communicate

If anything seems confusing or inconsistent with your contract, le your architect or landscape architect know immediately. It is important to document every point you communicate so you have complete record of the project. Save e-mails, invoices, checks, memos, construction documents, etc. These will all help keep the project on track and avoid any discrepancies.

The Board and LATC have a number of publications (including consumers guides) at www.cab.ca.gov and www.latc.ca.gov that may be helpful. Feel free to call us at (916) 574-7220 (Board) or (916) 575-7230 (LATC) for more information.

Agenda Item I

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO EXPLORE METHODS FOR DEVELOPING A TELECONFERENCED EDUCATOR'S ROUNDTABLE COMPRISED OF SCHOOL REPRESENTATIVES TO INCREASE COLLABORATION AND COMMUNICATION FOR FUTURE LATC STRATEGIC PLANS

In recent years, the Landscape Architects Technical Committee (LATC) has made an effort to increase educator participation by holding quarterly meetings at California landscape architecture schools. As part of its 2015-16 Strategic Plan, the LATC identified an objective to "Explore methods for developing a teleconferenced Educator's Roundtable comprised of school representatives to further increase collaboration and communication."

Attached is a list of possible invitees for the next strategic planning session which is scheduled for January 18, 2017. Possible topics for discussion include: 1) community college transfer agreements with LAAB programs; 2) the current means of presenting licensure information to landscape architecture students, and; 3) the National Council of Architectural Registration Boards' (NCARB) Integrated Path to Architectural Licensure (IPAL) initiative. At today's meeting, the LATC is asked to discuss this Strategic Plan objective and take possible action.

Note: IPAL provides students the opportunity to complete requirements for licensure while earning their degree. Spearheaded by NCARB, the initiative encourages accredited programs to incorporate the Architectural Experience Program® (AXP®), as well as the opportunity to take the Architect Registration Examination® (ARE®), into curricula.

ATTACHMENTS:
1. California Landscape Architectural Schools List
2. Inaugural Integrated Path, Schools Named by NCARB

California Landscape Architectural Schools

California State Polytechnic University, Pomona
Andrew Wilcox, Interim Chair
College of Environmental Design
Department of Landscape Architecture
3801 West Temple Avenue
Pomona, CA 91768
Fully Accredited BSLA and MLA Programs

California Polytechnic State University, San Luis Obispo
Omar Faruque, ASLA, Professor and Department Chair
College of Architecture and Environmental Design
Landscape Architecture Department
San Luis Obispo, CA 93407
Fully Accredited BLA Program

University of California, Berkeley
Louise Mozingo, ASLA, Chair
Department of Landscape Architecture and Environmental Planning
202 Wurster Hall, #2000
Berkeley, CA 94720
Fully Accredited MLA Program
Unaccredited Undergraduate Program

University of California, Davis
Steve Greco, Chair
Department of Environmental Design
1 Shields Avenue
Davis, CA 95616
Fully Accredited BSLA Program

University of Southern California
Kelly Shannon, Intl ASLA, Professor and Director
Graduate Program in Landscape Architecture
School of Architecture
Watt Hall, #204
University Park
Los Angeles, CA 90089
Fully Accredited MLA Program
Unaccredited Undergraduate Program

Woodbury University
Norman Millar, AIA, Dean
School of Architecture
2212 Main Street
San Diego, CA 92113
Unaccredited MLA Program

University Extension Certificate Programs

Certificates issued by the following extension universities are fully approved by the Landscape Architects Technical Committee.

University of California, Berkeley Extension
Eddie Chau, Program Director
Landscape Architecture Program
U.C. Berkeley Extension
1995 University Avenue
Berkeley, CA 94704

University of California, Los Angeles Extension
Stephanie V. Landregan, Program Director
Landscape Architecture Program
10995 Le Conte Avenue
Los Angeles, CA 90024

City/Community Colleges

LATC does not review or approve 2-year programs or curriculum. This list is not the complete list of programs.

Mesa College
Ian Kay, Department Chair
Department of Architecture and Environmental Design
7250 Mesa College Drive
San Diego, CA 92111

MiraCosta College
Karen Smith, Ph.D., Department Chair
Department of Horticulture and Hospitality
1 Barnard Drive
Oceanside, CA 92056

Modesto Junior College
Don Borges, Dean
Department of Agriculture & Environmental Sciences
435 College Avenue
Modesto, CA 95350

Southwestern College
Mark Valen, Chair
Landscape & Nursery Technology Program
900 Otay Lakes Road
Chula Vista, CA 91910

West Valley College
Dr. Soroush Ghahramani, Int'l Assoc. A.I.A., Chair
Department of Architecture
14000 Fruitvale Avenue
Saratoga, CA 95070

Attachment I.2

NCARB

Inaugural Integrated Path Schools Named by NCARB

August 31, 2015

Washington, DC—The National Council of Architectural Registration Boards (NCARB) has announced the names of the first 13 accredited architectural programs to be accepted for participation in the NCARB Integrated Path Initiative. The initiative encourages programs that are accredited by the National Architectural Accrediting Board (NAAB) to propose a pre-graduation integration of education, experience requirements and the opportunity to take each of the six divisions of the new Architect Registration Examination® 5.0.

The acceptance of initial participants culminates a two-year effort of the Council's Licensure Task Force (LTF) to design an integrated path framework that promotes individual academic program flexibility while addressing all regulatory requirements for architectural licensure. The LTF, composed of licensing board members, former presidents of related architectural organizations, recently licensed architects and aspiring architects, deans and instructors, and members of the public, reviewed existing programs requiring experience as a pre-graduation requisite and conducted a Request for Interest & Information and a formal Request for Proposals as part of its deliberations.

NCARB has established a new Integrated Path Evaluation Committee (IPEC) to oversee the ongoing work of this initiative. It is anticipated that the IPEC will continue to coach accepted programs, promote engagement with jurisdictional licensing boards regarding necessary law or rule changes to incorporate integrated path candidates, and oversee the acceptance of future program applicants.

These 13 accepted schools represent a wide range of accredited B.Arch and M.Arch programs in 9 jurisdictions, and are equally split between public and private institutions.

The inaugural class of NCARB-accepted Integrated Path programs is composed of:

- Boston Architectural College; Boston, Massachusetts
- Clemson University; Clemson, South Carolina
- Drexel University; Philadelphia, Pennsylvania
- Lawrence Technological University; Southfield, Michigan
- NewSchool of Architecture and Design; San Diego, California
- North Carolina State University; Raleigh, North Carolina
- Portland State University; Portland, Oregon
- Savannah College of Art and Design; Savannah, Georgia
- University of Cincinnati; Cincinnati, Ohio
- University of Detroit Mercy; Detroit, Michigan
- University of North Carolina-Charlotte; Charlotte, North Carolina
- University of Southern California; Los Angeles, California
- Woodbury University; Los Angeles, California

"Each of these programs has impressed our Licensure Task Force with their creativity, commitment to maintaining their NAAB-accreditation, and desire to provide a conduit for students who choose a rigorous path that will enrich both the academic and experience elements of architectural licensure," said NCARB President and LTF Member Dennis S. Ward, NCARB, AIA. "We look forward to coaching these programs, and future program participants, as well as celebrating the licensure of their alumni. Over the next few years we will provide support to our licensing board members as they work to evolve their regulations toward accepting this new licensure path."

Each program will implement the integrated path according to the schedule developed with their administration and faculty. Starting dates may vary from school to school. Integrated path students in each program will be part of existing accredited degree programs.

Many of the accepted schools have issued statements regarding their participation in the program.

Boston Architectural College; Boston, Massachusetts

Being selected as an NCARB 'integrated path' pilot recognizes the Boston Architectural College's tradition of integrating rigorous academic coursework with applied, practice-based learning in monitored and evaluated experience settings. It not only underscores the exceptional potential of BAC's approach but also strengthens the commitment of all partners—students, administrators, educators, and supervising practitioners alike—to redouble the collective efforts to communicate openly and ensure a student's ultimate success.

This recognition will enable the BAC to implement a series of progressive educational changes that stand to benefit all BAC architecture students by eventually reshaping our architecture curriculum. There is no doubt that this is a welcome 'game changer' for the BAC."

Len Charney I Dean of Practice
Boston Architectural College

Clemson University; Clemson, South Carolina

"Clemson School of Architecture is pleased to be at the vanguard of this new initiative to put in practice what has been a core principle of the program—melding the academy and practice to the betterment of both."

Ray Huff, FAIA, Director
Clemson Architecture Center in Charleston

Related Content

NCARB Accepts Over a Dozen Schools for "Integrated Path" to Licensure
This initiative will result in a more structured experience for students and offers the ability to complete the requirements for architectural licensure at the time of graduation. [more]

University of Kansas to Bring Internship and Examination Into Curricula
The University of Kansas joins 13 accredited programs that will participate in NCARB's integrated path to architectural licensure. [more]

880 71 9 1758

Drexel University; Philadelphia, Pennsylvania

"Drexel already attracts highly motivated students who are aware of the program's access to a NAAB-accredited degree while simultaneously logging enough IDP credits to sit for examination upon graduation. The Integrated Path to Architectural Licensure will become an attractive option for qualified students who determine early in their studies that they are interested in licensure. Participating firms that support our program by both hiring our students and providing adjunct instructors have indicated enthusiastically their support of early access to licensure.

We look forward to working with NCARB to launch this exciting initiative, which has an opportunity to radically re-invent architectural education."

Rachel S. Schade, AIA
Program Director, Architecture
Associate Teaching Professor
Associate Director for Student Placement
Department of Architecture + Interiors, Drexel University
Westphal College of Media Arts & Design

Lawrence Technological University; Southfield, Michigan

"As Lawrence Technological University embraces the conversation between 'Theory and Practice,' this opportunity enables us to celebrate the critical relationship between education and professional licensure. The return on investment from this initiative will greatly benefit our region, particularly as it helps us address the complex issues that face American cities, as in the case of Detroit, which is so important to the College of Architecture and Design."

Amy Green Deines,
Interim Dean and Professor
College of Architecture and Design
Lawrence Technological University

"The Integrated Path to Architectural Licensure presents Lawrence Technological University with an opportunity and a challenge to build a more robust dialogue between our academic ambitions and professional pursuits. We are honored to be selected as one of the first universities to participate in this innovative program and we look forward to partnering with the profession to develop this dialogue."

Scott G. Shall, AIA,
Interim Associate Dean and Associate Professor
College of Architecture and Design
Lawrence Technological University

"The Integrated Path to Architectural Licensure aligns perfectly with Lawrence Technological University's longstanding tradition of teaching theory and practice. It will allow the Department of Architecture to better coordinate and support our students' academic and professional pursuits."

James Stevens,
Interim Chair and Associate Professor
Department of Architecture
Lawrence Technological University

"This designation by NCARB formalizes what the mission of our architecture program has always been: a program that aims to educate architects who practice in the service of the public."

Martin Schwartz
Associate Chair and Associate Professor
Department of Architecture
Lawrence Technological University

NewSchool of Architecture and Design; San Diego, California

"The Integrated Path to Architectural Licensure will transform architecture education. By enhancing current educational practice with experiential learning and licensure exam preparation, graduates of this program will be prepared to enter the profession as licensed architects, armed with the knowledge, skills and experience required for sustained success. At NewSchool of Architecture & Design, we are excited to be one of the leaders of this innovative national movement with NCARB.

The integrated path to licensure allows NewSchool of Architecture & Design to meet its mission by offering an efficient pathway to success that meets surging industry demand and addresses increasing student pleas for an expedited trajectory to employment. We are proud to work with NCARB to offer innovative opportunities which empower students and transform our industry.

Transformative education must fully integrate academics and practice to ensure that every student graduates prepared to excel professionally, while making a positive impact on their industry and community. The Integrated Path to Architectural Licensure will fundamentally alter architectural education by integrating education, examination and experience, thereby expediting the attainment of credentials and formalizing the collaboration between education and practice. NewSchool of Architecture & Design is excited to be one of the leaders of this innovative national movement."

Vivian Sanchez
Chair
NewSchool of Architecture & Design Board of Directors

North Carolina State University; Raleigh, North Carolina

"The Integrated Path toward Licensure project brings together the study and practice of architecture in a fashion that encourages students to reconsider the office as a learning environment. It is an experience that matures the student in such a way as to enrich their study of architecture as they will be more able to understand the implications of design concepts. And, it normalizes the path toward licensure making the profession more accessible.

Within the underlying idea of the Integrated Path toward Licensure are the seeds of major transformation in architectural education. In my opinion it is a good form of subversive strategy that will benefit students as well as the profession at-large."

Marvin Malecha, FAIA, DPACSA
Dean of the College of Design

"The School of Architecture at NC State places an emphasis on preparing students to enter the profession. We have built strong relationships with practices, regional, national and global, plus extensive experience with online learning technology. The Integrated Path to Licensure will draw upon these resources to bring an unprecedented opportunity to our students. We are thrilled to be a part of the initial effort, and particularly look forward to working with NCARB and the other schools to share approaches and innovations over the coming years."

Dr. Robin F. Abrams, FAIA, ASLA
Head of the School of Architecture

Portland State University; Portland, Oregon

"The Portland State University School of Architecture is delighted to be part of the first group of universities offering an accelerated path to architectural licensure. Our students arrive with diverse educational backgrounds; they come to the university at many different stages in their lives and many financially support themselves and families. An accelerated pathway is an opportunity to combine their employment and their education in a focused way that reinforces the learning that occurs in both settings. For them, their goal of being a licensed architect is within sight.

While this intensive program is for only a few students who can make the commitment, parts of it will help many other students get involved in IDP and shorten their time to licensure. A mark of success for us as a school is not only seeing those in the accelerated pathway program obtain their license, but seeing an increase in students who start their IDP record outside of this pathway and who take advantage of the ARE study cohorts. Once students are on this trajectory, they are more likely to complete it after graduation and bring greater expertise to the profession."

Barbara Sestak, FAIA, NCARB
Professor of Architecture
Portland State University
College of Fine Arts
School of Architecture

Savannah College of Art and Design; Savannah, Georgia

"I applaud NCARB on this innovative initiative, which fully aligns with SCAD's tradition of bridging academia and the profession. Professional partnerships are a hallmark of the SCAD education, and students will definitely benefit from a seamless fusion of their academic curriculum, internship program, and examination preparation."

Paula Wallace
SCAD President and Founder

"SCAD is honored to be partnering with NCARB to inaugurate a momentous new era in architectural education. Integration is the real key. The reciprocal benefits of experiencing education, internship and examination in a fully integrated program amplifies the effects of each individually. The deliberation and care that NCARB's Licensure Task Force has taken in moving this landmark initiative forward has been exemplary. It underscores not just the magnitude of the task, but their commitment to evolving the profession into the 21st century."

Christian Sottile
Dean
SCAD School of Building Arts

University of Cincinnati; Cincinnati, Ohio

"The School of Architecture and Interior Design at the University of Cincinnati is already recognized as one of the leading institutions in preparing young designers for architectural practice. The School's inclusion among the founding institutions in the Integrated Path to Architectural Licensure program affirms that the School's blend of academic instruction and full-time work experience is exemplary in preparing its students for full membership in the profession of architecture.

The rationalized program of educational and work experiences, verified by rigorous examination, represented by the Integrated Path to Architectural Licensure Program, will serve as a model to other professions, and at the same time eliminate certain structural barriers some architectural interns face in achieving licensure."

Jeff Tilman, Ph.D., AIA
Assoc. Director
School of Architecture and Interior Design

University of Detroit Mercy; Detroit, Michigan

"The five-year accredited masters of architecture program at the University of Detroit Mercy has a longstanding tradition of integration with the profession, including one of the oldest co-op programs in the country. Building on that history, this new integrated path, which will make it possible for a student to elect the six-year option leading towards the completion of all three elements required for licensure, will provide a very valuable opportunity for those students who are highly motivated to attain licensure early in their career."

Will Wittig, AIA
Professor & Dean
University of Detroit Mercy
School of Architecture

University of North Carolina-Charlotte; Charlotte, North Carolina

"The Integrated Path to Licensure program is a worthy experiment combining— for the first time—education, experience and examination into a coherent whole. We know student interest

will be high but the program will be demanding and require close partnership coordination between the School, the Profession and our State Licensing Board. We're ready to take this experiment on!

Establishing an additional path to professional licensure gives our emerging architects more choice. This may be the most brilliant game-changer in more than half a century.

The Integrated Path to Licensure program will energize our students who are driven to accomplish their academic and professional objectives in a more focused, collaborative and integrated way.

The most promising advantage of the Integrated Path to Licensure Program is that graduates will begin their careers as licensed professionals who will potentially earn a higher salary and not have to sit for the Architect Registration Exam while trying to focus on career and life issues, such as family, all at the same time."

Christopher Jarrett
Director and Professor
School of Architecture
University of North Carolina at Charlotte

University of Southern California; Los Angeles, California

"The collaboration between the academy and practice will provide a new model for education and the discipline alike. Synthesizing the best sensibilities, the hybridized experience feathers and blends proposing a new model in the best traditions of USC and critical practice."

Gail Peter Borden, FAIA
Associate Dean for Academic Affairs
Architecture Discipline Head
Associate Professor
USC School of Architecture

Woodbury University; Los Angeles, California

"From the perspective of a school with a preponderance of first-generation college students who reflect the multicultural diversity of our region, we see NCARB's Accelerated Path to Architectural Licensure initiative as an important stepping stone to improving the diversity (including gender diversity) of licensed architects, and we embrace the opportunity to work closely with a consortium of architecture firms and our state board in the process."

Norman Millar, AIA
Professor & Dean
Woodbury School of Architecture

For more information regarding this announcement, including contact information for individual participating schools, please direct requests to Andrew McIntyre, NCARB Marketing & Communications Assistant Director, at amcintyre@ncarb.org.

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About NCARB
The National Council of Architectural Registration Boards' membership is made up of the architectural registration boards of all 50 states as well as those of the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands. NCARB assists its member registration boards in carrying out their duties and provides a certification program for individual architects.

NCARB protects the public health, safety, and welfare by leading the regulation of the practice of architecture through the development and application of standards for licensure and credentialing of architects. In order to achieve these goals, the Council develops and recommends standards to be required of an applicant for architectural registration; develops and recommends standards regulating the practice of architecture; provides to Member Boards a process for certifying the qualifications of an architect for registration; and represents the interests of Member Boards before public and private agencies. NCARB has established reciprocal registration for architects in the United States and Canada.

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Agenda Item J

***NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS V. FEDERAL TRADE COMMISSION* CASE REVIEW – DEPARTMENT OF CONSUMER AFFAIRS LEGAL COUNSEL**

At this meeting, Department of Consumer Affairs Legal Counsel will provide the Committee with information pertaining to the *North Carolina State Board of Dental Examiners v. Federal Trade Commission* case.

Attachments:

1. U.S. Supreme Court Case of *North Carolina State Board of Dental Examiners v. Federal Trade Commission* [February 25, 2015]
2. Office of the Attorney General Opinion No. 15-402 [September 10, 2015]
3. Federal Trade Commission Staff Guidance [October 2015]

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS *v.* FEDERAL TRADE COMMISSION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 13–534. Argued October 14, 2014—Decided February 25, 2015

North Carolina's Dental Practice Act (Act) provides that the North Carolina State Board of Dental Examiners (Board) is "the agency of the State for the regulation of the practice of dentistry." The Board's principal duty is to create, administer, and enforce a licensing system for dentists; and six of its eight members must be licensed, practicing dentists.

The Act does not specify that teeth whitening is "the practice of dentistry." Nonetheless, after dentists complained to the Board that nondentists were charging lower prices for such services than dentists did, the Board issued at least 47 official cease-and-desist letters to nondentist teeth whitening service providers and product manufacturers, often warning that the unlicensed practice of dentistry is a crime. This and other related Board actions led nondentists to cease offering teeth whitening services in North Carolina.

The Federal Trade Commission (FTC) filed an administrative complaint, alleging that the Board's concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition under the Federal Trade Commission Act. An Administrative Law Judge (ALJ) denied the Board's motion to dismiss on the ground of state-action immunity. The FTC sustained that ruling, reasoning that even if the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board must be actively supervised by the State to claim immunity, which it was not. After a hearing on the merits, the ALJ determined that the Board had unreasonably restrained trade in violation of antitrust law. The FTC again sustained the ALJ, and the Fourth Circuit affirmed the FTC in

all respects.

Held: Because a controlling number of the Board's decisionmakers are active market participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met. Pp. 5–18.

(a) Federal antitrust law is a central safeguard for the Nation's free market structures. However, requiring States to conform to the mandates of the Sherman Act at the expense of other values a State may deem fundamental would impose an impermissible burden on the States' power to regulate. Therefore, beginning with *Parker* v. *Brown*, 317 U. S. 341, this Court interpreted the antitrust laws to confer immunity on the anticompetitive conduct of States acting in their sovereign capacity. Pp. 5–6.

(b) The Board's actions are not cloaked with *Parker* immunity. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if "'the challenged restraint . . . [is] clearly articulated and affirmatively expressed as state policy,' and . . . 'the policy . . . [is] actively supervised by the State.'" *FTC* v. *Phoebe Putney Health System, Inc.*, 568 U. S. ___, ___ (quoting *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.,* 445 U. S. 97, 105). Here, the Board did not receive active supervision of its anticompetitive conduct. Pp. 6–17.

(1) An entity may not invoke *Parker* immunity unless its actions are an exercise of the State's sovereign power. See *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374. Thus, where a State delegates control over a market to a nonsovereign actor the Sherman Act confers immunity only if the State accepts political accountability for the anticompetitive conduct it permits and controls. Limits on state-action immunity are most essential when a State seeks to delegate its regulatory power to active market participants, for dual allegiances are not always apparent to an actor and prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. Accordingly, *Parker* immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State's own. *Midcal*'s two-part test provides a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for entities purporting to act under state authority might diverge from the State's considered definition of the public good and engage in private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this

harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity. Pp. 6–10.

(2) There are instances in which an actor can be excused from *Midcal*'s active supervision requirement. Municipalities, which are electorally accountable, have general regulatory powers, and have no private price-fixing agenda, are subject exclusively to the clear articulation requirement. See *Hallie* v. *Eau Claire*, 471 U. S. 34, 35. That *Hallie* excused municipalities from *Midcal*'s supervision rule for these reasons, however, all but confirms the rule's applicability to actors controlled by active market participants. Further, in light of *Omni*'s holding that an otherwise immune entity will not lose immunity based on ad hoc and *ex post* questioning of its motives for making particular decisions, 499 U. S., at 374, it is all the more necessary to ensure the conditions for granting immunity are met in the first place, see *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 633, and *Phoebe Putney, supra,* at ___. The clear lesson of precedent is that *Midcal*'s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants. Pp. 10–12.

(3) The Board's argument that entities designated by the States as agencies are exempt from *Midcal*'s second requirement cannot be reconciled with the Court's repeated conclusion that the need for supervision turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade. State agencies controlled by active market participants pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773, 791. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. While *Hallie* stated "it is likely that active state supervision would also not be required" for agencies, 471 U. S., at 46, n. 10, the entity there was more like prototypical state agencies, not specialized boards dominated by active market participants. The latter are similar to private trade associations vested by States with regulatory authority, which must satisfy *Midcal*'s active supervision standard. 445 U. S., at 105–106. The similarities between agencies controlled by active market participants and such associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie*, *supra*, at 39. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. Thus,

the Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity. Pp. 12–14.

(4) The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. But this holding is not inconsistent with the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State. Further, this case does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. Of course, States may provide for the defense and indemnification of agency members in the event of litigation, and they can also ensure *Parker* immunity is available by adopting clear policies to displace competition and providing active supervision. Arguments against the wisdom of applying the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity must be rejected, see *Patrick* v. *Burget*, 486 U. S. 94, 105–106, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. Pp. 14–16.

(5) The Board does not contend in this Court that its anticompetitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis. The Act delegates control over the practice of dentistry to the Board, but says nothing about teeth whitening. In acting to expel the dentists' competitors from the market, the Board relied on cease-and-desist letters threatening criminal liability, instead of other powers at its disposal that would have invoked oversight by a politically accountable official. Whether or not the Board exceeded its powers under North Carolina law, there is no evidence of any decision by the State to initiate or concur with the Board's actions against the nondentists. P. 17.

(c) Here, where there are no specific supervisory systems to be reviewed, it suffices to note that the inquiry regarding active supervision is flexible and context-dependent. The question is whether the State's review mechanisms provide "realistic assurance" that a nonsovereign actor's anticompetitive conduct "promotes state policy, rather than merely the party's individual interests." *Patrick*, 486 U. S., 100–101. The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, see *id.*, at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the "mere potential for state

supervision is not an adequate substitute for a decision by the State," *Ticor*, *supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case. Pp. 17–18.

717 F. 3d 359, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 13–534

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS, PETITIONER *v.* FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[February 25, 2015]

JUSTICE KENNEDY delivered the opinion of the Court.

This case arises from an antitrust challenge to the actions of a state regulatory board. A majority of the board's members are engaged in the active practice of the profession it regulates. The question is whether the board's actions are protected from Sherman Act regulation under the doctrine of state-action antitrust immunity, as defined and applied in this Court's decisions beginning with *Parker* v. *Brown*, 317 U. S. 341 (1943).

I

A

In its Dental Practice Act (Act), North Carolina has declared the practice of dentistry to be a matter of public concern requiring regulation. N. C. Gen. Stat. Ann. §90–22(a) (2013). Under the Act, the North Carolina State Board of Dental Examiners (Board) is "the agency of the State for the regulation of the practice of dentistry." §90–22(b).

The Board's principal duty is to create, administer, and enforce a licensing system for dentists. See §§90–29 to

90–41. To perform that function it has broad authority over licensees. See §90–41. The Board's authority with respect to unlicensed persons, however, is more restricted: like "any resident citizen," the Board may file suit to "perpetually enjoin any person from . . . unlawfully practicing dentistry." §90–40.1.

The Act provides that six of the Board's eight members must be licensed dentists engaged in the active practice of dentistry. §90–22. They are elected by other licensed dentists in North Carolina, who cast their ballots in elections conducted by the Board. *Ibid.* The seventh member must be a licensed and practicing dental hygienist, and he or she is elected by other licensed hygienists. *Ibid.* The final member is referred to by the Act as a "consumer" and is appointed by the Governor. *Ibid.* All members serve 3-year terms, and no person may serve more than two consecutive terms. *Ibid.* The Act does not create any mechanism for the removal of an elected member of the Board by a public official. See *ibid.*

Board members swear an oath of office, §138A–22(a), and the Board must comply with the State's Administrative Procedure Act, §150B–1 *et seq.*, Public Records Act, §132–1 *et seq.*, and open-meetings law, §143–318.9 *et seq.* The Board may promulgate rules and regulations governing the practice of dentistry within the State, provided those mandates are not inconsistent with the Act and are approved by the North Carolina Rules Review Commission, whose members are appointed by the state legislature. See §§90–48, 143B–30.1, 150B–21.9(a).

B

In the 1990's, dentists in North Carolina started whitening teeth. Many of those who did so, including 8 of the Board's 10 members during the period at issue in this case, earned substantial fees for that service. By 2003, nondentists arrived on the scene. They charged lower

prices for their services than the dentists did. Dentists soon began to complain to the Board about their new competitors. Few complaints warned of possible harm to consumers. Most expressed a principal concern with the low prices charged by nondentists.

Responding to these filings, the Board opened an investigation into nondentist teeth whitening. A dentist member was placed in charge of the inquiry. Neither the Board's hygienist member nor its consumer member participated in this undertaking. The Board's chief operations officer remarked that the Board was "going forth to do battle" with nondentists. App. to Pet. for Cert. 103a. The Board's concern did not result in a formal rule or regulation reviewable by the independent Rules Review Commission, even though the Act does not, by its terms, specify that teeth whitening is "the practice of dentistry."

Starting in 2006, the Board issued at least 47 cease-and-desist letters on its official letterhead to nondentist teeth whitening service providers and product manufacturers. Many of those letters directed the recipient to cease "all activity constituting the practice of dentistry"; warned that the unlicensed practice of dentistry is a crime; and strongly implied (or expressly stated) that teeth whitening constitutes "the practice of dentistry." App. 13, 15. In early 2007, the Board persuaded the North Carolina Board of Cosmetic Art Examiners to warn cosmetologists against providing teeth whitening services. Later that year, the Board sent letters to mall operators, stating that kiosk teeth whiteners were violating the Dental Practice Act and advising that the malls consider expelling violators from their premises.

These actions had the intended result. Nondentists ceased offering teeth whitening services in North Carolina.

C

In 2010, the Federal Trade Commission (FTC) filed an

administrative complaint charging the Board with violating §5 of the Federal Trade Commission Act, 38 Stat. 719, as amended, 15 U. S. C. §45. The FTC alleged that the Board's concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition. The Board moved to dismiss, alleging state-action immunity. An Administrative Law Judge (ALJ) denied the motion. On appeal, the FTC sustained the ALJ's ruling. It reasoned that, even assuming the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board is a "public/private hybrid" that must be actively supervised by the State to claim immunity. App. to Pet. for Cert. 49a. The FTC further concluded the Board could not make that showing.

Following other proceedings not relevant here, the ALJ conducted a hearing on the merits and determined the Board had unreasonably restrained trade in violation of antitrust law. On appeal, the FTC again sustained the ALJ. The FTC rejected the Board's public safety justification, noting, *inter alia*, "a wealth of evidence . . . suggesting that non-dentist provided teeth whitening is a safe cosmetic procedure." *Id.,* at 123a.

The FTC ordered the Board to stop sending the cease-and-desist letters or other communications that stated nondentists may not offer teeth whitening services and products. It further ordered the Board to issue notices to all earlier recipients of the Board's cease-and-desist orders advising them of the Board's proper sphere of authority and saying, among other options, that the notice recipients had a right to seek declaratory rulings in state court.

On petition for review, the Court of Appeals for the Fourth Circuit affirmed the FTC in all respects. 717 F. 3d 359, 370 (2013). This Court granted certiorari. 571 U. S. ___ (2014).

II

Federal antitrust law is a central safeguard for the Nation's free market structures. In this regard it is "as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms." *United States* v. *Topco Associates, Inc.*, 405 U. S. 596, 610 (1972). The antitrust laws declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market.

The Sherman Act, 26 Stat. 209, as amended, 15 U. S. C. §1 *et seq.*, serves to promote robust competition, which in turn empowers the States and provides their citizens with opportunities to pursue their own and the public's welfare. See *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 632 (1992). The States, however, when acting in their respective realm, need not adhere in all contexts to a model of unfettered competition. While "the States regulate their economies in many ways not inconsistent with the antitrust laws," *id.,* at 635–636, in some spheres they impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives. If every duly enacted state law or policy were required to conform to the mandates of the Sherman Act, thus promoting competition at the expense of other values a State may deem fundamental, federal antitrust law would impose an impermissible burden on the States' power to regulate. See *Exxon Corp.* v. *Governor of Maryland*, 437 U. S. 117, 133 (1978); see also Easterbrook, Antitrust and the Economics of Federalism, 26 J. Law & Econ. 23, 24 (1983).

For these reasons, the Court in *Parker* v. *Brown* interpreted the antitrust laws to confer immunity on anticompetitive conduct by the States when acting in their sovereign capacity. See 317 U. S., at 350–351. That ruling

recognized Congress' purpose to respect the federal balance and to "embody in the Sherman Act the federalism principle that the States possess a significant measure of sovereignty under our Constitution." *Community Communications Co.* v. *Boulder*, 455 U. S. 40, 53 (1982). Since 1943, the Court has reaffirmed the importance of *Parker*'s central holding. See, *e.g., Ticor*, *supra*, at 632–637; *Hoover* v. *Ronwin*, 466 U. S. 558, 568 (1984); *Lafayette* v. *Louisiana Power & Light Co.*, 435 U. S. 389, 394–400 (1978).

III

In this case the Board argues its members were invested by North Carolina with the power of the State and that, as a result, the Board's actions are cloaked with *Parker* immunity. This argument fails, however. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if it satisfies two requirements: "first that 'the challenged restraint . . . be one clearly articulated and affirmatively expressed as state policy,' and second that 'the policy . . . be actively supervised by the State.'" *FTC* v. *Phoebe Putney Health System, Inc.*, 568 U. S. ___, ___ (2013) (slip op., at 7) (quoting *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.,* 445 U. S. 97, 105 (1980)). The parties have assumed that the clear articulation requirement is satisfied, and we do the same. While North Carolina prohibits the unauthorized practice of dentistry, however, its Act is silent on whether that broad prohibition covers teeth whitening. Here, the Board did not receive active supervision by the State when it interpreted the Act as addressing teeth whitening and when it enforced that policy by issuing cease-and-desist letters to nondentist teeth whiteners.

A

Although state-action immunity exists to avoid conflicts

between state sovereignty and the Nation's commitment to a policy of robust competition, *Parker* immunity is not unbounded. "[G]iven the fundamental national values of free enterprise and economic competition that are embodied in the federal antitrust laws, 'state action immunity is disfavored, much as are repeals by implication.'" *Phoebe Putney*, *supra*, at ___ (slip op., at 7) (quoting *Ticor*, *supra,* at 636).

An entity may not invoke *Parker* immunity unless the actions in question are an exercise of the State's sovereign power. See *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374 (1991). State legislation and "decision[s] of a state supreme court, acting legislatively rather than judicially," will satisfy this standard, and "*ipso facto* are exempt from the operation of the antitrust laws" because they are an undoubted exercise of state sovereign authority. *Hoover*, *supra*, at 567–568.

But while the Sherman Act confers immunity on the States' own anticompetitive policies out of respect for federalism, it does not always confer immunity where, as here, a State delegates control over a market to a nonsovereign actor. See *Parker*, *supra,* at 351 ("[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful"). For purposes of *Parker*, a nonsovereign actor is one whose conduct does not automatically qualify as that of the sovereign State itself. See *Hoover*, *supra*, at 567–568. State agencies are not simply by their governmental character sovereign actors for purposes of state-action immunity. See *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773, 791 (1975) ("The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members"). Immunity for state agencies, therefore, requires more than a mere facade of state involvement, for it is necessary in light of

Parker's rationale to ensure the States accept political accountability for anticompetitive conduct they permit and control. See *Ticor*, 504 U. S., at 636.

Limits on state-action immunity are most essential when the State seeks to delegate its regulatory power to active market participants, for established ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern. Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability. See *Midcal*, *supra*, at 106 ("The national policy in favor of competition cannot be thwarted by casting [a] gauzy cloak of state involvement over what is essentially a private price-fixing arrangement"). Indeed, prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. See, *e.g., Allied Tube & Conduit Corp.* v. *Indian Head, Inc.*, 486 U. S. 492, 501 (1988); *Hoover*, *supra*, at 584 (Stevens, J., dissenting) ("The risk that private regulation of market entry, prices, or output may be designed to confer monopoly profits on members of an industry at the expense of the consuming public has been the central concern of . . . our antitrust jurisprudence"); see also Elhauge, The Scope of Antitrust Process, 104 Harv. L. Rev. 667, 672 (1991). So it follows that, under *Parker* and the Supremacy Clause, the States' greater power to attain an end does not include the lesser power to negate the congressional judgment embodied in the Sherman Act through unsupervised delegations to active market participants. See Garland, Antitrust and State Action: Economic Efficiency and the Political Process, 96 Yale L. J. 486, 500 (1986).

Parker immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State's own.

See *Goldfarb, supra*, at 790; see also 1A P. Areeda & H. Hovencamp, Antitrust Law ¶226, p. 180 (4th ed. 2013) (Areeda & Hovencamp). The question is not whether the challenged conduct is efficient, well-functioning, or wise. See *Ticor*, *supra*, at 634–635. Rather, it is "whether anticompetitive conduct engaged in by [nonsovereign actors] should be deemed state action and thus shielded from the antitrust laws." *Patrick* v. *Burget*, 486 U. S. 94, 100 (1988).

To answer this question, the Court applies the two-part test set forth in *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.*, 445 U. S. 97, a case arising from California's delegation of price-fixing authority to wine merchants. Under *Midcal*, "[a] state law or regulatory scheme cannot be the basis for antitrust immunity unless, first, the State has articulated a clear policy to allow the anticompetitive conduct, and second, the State provides active supervision of [the] anticompetitive conduct." *Ticor*, *supra*, at 631 (citing *Midcal*, *supra*, at 105).

Midcal's clear articulation requirement is satisfied "where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals." *Phoebe Putney*, 568 U. S., at ___ (slip op., at 11). The active supervision requirement demands, *inter alia*, "that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy." *Patrick*, *supra*, U. S., at 101.

The two requirements set forth in *Midcal* provide a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for a policy may

satisfy this test yet still be defined at so high a level of generality as to leave open critical questions about how and to what extent the market should be regulated. See *Ticor*, *supra*, at 636–637. Entities purporting to act under state authority might diverge from the State's considered definition of the public good. The resulting asymmetry between a state policy and its implementation can invite private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity.

Midcal's supervision rule "stems from the recognition that '[w]here a private party is engaging in anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State.'" *Patrick*, *supra*, at 100. Concern about the private incentives of active market participants animates *Midcal*'s supervision mandate, which demands "realistic assurance that a private party's anticompetitive conduct promotes state policy, rather than merely the party's individual interests." *Patrick*, *supra*, at 101.

B

In determining whether anticompetitive policies and conduct are indeed the action of a State in its sovereign capacity, there are instances in which an actor can be excused from *Midcal*'s active supervision requirement. In *Hallie* v. *Eau Claire*, 471 U. S. 34, 45 (1985), the Court held municipalities are subject exclusively to *Midcal*'s "'clear articulation'" requirement. That rule, the Court observed, is consistent with the objective of ensuring that the policy at issue be one enacted by the State itself. *Hallie* explained that "[w]here the actor is a municipality, there is little or no danger that it is involved in a private price-fixing arrangement. The only real danger is that it will seek to further purely parochial public interests at the

expense of more overriding state goals." 471 U. S., at 47. *Hallie* further observed that municipalities are electorally accountable and lack the kind of private incentives characteristic of active participants in the market. See *id.,* at 45, n. 9. Critically, the municipality in *Hallie* exercised a wide range of governmental powers across different economic spheres, substantially reducing the risk that it would pursue private interests while regulating any single field. See *ibid.* That *Hallie* excused municipalities from *Midcal*'s supervision rule for these reasons all but confirms the rule's applicability to actors controlled by active market participants, who ordinarily have none of the features justifying the narrow exception *Hallie* identified. See 471 U. S., at 45.

Following *Goldfarb*, *Midcal*, and *Hallie*, which clarified the conditions under which *Parker* immunity attaches to the conduct of a nonsovereign actor, the Court in *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, addressed whether an otherwise immune entity could lose immunity for conspiring with private parties. In *Omni*, an aspiring billboard merchant argued that the city of Columbia, South Carolina, had violated the Sherman Act—and forfeited its *Parker* immunity—by anticompetitively conspiring with an established local company in passing an ordinance restricting new billboard construction. 499 U. S., at 367–368. The Court disagreed, holding there is no "conspiracy exception" to *Parker*. *Omni, supra*, at 374.

Omni, like the cases before it, recognized the importance of drawing a line "relevant to the purposes of the Sherman Act and of *Parker*: prohibiting the restriction of competition for private gain but permitting the restriction of competition in the public interest." 499 U. S., at 378. In the context of a municipal actor which, as in *Hallie*, exercised substantial governmental powers, *Omni* rejected a conspiracy exception for "corruption" as vague and unworkable, since "virtually all regulation benefits some

segments of the society and harms others" and may in that sense be seen as "'corrupt.'" 499 U. S., at 377. *Omni* also rejected subjective tests for corruption that would force a "deconstruction of the governmental process and probing of the official 'intent' that we have consistently sought to avoid." *Ibid.* Thus, whereas the cases preceding it addressed the preconditions of *Parker* immunity and engaged in an objective, *ex ante* inquiry into nonsovereign actors' structure and incentives, *Omni* made clear that recipients of immunity will not lose it on the basis of ad hoc and *ex post* questioning of their motives for making particular decisions.

Omni's holding makes it all the more necessary to ensure the conditions for granting immunity are met in the first place. The Court's two state-action immunity cases decided after *Omni* reinforce this point. In *Ticor* the Court affirmed that *Midcal*'s limits on delegation must ensure that "[a]ctual state involvement, not deference to private price-fixing arrangements under the general auspices of state law, is the precondition for immunity from federal law." 504 U. S., at 633. And in *Phoebe Putney* the Court observed that *Midcal*'s active supervision requirement, in particular, is an essential condition of state-action immunity when a nonsovereign actor has "an incentive to pursue [its] own self-interest under the guise of implementing state policies." 568 U. S., at ___ (slip op., at 8) (quoting *Hallie*, *supra*, at 46–47). The lesson is clear: *Midcal*'s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants.

C

The Board argues entities designated by the States as agencies are exempt from *Midcal*'s second requirement. That premise, however, cannot be reconciled with the Court's repeated conclusion that the need for supervision

turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade.

State agencies controlled by active market participants, who possess singularly strong private interests, pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See Areeda & Hovencamp ¶227, at 226. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. See *Patrick*, 486 U. S., at 100–101.

The Court applied this reasoning to a state agency in *Goldfarb*. There the Court denied immunity to a state agency (the Virginia State Bar) controlled by market participants (lawyers) because the agency had "joined in what is essentially a private anticompetitive activity" for "the benefit of its members." 421 U. S., at 791, 792. This emphasis on the Bar's private interests explains why *Goldfarb*, though it predates *Midcal*, considered the lack of supervision by the Virginia Supreme Court to be a principal reason for denying immunity. See 421 U. S., at 791; see also *Hoover*, 466 U. S., at 569 (emphasizing lack of active supervision in *Goldfarb*); *Bates* v. *State Bar of Ariz.*, 433 U. S. 350, 361–362 (1977) (granting the Arizona Bar state-action immunity partly because its "rules are subject to pointed re-examination by the policymaker").

While *Hallie* stated "it is likely that active state supervision would also not be required" for agencies, 471 U. S., at 46, n. 10, the entity there, as was later the case in *Omni*, was an electorally accountable municipality with general regulatory powers and no private price-fixing agenda. In that and other respects the municipality was more like prototypical state agencies, not specialized boards dominated by active market participants. In important regards, agencies controlled by market partici-

pants are more similar to private trade associations vested by States with regulatory authority than to the agencies *Hallie* considered. And as the Court observed three years after *Hallie*, "[t]here is no doubt that the members of such associations often have economic incentives to restrain competition and that the product standards set by such associations have a serious potential for anticompetitive harm." *Allied Tube*, 486 U. S., at 500. For that reason, those associations must satisfy *Midcal*'s active supervision standard. See *Midcal*, 445 U. S., at 105–106.

The similarities between agencies controlled by active market participants and private trade associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie*, *supra*, at 39 (rejecting "purely formalistic" analysis). *Parker* immunity does not derive from nomenclature alone. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. See Areeda & Hovencamp ¶227, at 226. The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity.

D

The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. If this were so—and, for reasons to be noted, it need not be so—there would be some cause for concern. The States have a sovereign interest in structuring their governments, see *Gregory* v. *Ashcroft*, 501 U. S. 452, 460 (1991), and may conclude there are substantial benefits to staffing their

agencies with experts in complex and technical subjects, see *Southern Motor Carriers Rate Conference, Inc.* v. *United States*, 471 U. S. 48, 64 (1985). There is, moreover, a long tradition of citizens esteemed by their professional colleagues devoting time, energy, and talent to enhancing the dignity of their calling.

Adherence to the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State reaches back at least to the Hippocratic Oath. See generally S. Miles, The Hippocratic Oath and the Ethics of Medicine (2004). In the United States, there is a strong tradition of professional self-regulation, particularly with respect to the development of ethical rules. See generally R. Rotunda & J. Dzienkowski, Legal Ethics: The Lawyer's Deskbook on Professional Responsibility (2014); R. Baker, Before Bioethics: A History of American Medical Ethics From the Colonial Period to the Bioethics Revolution (2013). Dentists are no exception. The American Dental Association, for example, in an exercise of "the privilege and obligation of self-government," has "call[ed] upon dentists to follow high ethical standards," including "honesty, compassion, kindness, integrity, fairness and charity." American Dental Association, Principles of Ethics and Code of Professional Conduct 3–4 (2012). State laws and institutions are sustained by this tradition when they draw upon the expertise and commitment of professionals.

Today's holding is not inconsistent with that idea. The Board argues, however, that the potential for money damages will discourage members of regulated occupations from participating in state government. Cf. *Filarsky* v. *Delia*, 566 U. S. ___, ___ (2012) (slip op., at 12) (warning in the context of civil rights suits that the "the most talented candidates will decline public engagements if they do not receive the same immunity enjoyed by their public employee counterparts"). But this case, which does not

present a claim for money damages, does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. See *Goldfarb*, 421 U. S., at 792, n. 22; see also Brief for Respondent 56. And, of course, the States may provide for the defense and indemnification of agency members in the event of litigation.

States, furthermore, can ensure *Parker* immunity is available to agencies by adopting clear policies to displace competition; and, if agencies controlled by active market participants interpret or enforce those policies, the States may provide active supervision. Precedent confirms this principle. The Court has rejected the argument that it would be unwise to apply the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity:

> "[Respondents] contend that effective peer review is essential to the provision of quality medical care and that any threat of antitrust liability will prevent physicians from participating openly and actively in peer-review proceedings. This argument, however, essentially challenges the wisdom of applying the antitrust laws to the sphere of medical care, and as such is properly directed to the legislative branch. To the extent that Congress has declined to exempt medical peer review from the reach of the antitrust laws, peer review is immune from antitrust scrutiny only if the State effectively has made this conduct its own." *Patrick*, 486 U. S. at 105–106 (footnote omitted).

The reasoning of *Patrick* v. *Burget* applies to this case with full force, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. See generally Edlin & Haw, Cartels by Another Name: Should Licensed Occupations Face Antitrust Scrutiny? 162 U. Pa. L. Rev. 1093 (2014).

E

The Board does not contend in this Court that its anticompetitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis.

By statute, North Carolina delegates control over the practice of dentistry to the Board. The Act, however, says nothing about teeth whitening, a practice that did not exist when it was passed. After receiving complaints from other dentists about the nondentists' cheaper services, the Board's dentist members—some of whom offered whitening services—acted to expel the dentists' competitors from the market. In so doing the Board relied upon cease-and-desist letters threatening criminal liability, rather than any of the powers at its disposal that would invoke oversight by a politically accountable official. With no active supervision by the State, North Carolina officials may well have been unaware that the Board had decided teeth whitening constitutes "the practice of dentistry" and sought to prohibit those who competed against dentists from participating in the teeth whitening market. Whether or not the Board exceeded its powers under North Carolina law, cf. *Omni*, 499 U. S., at 371–372, there is no evidence here of any decision by the State to initiate or concur with the Board's actions against the nondentists.

IV

The Board does not claim that the State exercised active, or indeed any, supervision over its conduct regarding nondentist teeth whiteners; and, as a result, no specific supervisory systems can be reviewed here. It suffices to note that the inquiry regarding active supervision is flexible and context-dependent. Active supervision need not entail day-to-day involvement in an agency's operations or micromanagement of its every decision. Rather, the question is whether the State's review mechanisms provide "realistic assurance" that a nonsovereign actor's anticom-

petitive conduct "promotes state policy, rather than merely the party's individual interests." *Patrick*, *supra,* at 100–101; see also *Ticor*, 504 U. S., at 639–640.

The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it, see *Patrick*, 486 U. S., at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the "mere potential for state supervision is not an adequate substitute for a decision by the State," *Ticor*, *supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case.

* * *

The Sherman Act protects competition while also respecting federalism. It does not authorize the States to abandon markets to the unsupervised control of active market participants, whether trade associations or hybrid agencies. If a State wants to rely on active market participants as regulators, it must provide active supervision if state-action immunity under *Parker* is to be invoked.

The judgment of the Court of Appeals for the Fourth Circuit is affirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 13–534

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS, PETITIONER *v.* FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[February 25, 2015]

JUSTICE ALITO, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

The Court's decision in this case is based on a serious misunderstanding of the doctrine of state-action antitrust immunity that this Court recognized more than 60 years ago in *Parker* v. *Brown*, 317 U. S. 341 (1943). In *Parker*, the Court held that the Sherman Act does not prevent the States from continuing their age-old practice of enacting measures, such as licensing requirements, that are designed to protect the public health and welfare. *Id.*, at 352. The case now before us involves precisely this type of state regulation—North Carolina's laws governing the practice of dentistry, which are administered by the North Carolina Board of Dental Examiners (Board).

Today, however, the Court takes the unprecedented step of holding that *Parker* does not apply to the North Carolina Board because the Board is not structured in a way that merits a good-government seal of approval; that is, it is made up of practicing dentists who have a financial incentive to use the licensing laws to further the financial interests of the State's dentists. There is nothing new about the structure of the North Carolina Board. When the States first created medical and dental boards, well before the Sherman Act was enacted, they began to staff

them in this way.[1] Nor is there anything new about the suspicion that the North Carolina Board—in attempting to prevent persons other than dentists from performing teeth-whitening procedures—was serving the interests of dentists and not the public. Professional and occupational licensing requirements have often been used in such a way.[2] But that is not what *Parker* immunity is about. Indeed, the very state program involved in that case was unquestionably designed to benefit the regulated entities, California raisin growers.

The question before us is not whether such programs serve the public interest. The question, instead, is whether this case is controlled by *Parker*, and the answer to that question is clear. Under *Parker*, the Sherman Act (and the Federal Trade Commission Act, see *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 635 (1992)) do not apply to state agencies; the North Carolina Board of Dental Examiners is a state agency; and that is the end of the matter. By straying from this simple path, the Court has not only distorted *Parker*; it has headed into a morass. Determining whether a state agency is structured in a way that militates against regulatory capture is no easy task, and there is reason to fear that today's decision will spawn confusion. The Court has veered off course, and therefore I cannot go along.

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[1] S. White, History of Oral and Dental Science in America 197–214 (1876) (detailing earliest American regulations of the practice of dentistry).

[2] See, *e.g.*, R. Shrylock, Medical Licensing in America 29 (1967) (Shrylock) (detailing the deterioration of licensing regimes in the mid-19th century, in part out of concerns about restraints on trade); Gellhorn, The Abuse of Occupational Licensing, 44 U. Chi. L. Rev. 6 (1976); Shepard, Licensing Restrictions and the Cost of Dental Care, 21 J. Law & Econ. 187 (1978).

I

In order to understand the nature of *Parker* state-action immunity, it is helpful to recall the constitutional landscape in 1890 when the Sherman Act was enacted. At that time, this Court and Congress had an understanding of the scope of federal and state power that is very different from our understanding today. The States were understood to possess the exclusive authority to regulate "their purely internal affairs." *Leisy* v. *Hardin*, 135 U. S. 100, 122 (1890). In exercising their police power in this area, the States had long enacted measures, such as price controls and licensing requirements, that had the effect of restraining trade.[3]

The Sherman Act was enacted pursuant to Congress' power to regulate interstate commerce, and in passing the Act, Congress wanted to exercise that power "to the utmost extent." *United States* v. *South-Eastern Underwriters Assn.*, 322 U. S. 533, 558 (1944). But in 1890, the understanding of the commerce power was far more limited than it is today. See, *e.g., Kidd* v. *Pearson*, 128 U. S. 1, 17–18 (1888). As a result, the Act did not pose a threat to traditional state regulatory activity.

By 1943, when *Parker* was decided, however, the situation had changed dramatically. This Court had held that the commerce power permitted Congress to regulate even local activity if it "exerts a substantial economic effect on interstate commerce." *Wickard* v. *Filburn*, 317 U. S. 111, 125 (1942). This meant that Congress could regulate many of the matters that had once been thought to fall exclusively within the jurisdiction of the States. The new interpretation of the commerce power brought about an expansion of the reach of the Sherman Act. See *Hospital*

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[3] See Handler, The Current Attack on the *Parker* v. *Brown* State Action Doctrine, 76 Colum. L. Rev. 1, 4–6 (1976) (collecting cases).

Building Co. v. *Trustees of Rex Hospital*, 425 U. S. 738, 743, n. 2 (1976) ("[D]ecisions by this Court have permitted the reach of the Sherman Act to expand along with expanding notions of congressional power"). And the expanded reach of the Sherman Act raised an important question. The Sherman Act does not expressly exempt States from its scope. Does that mean that the Act applies to the States and that it potentially outlaws many traditional state regulatory measures? The Court confronted that question in *Parker*.

In *Parker*, a raisin producer challenged the California Agricultural Prorate Act, an agricultural price support program. The California Act authorized the creation of an Agricultural Prorate Advisory Commission (Commission) to establish marketing plans for certain agricultural commodities within the State. 317 U. S., at 346–347. Raisins were among the regulated commodities, and so the Commission established a marketing program that governed many aspects of raisin sales, including the quality and quantity of raisins sold, the timing of sales, and the price at which raisins were sold. *Id.*, at 347–348. The *Parker* Court assumed that this program would have violated "the Sherman Act if it were organized and made effective solely by virtue of a contract, combination or conspiracy of private persons," and the Court also assumed that Congress could have prohibited a State from creating a program like California's if it had chosen to do so. *Id.*, at 350. Nevertheless, the Court concluded that the California program did not violate the Sherman Act because the Act did not circumscribe state regulatory power. *Id.*, at 351.

The Court's holding in *Parker* was not based on either the language of the Sherman Act or anything in the legislative history affirmatively showing that the Act was not meant to apply to the States. Instead, the Court reasoned that "[i]n a dual system of government in which, under the Constitution, the states are sovereign, save only as Con-

gress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." 317 U. S., at 351. For the Congress that enacted the Sherman Act in 1890, it would have been a truly radical and almost certainly futile step to attempt to prevent the States from exercising their traditional regulatory authority, and the *Parker* Court refused to assume that the Act was meant to have such an effect.

When the basis for the *Parker* state-action doctrine is understood, the Court's error in this case is plain. In 1890, the regulation of the practice of medicine and dentistry was regarded as falling squarely within the States' sovereign police power. By that time, many States had established medical and dental boards, often staffed by doctors or dentists,[4] and had given those boards the authority to confer and revoke licenses.[5] This was quintessential police power legislation, and although state laws were often challenged during that era under the doctrine of substantive due process, the licensing of medical professionals easily survived such assaults. Just one year before the enactment of the Sherman Act, in *Dent* v. *West Virginia*, 129 U. S. 114, 128 (1889), this Court rejected such a challenge to a state law requiring all physicians to obtain a certificate from the state board of health attesting to their qualifications. And in *Hawker* v. *New York*, 170 U. S. 189, 192 (1898), the Court reiterated that a law

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[4] Shrylock 54–55; D. Johnson and H. Chaudry, Medical Licensing and Discipline in America 23–24 (2012).

[5] In *Hawker* v. *New York,* 170 U. S. 189 (1898), the Court cited state laws authorizing such boards to refuse or revoke medical licenses. *Id.*, at 191–193, n. 1. See also *Douglas* v. *Noble*, 261 U. S. 165, 166 (1923) ("In 1893 the legislature of Washington provided that only licensed persons should practice dentistry" and "vested the authority to license in a board of examiners, consisting of five practicing dentists").

specifying the qualifications to practice medicine was clearly a proper exercise of the police power. Thus, the North Carolina statutes establishing and specifying the powers of the State Board of Dental Examiners represent precisely the kind of state regulation that the *Parker* exemption was meant to immunize.

II

As noted above, the only question in this case is whether the North Carolina Board of Dental Examiners is really a state agency, and the answer to that question is clearly yes.

- The North Carolina Legislature determined that the practice of dentistry "affect[s] the public health, safety and welfare" of North Carolina's citizens and that therefore the profession should be "subject to regulation and control in the public interest" in order to ensure "that only qualified persons be permitted to practice dentistry in the State." N. C. Gen. Stat. Ann. §90–22(a) (2013).
- To further that end, the legislature created the North Carolina State Board of Dental Examiners "as the agency of the State for the regulation of the practice of dentistry in th[e] State." §90–22(b).
- The legislature specified the membership of the Board. §90–22(c). It defined the "practice of dentistry," §90–29(b), and it set out standards for licensing practitioners, §90–30. The legislature also set out standards under which the Board can initiate disciplinary proceedings against licensees who engage in certain improper acts. §90–41(a).
- The legislature empowered the Board to "maintain an action in the name of the State of North Carolina to perpetually enjoin any person from . . . unlawfully practicing dentistry." §90–40.1(a). It authorized the Board to conduct investigations and to hire legal

counsel, and the legislature made any "notice or statement of charges against any licensee" a public record under state law. §§ 90–41(d)–(g).

- The legislature empowered the Board "to enact rules and regulations governing the practice of dentistry within the State," consistent with relevant statutes. §90–48. It has required that any such rules be included in the Board's annual report, which the Board must file with the North Carolina secretary of state, the state attorney general, and the legislature's Joint Regulatory Reform Committee. §93B–2. And if the Board fails to file the required report, state law demands that it be automatically suspended until it does so. *Ibid*.

As this regulatory regime demonstrates, North Carolina's Board of Dental Examiners is unmistakably a state agency created by the state legislature to serve a prescribed regulatory purpose and to do so using the State's power in cooperation with other arms of state government.

The Board is not a private or "nonsovereign" entity that the State of North Carolina has attempted to immunize from federal antitrust scrutiny. *Parker* made it clear that a State may not "'give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful.'" *Ante,* at 7 (quoting *Parker*, 317 U. S., at 351). When the *Parker* Court disapproved of any such attempt, it cited *Northern Securities Co.* v. *United States*, 193 U. S. 197 (1904), to show what it had in mind. In that case, the Court held that a State's act of chartering a corporation did not shield the corporation's monopolizing activities from federal antitrust law. *Id*., at 344–345. Nothing similar is involved here. North Carolina did not authorize a private entity to enter into an anticompetitive arrangement; rather, North Carolina *created a state agency* and gave that agency the power to regulate a particular subject affecting public health and

safety.

Nothing in *Parker* supports the type of inquiry that the Court now prescribes. The Court crafts a test under which state agencies that are "controlled by active market participants," *ante*, at 12, must demonstrate active state supervision in order to be immune from federal antitrust law. The Court thus treats these state agencies like private entities. But in *Parker*, the Court did not examine the structure of the California program to determine if it had been captured by private interests. If the Court had done so, the case would certainly have come out differently, because California conditioned its regulatory measures on the participation and approval of market actors in the relevant industry.

Establishing a prorate marketing plan under California's law first required the petition of at least 10 producers of the particular commodity. *Parker*, 317 U. S., at 346. If the Commission then agreed that a marketing plan was warranted, the Commission would "select a program committee *from among nominees chosen by the qualified producers*." *Ibid.* (emphasis added). That committee would then formulate the proration marketing program, which the Commission could modify or approve. But even after Commission approval, the program became law (and then, automatically) only if it gained the approval of 65 percent of the relevant producers, representing at least 51 percent of the acreage of the regulated crop. *Id.*, at 347. This scheme gave decisive power to market participants. But despite these aspects of the California program, *Parker* held that California was acting as a "sovereign" when it "adopt[ed] and enforc[ed] the prorate program." *Id.*, at 352. This reasoning is irreconcilable with the Court's today.

III

The Court goes astray because it forgets the origin of the

Parker doctrine and is misdirected by subsequent cases that extended that doctrine (in certain circumstances) to private entities. The Court requires the North Carolina Board to satisfy the two-part test set out in *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.*, 445 U. S. 97 (1980), but the party claiming *Parker* immunity in that case was not a state agency but a private trade association. Such an entity is entitled to *Parker* immunity, *Midcal* held, only if the anticompetitive conduct at issue was both "'clearly articulated'" and "'actively supervised by the State itself.'" 445 U. S., at 105. Those requirements are needed where a State authorizes private parties to engage in anticompetitive conduct. They serve to identify those situations in which conduct *by private parties* can be regarded as the conduct of a State. But when the conduct in question is the conduct of a state agency, no such inquiry is required.

This case falls into the latter category, and therefore *Midcal* is inapposite. The North Carolina Board is not a private trade association. It is a state agency, created and empowered by the State to regulate an industry affecting public health. It would not exist if the State had not created it. And for purposes of *Parker*, its membership is irrelevant; what matters is that it is part of the government of the sovereign State of North Carolina.

Our decision in *Hallie* v. *Eau Claire*, 471 U. S. 34 (1985), which involved Sherman Act claims against a municipality, not a State agency, is similarly inapplicable. In *Hallie,* the plaintiff argued that the two-pronged *Midcal* test should be applied, but the Court disagreed. The Court acknowledged that municipalities "are not themselves sovereign." 471 U. S., at 38. But recognizing that a municipality is "an arm of the State," *id.*, at 45, the Court held that a municipality should be required to satisfy only the first prong of the *Midcal* test (requiring a clearly articulated state policy), 471 U. S., at 46. That municipalities

are not sovereign was critical to our analysis in *Hallie*, and thus that decision has no application in a case, like this one, involving a state agency.

Here, however, the Court not only disregards the North Carolina Board's status as a full-fledged state agency; it treats the Board less favorably than a municipality. This is puzzling. States are sovereign, *Northern Ins. Co. of N. Y.* v. *Chatham County*, 547 U. S. 189, 193 (2006), and California's sovereignty provided the foundation for the decision in *Parker*, *supra,* at 352. Municipalities are not sovereign. *Jinks* v. *Richland County*, 538 U. S. 456, 466 (2003). And for this reason, federal law often treats municipalities differently from States. Compare *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 71 (1989) ("[N]either a State nor its officials acting it their official capacities are 'persons' under [42 U. S. C.] §1983"), with *Monell* v. *City Dept. of Social Servs., New York*, 436 U. S. 658, 694 (1978) (municipalities liable under §1983 where "execution of a government's policy or custom . . . inflicts the injury").

The Court recognizes that municipalities, although not sovereign, nevertheless benefit from a more lenient standard for state-action immunity than private entities. Yet under the Court's approach, the North Carolina Board of Dental Examiners, a full-fledged state agency, is treated like a private actor and must demonstrate that the State actively supervises its actions.

The Court's analysis seems to be predicated on an assessment of the varying degrees to which a municipality and a state agency like the North Carolina Board are likely to be captured by private interests. But until today, *Parker* immunity was never conditioned on the proper use of state regulatory authority. On the contrary, in *Columbia* v. *Omni Outdoor Advertising, Inc.,* 499 U. S. 365 (1991), we refused to recognize an exception to *Parker* for cases in which it was shown that the defendants had

engaged in a conspiracy or corruption or had acted in a way that was not in the public interest. *Id.,* at 374. The Sherman Act, we said, is not an anticorruption or good-government statute. 499 U. S., at 398. We were unwilling in *Omni* to rewrite *Parker* in order to reach the allegedly abusive behavior of city officials. 499 U. S., at 374–379. But that is essentially what the Court has done here.

III

Not only is the Court's decision inconsistent with the underlying theory of *Parker*; it will create practical problems and is likely to have far-reaching effects on the States' regulation of professions. As previously noted, state medical and dental boards have been staffed by practitioners since they were first created, and there are obvious advantages to this approach. It is reasonable for States to decide that the individuals best able to regulate technical professions are practitioners with expertise in those very professions. Staffing the State Board of Dental Examiners with certified public accountants would certainly lessen the risk of actions that place the well-being of dentists over those of the public, but this would also compromise the State's interest in sensibly regulating a technical profession in which lay people have little expertise.

As a result of today's decision, States may find it necessary to change the composition of medical, dental, and other boards, but it is not clear what sort of changes are needed to satisfy the test that the Court now adopts. The Court faults the structure of the North Carolina Board because "active market participants" constitute "a controlling number of [the] decisionmakers," *ante,* at 14, but this test raises many questions.

What is a "controlling number"? Is it a majority? And if so, why does the Court eschew that term? Or does the Court mean to leave open the possibility that something less than a majority might suffice in particular circum-

stances? Suppose that active market participants constitute a voting bloc that is generally able to get its way? How about an obstructionist minority or an agency chair empowered to set the agenda or veto regulations?

Who is an "active market participant"? If Board members withdraw from practice during a short term of service but typically return to practice when their terms end, does that mean that they are not active market participants during their period of service?

What is the scope of the market in which a member may not participate while serving on the board? Must the market be relevant to the particular regulation being challenged or merely to the jurisdiction of the entire agency? Would the result in the present case be different if a majority of the Board members, though practicing dentists, did not provide teeth whitening services? What if they were orthodontists, periodontists, and the like? And how much participation makes a person "active" in the market?

The answers to these questions are not obvious, but the States must predict the answers in order to make informed choices about how to constitute their agencies.

I suppose that all this will be worked out by the lower courts and the Federal Trade Commission (FTC), but the Court's approach raises a more fundamental question, and that is why the Court's inquiry should stop with an examination of the structure of a state licensing board. When the Court asks whether market participants control the North Carolina Board, the Court in essence is asking whether this regulatory body has been captured by the entities that it is supposed to regulate. Regulatory capture can occur in many ways.[6] So why ask only whether

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[6] See, *e.g.,* R. Noll, Reforming Regulation 40–43, 46 (1971); J. Wilson, The Politics of Regulation 357–394 (1980). Indeed, it has even been

the members of a board are active market participants? The answer may be that determining when regulatory capture has occurred is no simple task. That answer provides a reason for relieving courts from the obligation to make such determinations at all. It does not explain why it is appropriate for the Court to adopt the rather crude test for capture that constitutes the holding of today's decision.

IV

The Court has created a new standard for distinguishing between private and state actors for purposes of federal antitrust immunity. This new standard is not true to the *Parker* doctrine; it diminishes our traditional respect for federalism and state sovereignty; and it will be difficult to apply. I therefore respectfully dissent.

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charged that the FTC, which brought this case, has been captured by entities over which it has jurisdiction. See E. Cox, "The Nader Report" on the Federal Trade Commission vii–xiv (1969); Posner, Federal Trade Commission, Chi. L. Rev. 47, 82–84 (1969).

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OFFICE OF THE ATTORNEY GENERAL
State of California

KAMALA D. HARRIS
Attorney General

OPINION	:	No. 15-402
of	:	September 10, 2015
KAMALA D. HARRIS Attorney General	:	
SUSAN DUNCAN LEE Deputy Attorney General	:	

THE HONORABLE JERRY HILL, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

What constitutes "active state supervision" of a state licensing board for purposes of the state action immunity doctrine in antitrust actions, and what measures might be taken to guard against antitrust liability for board members?

CONCLUSIONS

"Active state supervision" requires a state official to review the substance of a regulatory decision made by a state licensing board, in order to determine whether the decision actually furthers a clearly articulated state policy to displace competition with regulation in a particular market. The official reviewing the decision must not be an active member of the market being regulated, and must have and exercise the power to approve, modify, or disapprove the decision.

Measures that might be taken to guard against antitrust liability for board members include changing the composition of boards, adding lines of supervision by state officials, and providing board members with legal indemnification and antitrust training.

ANALYSIS

In *North Carolina State Board of Dental Examiners v. Federal Trade Commission*,[1] the Supreme Court of the United States established a new standard for determining whether a state licensing board is entitled to immunity from antitrust actions.

Immunity is important to state actors not only because it shields them from adverse judgments, but because it shields them from having to go through litigation. When immunity is well established, most people are deterred from filing a suit at all. If a suit is filed, the state can move for summary disposition of the case, often before the discovery process begins. This saves the state a great deal of time and money, and it relieves employees (such as board members) of the stresses and burdens that inevitably go along with being sued. This freedom from suit clears a safe space for government officials and employees to perform their duties and to exercise their discretion without constant fear of litigation. Indeed, allowing government actors freedom to exercise discretion is one of the fundamental justifications underlying immunity doctrines.[2]

Before *North Carolina Dental* was decided, most state licensing boards operated under the assumption that they were protected from antitrust suits under the state action immunity doctrine. In light of the decision, many states—including California—are reassessing the structures and operations of their state licensing boards with a view to determining whether changes should be made to reduce the risk of antitrust claims. This opinion examines the legal requirements for state supervision under the *North Carolina Dental* decision, and identifies a variety of measures that the state Legislature might consider taking in response to the decision.

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[1] *North Carolina State Bd. of Dental Examiners v. F.T.C.* (2015) ___ U.S. ___, 135 S. Ct. 1101 (*North Carolina Dental*).

[2] See *Mitchell v. Forsyth* (1985) 472 U.S. 511, 526; *Harlow v. Fitzgerald* (1982) 457 U.S. 800, 819.

I. *North Carolina Dental* Established a New Immunity Standard for State Licensing Boards

A. The *North Carolina Dental* Decision

The North Carolina Board of Dental Examiners was established under North Carolina law and charged with administering a licensing system for dentists. A majority of the members of the board are themselves practicing dentists. North Carolina statutes delegated authority to the dental board to regulate the practice of dentistry, but did not expressly provide that teeth-whitening was within the scope of the practice of dentistry.

Following complaints by dentists that non-dentists were performing teeth-whitening services for low prices, the dental board conducted an investigation. The board subsequently issued cease-and-desist letters to dozens of teeth-whitening outfits, as well as to some owners of shopping malls where teeth-whiteners operated. The effect on the teeth-whitening market in North Carolina was dramatic, and the Federal Trade Commission took action.

In defense to antitrust charges, the dental board argued that, as a state agency, it was immune from liability under the federal antitrust laws. The Supreme Court rejected that argument, holding that a state board on which a controlling number of decision makers are active market participants must show that it is subject to "active supervision" in order to claim immunity.[3]

B. State Action Immunity Doctrine Before *North Carolina Dental*

The Sherman Antitrust Act of 1890[4] was enacted to prevent anticompetitive economic practices such as the creation of monopolies or restraints of trade. The terms of the Sherman Act are broad, and do not expressly exempt government entities, but the Supreme Court has long since ruled that federal principles of dual sovereignty imply that federal antitrust laws do not apply to the actions of states, even if those actions are anticompetitive.[5]

This immunity of states from federal antitrust lawsuits is known as the "state action doctrine."[6] The state action doctrine, which was developed by the Supreme Court

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[3] *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1114.

[4] 15 U.S.C. §§ 1, 2.

[5] *Parker v. Brown* (1943) 317 U.S. 341, 350-351.

[6] It is important to note that the phrase "state action" in this context means something

in *Parker v. Brown*,[7] establishes three tiers of decision makers, with different thresholds for immunity in each tier.

In the top tier, with the greatest immunity, is the state itself: the sovereign acts of state governments are absolutely immune from antitrust challenge.[8] Absolute immunity extends, at a minimum, to the state Legislature, the Governor, and the state's Supreme Court.

In the second tier are subordinate state agencies,[9] such as executive departments and administrative agencies with statewide jurisdiction. State agencies are immune from antitrust challenge if their conduct is undertaken pursuant to a "clearly articulated" and "affirmatively expressed" state policy to displace competition.[10] A state policy is sufficiently clear when displacement of competition is the "inherent, logical, or ordinary result" of the authority delegated by the state legislature.[11]

The third tier includes private parties acting on behalf of a state, such as the members of a state-created professional licensing board. Private parties may enjoy state action immunity when two conditions are met: (1) their conduct is undertaken pursuant to a "clearly articulated" and "affirmatively expressed" state policy to displace competition, and (2) their conduct is "actively supervised" by the state.[12] The

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very different from "state action" for purposes of analysis of a civil rights violation under section 1983 of title 42 of the United States Code. Under section 1983, *liability* attaches to "state action," which may cover even the inadvertent or unilateral act of a state official not acting pursuant to state policy. In the antitrust context, a conclusion that a policy or action amounts to "state action" results in *immunity* from suit.

[7] *Parker v. Brown*, *supra*, 317 U.S. 341.

[8] *Hoover v. Ronwin* (1984) 466 U.S. 558, 574, 579-580.

[9] Distinguishing the state itself from subordinate state agencies has sometimes proven difficult. Compare the majority opinion in *Hoover v. Ronwin*, *supra*, 466 U.S. at p. 581 with dissenting opinion of Stevens, J., at pp. 588-589. (See *Costco v. Maleng* (9th Cir. 2008) 522 F.3d 874, 887, subseq. hrg. 538 F.3d 1128; *Charley's Taxi Radio Dispatch Corp. v. SIDA of Haw., Inc.* (9th Cir. 1987) 810 F.2d 869, 875.)

[10] See *Town of Hallie v. City of Eau Claire* (1985) 471 U.S. 34, 39.

[11] *F.T.C. v. Phoebe Putney Health Systems, Inc.* (2013) ___ U.S. ___, 133 S.Ct. 1003, 1013; see also *Southern Motor Carriers Rate Conference, Inc. v. U.S.* (1985) 471 U.S. 48, 57 (state policy need not compel specific anticompetitive effect).

[12] *Cal. Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.* (1980) 445 U.S. 97, 105 (*Midcal*).

fundamental purpose of the supervision requirement is to shelter only those private anticompetitive acts that the state approves as actually furthering its regulatory policies.[13] To that end, the mere possibility of supervision—such as the existence of a regulatory structure that is not operative, or not resorted to—is not enough. "The active supervision prong . . . requires that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy."[14]

C. State Action Immunity Doctrine After *North Carolina Dental*

Until the Supreme Court decided *North Carolina Dental*, it was widely believed that most professional licensing boards would fall within the second tier of state action immunity, requiring a clear and affirmative policy, but not active state supervision of every anticompetitive decision. In California in particular, there were good arguments that professional licensing boards[15] were subordinate agencies of the state: they are formal, ongoing bodies created pursuant to state law; they are housed within the Department of Consumer Affairs and operate under the Consumer Affairs Director's broad powers of investigation and control; they are subject to periodic sunset review by the Legislature, to rule-making review under the Administrative Procedure Act, and to administrative and judicial review of disciplinary decisions; their members are appointed by state officials, and include increasingly large numbers of public (non-professional) members; their meetings and records are subject to open-government laws and to strong prohibitions on conflicts of interest; and their enabling statutes generally provide well-guided discretion to make decisions affecting the professional markets that the boards regulate.[16]

Those arguments are now foreclosed, however, by *North Carolina Dental*. There, the Court squarely held, for the first time, that "a state board on which a controlling

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[13] *Patrick v. Burget* (1988) 486 U.S. 94, 100-101.

[14] *Ibid*.

[15] California's Department of Consumer Affairs includes some 25 professional regulatory boards that establish minimum qualifications and levels of competency for licensure in various professions, including accountancy, acupuncture, architecture, medicine, nursing, structural pest control, and veterinary medicine—to name just a few. (See http://www.dca.ca.gov/about_ca/entities.shtml.)

[16] Cf. 1A Areeda & Hovenkamp, *supra*, ¶ 227, p. 208 (what matters is not what the body is called, but its structure, membership, authority, openness to the public, exposure to ongoing review, etc.).

number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity."[17] The effect of *North Carolina Dental* is to put professional licensing boards "on which a controlling number of decision makers are active market participants" in the third tier of state-action immunity. That is, they are immune from antitrust actions as long as they act pursuant to clearly articulated state policy to replace competition with regulation of the profession, *and* their decisions are actively supervised by the state.

Thus arises the question presented here: What constitutes "active state supervision"?[18]

D. Legal Standards for Active State Supervision

The active supervision requirement arises from the concern that, when active market participants are involved in regulating their own field, "there is a real danger" that they will act to further their own interests, rather than those of consumers or of the state.[19] The purpose of the requirement is to ensure that state action immunity is afforded to private parties only when their actions actually further the state's policies.[20]

There is no bright-line test for determining what constitutes active supervision of a professional licensing board: the standard is "flexible and context-dependent."[21] Sufficient supervision "need not entail day-to-day involvement" in the board's operations or "micromanagement of its every decision."[22] Instead, the question is whether the review mechanisms that are in place "provide 'realistic assurance'" that the anticompetitive effects of a board's actions promote state policy, rather than the board members' private interests.[23]

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[17] *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1114; *Midcal*, *supra*, 445 U.S at p. 105.

[18] Questions about whether the State's anticompetitive policies are adequately articulated are beyond the scope of this Opinion.

[19] *Patrick v. Burget*, *supra*, 486 U.S. at p. 100, citing *Town of Hallie v. City of Eau Claire*, *supra*, 471 U.S. at p. 47; see *id.* at p. 45 ("A private party . . . may be presumed to be acting primarily on his or its own behalf").

[20] *Patrick v. Burget*, *supra*, 486 U.S. at pp. 100-101.

[21] *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1116.

[22] *Ibid.*

[23] *Ibid.*

The *North Carolina Dental* opinion and pre-existing authorities allow us to identify "a few constant requirements of active supervision":[24]

- The state supervisor who reviews a decision must have the power to reverse or modify the decision.[25]
- The "mere potential" for supervision is not an adequate substitute for supervision.[26]
- When a state supervisor reviews a decision, he or she must review the substance of the decision, not just the procedures followed to reach it.[27]
- The state supervisor must not be an active market participant.[28]

Keeping these requirements in mind may help readers evaluate whether California law already provides adequate supervision for professional licensing boards, or whether new or stronger measures are desirable.

II. Threshold Considerations for Assessing Potential Responses to *North Carolina Dental*

There are a number of different measures that the Legislature might consider in response to the *North Carolina Dental* decision. We will describe a variety of these, along with some of their potential advantages or disadvantages. Before moving on to

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[24] *Id. at* pp. 1116-1117.

[25] *Ibid.*

[26] *Id.* at p. 1116, citing *F.T.C. v. Ticor Title Ins. Co.* (1992) 504 U.S. 621, 638. For example, a passive or negative-option review process, in which an action is considered approved as long as the state supervisor raises no objection to it, may be considered inadequate in some circumstances. (*Ibid.*)

[27] *Ibid.*, citing *Patrick v. Burget*, *supra*, 486 U.S. at pp. 102-103. In most cases, there should be some evidence that the state supervisor considered the particular circumstances of the action before making a decision. Ideally, there should be a factual record and a written decision showing that there has been an assessment of the action's potential impact on the market, and of whether the action furthers state policy. (See *In the Matter of Indiana Household Moves and Warehousemen, Inc.* (2008) 135 F.T.C. 535, 555-557; see also Federal Trade Commission, Report of the State Action Task Force (2003) at p. 54.)

[28] *North Carolina Dental*, *supra*, 135 S.Ct. at pp. 1116-1117.

those options, however, we should put the question of immunity into proper perspective. There are two important things keep in mind: (1) the loss of immunity, if it is lost, does not mean that an antitrust violation has been committed, and (2) even when board members participate in regulating the markets they compete in, many—if not most—of their actions do not implicate the federal antitrust laws.

In the context of regulating professions, "market-sensitive" decisions (that is, the kinds of decisions that are most likely to be open to antitrust scrutiny) are those that create barriers to market participation, such as rules or enforcement actions regulating the scope of unlicensed practice; licensing requirements imposing heavy burdens on applicants; marketing programs; restrictions on advertising; restrictions on competitive bidding; restrictions on commercial dealings with suppliers and other third parties; and price regulation, including restrictions on discounts.

On the other hand, we believe that there are broad areas of operation where board members can act with reasonable confidence—especially once they and their state-official contacts have been taught to recognize actual antitrust issues, and to treat those issues specially. Broadly speaking, promulgation of regulations is a fairly safe area for board members, because of the public notice, written justification, Director review, and review by the Office of Administrative Law that are required by the Administrative Procedure Act. Also, broadly speaking, disciplinary decisions are another fairly safe area because of due process procedures; participation of state actors such as board executive officers, investigators, prosecutors, and administrative law judges; and availability of administrative mandamus review.

We are not saying that the procedures that attend these quasi-legislative and quasi-judicial functions make the licensing boards altogether immune from antitrust claims. Nor are we saying that rule-making and disciplinary actions are per se immune from antitrust laws. What we are saying is that, assuming a board identifies its market-sensitive decisions and gets active state supervision for those, then ordinary rule-making and discipline (faithfully carried out under the applicable rules) may be regarded as relatively safe harbors for board members to operate in. It may require some education and experience for board members to understand the difference between market-sensitive and "ordinary" actions, but a few examples may bring in some light.

North Carolina Dental presents a perfect example of a market-sensitive action. There, the dental board decided to, and actually succeeded in, driving non-dentist teeth-whitening service providers out of the market, even though nothing in North Carolina's laws specified that teeth-whitening constituted the illegal practice of dentistry. Counter-examples—instances where no antitrust violation occurs—are far more plentiful. For example, a regulatory board may legitimately make rules or impose discipline to prohibit

license-holders from engaging in fraudulent business practices (such as untruthful or deceptive advertising) without violating antitrust laws.[29] As well, suspending the license of an individual license-holder for violating the standards of the profession is a reasonable restraint and has virtually no effect on a large market, and therefore would not violate antitrust laws.[30]

Another area where board members can feel safe is in carrying out the actions required by a detailed anticompetitive statutory scheme.[31] For example, a state law prohibiting certain kinds of advertising or requiring certain fees may be enforced without need for substantial judgment or deliberation by the board. Such detailed legislation leaves nothing for the state to supervise, and thus it may be said that the legislation itself satisfies the supervision requirement.[32]

Finally, some actions will not be antitrust violations because their effects are, in fact, pro-competitive rather than anticompetitive. For instance, the adoption of safety standards that are based on objective expert judgments have been found to be pro-competitive.[33] Efficiency measures taken for the benefit of consumers, such as making information available to the purchasers of competing products, or spreading development costs to reduce per-unit prices, have been held to be pro-competitive because they are pro-consumer.[34]

III. Potential Measures for Preserving State Action Immunity

A. Changes to the Composition of Boards

The *North Carolina Dental* decision turns on the principle that a state board is a group of private actors, not a subordinate state agency, when "a controlling number of decisionmakers are active market participants in the occupation the board regulates."[35]

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[29] See generally *California Dental Assn. v. F.T.C.* (1999) 526 U.S. 756.

[30] See *Oksanen v. Page Memorial Hospital* (4th Cir. 1999) 945 F.2d 696 (*en banc*).

[31] See *324 Liquor Corp. v. Duffy* (1987) 479 U.S. 335, 344, fn. 6.

[32] 1A Areeda & Hovenkamp, Antitrust Law, *supra*, ¶ 221, at p. 66; ¶ 222, at pp. 67, 76.

[33] See *Allied Tube & Conduit Corp. v. Indian Head, Inc.* (1988) 486 U.S. 492, 500-501.

[34] *Broadcom Corp. v. Qualcomm Inc.* (3rd Cir. 2007) 501 F.3d 297, 308-309; see generally Bus. & Prof. Code, § 301.

[35] 135 S.Ct. at p. 1114.

This ruling brings the composition of boards into the spotlight. While many boards in California currently require a majority of public members, it is still the norm for professional members to outnumber public members on boards that regulate healing-arts professions. In addition, delays in identifying suitable public-member candidates and in filling public seats can result in de facto market-participant majorities.

In the wake of *North Carolina Dental*, many observers' first impulse was to assume that reforming the composition of professional boards would be the best resolution, both for state actors and for consumer interests. Upon reflection, however, it is not obvious that sweeping changes to board composition would be the most effective solution.[36]

Even if the Legislature were inclined to decrease the number of market-participant board members, the current state of the law does not allow us to project accurately how many market-participant members is too many. This is a question that was not resolved by the *North Carolina Dental* decision, as the dissenting opinion points out:

> What is a "controlling number"? Is it a majority? And if so, why does the Court eschew that term? Or does the Court mean to leave open the possibility that something less than a majority might suffice in particular circumstances? Suppose that active market participants constitute a voting bloc that is generally able to get its way? How about an obstructionist minority or an agency chair empowered to set the agenda or veto regulations?[37]

Some observers believe it is safe to assume that the *North Carolina Dental* standard would be satisfied if public members constituted a majority of a board. The

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[36] Most observers believe that there are real advantages in staffing boards with professionals in the field. The combination of technical expertise, practiced judgment, and orientation to prevailing ethical norms is probably impossible to replicate on a board composed entirely of public members. Public confidence must also be considered. Many consumers would no doubt share the sentiments expressed by Justice Breyer during oral argument in the *North Carolina Dental* case: "[W]hat the State says is: We would like this group of brain surgeons to decide who can practice brain surgery in this State. I don't want a group of bureaucrats deciding that. I would like brain surgeons to decide that." (*North Carolina Dental*, *supra*, transcript of oral argument p. 31, available at http://www.supremecourt.gov/oral_arguments/argument_transcripts/13-534_l6h1.pdf (hereafter, Transcript).)

[37] *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1123 (dis. opn. of Alito, J.).

obvious rejoinder to that argument is that the Court pointedly did not use the term "majority;" it used "controlling number." More cautious observers have suggested that "controlling number" should be taken to mean the majority of a quorum, at least until the courts give more guidance on the matter.

North Carolina Dental leaves open other questions about board composition as well. One of these is: Who is an "active market participant"?[38] Would a retired member of the profession no longer be a participant of the market? Would withdrawal from practice during a board member's term of service suffice? These questions were discussed at oral argument,[39] but were not resolved. Also left open is the scope of the market in which a member may not participate while serving on the board.[40]

Over the past four decades, California has moved decisively to expand public membership on licensing boards.[41] The change is generally agreed to be a salutary one for consumers, and for underserved communities in particular.[42] There are many good reasons to consider continuing the trend to increase public membership on licensing boards—but we believe a desire to ensure immunity for board members should not be the decisive factor. As long as the legal questions raised by *North Carolina Dental* remain unresolved, radical changes to board composition are likely to create a whole new set of policy and practical challenges, with no guarantee of resolving the immunity problem.

B. Some Mechanisms for Increasing State Supervision

Observers have proposed a variety of mechanisms for building more state oversight into licensing boards' decision-making processes. In considering these alternatives, it may be helpful to bear in mind that licensing boards perform a variety of

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[38] *Ibid*.

[39] Transcript, *supra*, at p. 31.

[40] *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1123 (dis. opn. of Alito, J.). Some observers have suggested that professionals from one practice area might be appointed to serve on the board regulating another practice area, in order to bring their professional expertise to bear in markets where they are not actively competing.

[41] See Center for Public Interest Law, A Guide to California's Health Care Licensing Boards (July 2009) at pp. 1-2; Shimberg, Occupational Licensing: A Public Perspective (1982) at pp. 163-165.

[42] See Center for Public Interest Law, *supra*, at pp. 15-17; Shimberg, *supra*, at pp. 175-179.

distinct functions, and that different supervisory structures may be appropriate for different functions.

For example, boards may develop and enforce standards for licensure; receive, track, and assess trends in consumer complaints; perform investigations and support administrative and criminal prosecutions; adjudicate complaints and enforce disciplinary measures; propose regulations and shepherd them through the regulatory process; perform consumer education; and more. Some of these functions are administrative in nature, some are quasi-judicial, and some are quasi-legislative. Boards' quasi-judicial and quasi-legislative functions, in particular, are already well supported by due process safeguards and other forms of state supervision (such as vertical prosecutions, administrative mandamus procedures, and public notice and scrutiny through the Administrative Procedure Act). Further, some functions are less likely to have antitrust implications than others: decisions affecting only a single license or licensee in a large market will rarely have an anticompetitive effect within the meaning of the Sherman Act. For these reasons, it is worth considering whether it is less urgent, or not necessary at all, to impose additional levels of supervision with respect to certain functions.

Ideas for providing state oversight include the concept of a superagency, such as a stand-alone office, or a committee within a larger agency, which has full responsibility for reviewing board actions de novo. Under such a system, the boards could be permitted to carry on with their business as usual, except that they would be required to refer each of their decisions (or some subset of decisions) to the superagency for its review. The superagency could review each action file submitted by the board, review the record and decision in light of the state's articulated regulatory policies, and then issue its own decision approving, modifying, or vetoing the board's action.

Another concept is to modify the powers of the boards themselves, so that all of their functions (or some subset of functions) would be advisory only. Under such a system, the boards would not take formal actions, but would produce a record and a recommendation for action, perhaps with proposed findings and conclusions. The recommendation file would then be submitted to a supervising state agency for its further consideration and formal action, if any.

Depending on the particular powers and procedures of each system, either could be tailored to encourage the development of written records to demonstrate executive discretion; access to administrative mandamus procedures for appeal of decisions; and the development of expertise and collaboration among reviewers, as well as between the reviewers and the boards that they review. Under any system, care should be taken to structure review functions so as to avoid unnecessary duplication or conflicts with other agencies and departments, and to minimize the development of super-policies not

adequately tailored to individual professions and markets. To prevent the development of "rubber-stamp" decisions, any acceptable system must be designed and sufficiently staffed to enable plenary review of board actions or recommendations at the individual transactional level.

As it stands, California is in a relatively advantageous position to create these kinds of mechanisms for active supervision of licensing boards. With the boards centrally housed within the Department of Consumer Affairs (an "umbrella agency"), there already exists an organization with good knowledge and experience of board operations, and with working lines of communication and accountability. It is worth exploring whether existing resources and minimal adjustments to procedures and outlooks might be converted to lines of active supervision, at least for the boards' most market-sensitive actions.

Moreover, the Business and Professions Code already demonstrates an intention that the Department of Consumer Affairs will protect consumer interests as a means of promoting "the fair and efficient functioning of the free enterprise market economy" by educating consumers, suppressing deceptive and fraudulent practices, fostering competition, and representing consumer interests at all levels of government.[43] The free-market and consumer-oriented principles underlying *North Carolina Dental* are nothing new to California, and no bureaucratic paradigms need to be radically shifted as a result.

The Business and Professions Code also gives broad powers to the Director of Consumer Affairs (and his or her designees)[44] to protect the interests of consumers at every level.[45] The Director has power to investigate the work of the boards and to obtain their data and records;[46] to investigate alleged misconduct in licensing examinations and qualifications reviews;[47] to require reports;[48] to receive consumer complaints;[49] and to initiate audits and reviews of disciplinary cases and complaints about licensees.[50]

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[43] Bus. & Prof. Code, § 301.

[44] Bus. & Prof. Code, §§ 10, 305.

[45] See Bus. & Prof. Code, § 310.

[46] Bus. & Prof. Code, § 153.

[47] Bus. & Prof. Code, § 109.

[48] Bus. & Prof. Code, § 127.

[49] Bus. & Prof. Code, § 325.

[50] Bus. & Prof. Code, § 116.

In addition, the Director must be provided a full opportunity to review all proposed rules and regulations (except those relating to examinations and licensure qualifications) before they are filed with the Office of Administrative Law, and the Director may disapprove any proposed regulation on the ground that it is injurious to the public.[51] Whenever the Director (or his or her designee) actually exercises one of these powers to reach a substantive conclusion as to whether a board's action furthers an affirmative state policy, then it is safe to say that the active supervision requirement has been met.[52]

It is worth considering whether the Director's powers should be amended to make review of certain board decisions mandatory as a matter of course, or to make the Director's review available upon the request of a board. It is also worth considering whether certain existing limitations on the Director's powers should be removed or modified. For example, the Director may investigate allegations of misconduct in examinations or qualification reviews, but the Director currently does not appear to have power to review board decisions in those areas, or to review proposed rules in those areas.[53] In addition, the Director's power to initiate audits and reviews appears to be limited to disciplinary cases and complaints about licensees.[54] If the Director's initiative is in fact so limited, it is worth considering whether that limitation continues to make sense. Finally, while the Director must be given a full opportunity to review most proposed regulations, the Director's disapproval may be overridden by a unanimous vote of the board.[55] It is worth considering whether the provision for an override maintains its utility, given that such an override would nullify any "active supervision" and concomitant immunity that would have been gained by the Director's review.[56]

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[51] Bus. & Prof. Code, § 313.1.

[52] Although a written statement of decision is not specifically required by existing legal standards, developing a practice of creating an evidentiary record and statement of decision would be valuable for many reasons, not the least of which would be the ability to proffer the documents to a court in support of a motion asserting state action immunity.

[53] Bus. & Prof. Code, §§ 109, 313.1.

[54] Bus. & Prof. Code, § 116.

[55] Bus. & Prof. Code, § 313.1.

[56] Even with an override, proposed regulations are still subject to review by the Office of Administrative Law.

C. Legislation Granting Immunity

From time to time, states have enacted laws expressly granting immunity from antitrust laws to political subdivisions, usually with respect to a specific market.[57] However, a statute purporting to grant immunity to private persons, such as licensing board members, would be of doubtful validity. Such a statute might be regarded as providing adequate authorization for anticompetitive activity, but active state supervision would probably still be required to give effect to the intended immunity. What is quite clear is that a state cannot grant blanket immunity by fiat. "[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful . . . ."[58]

IV. Indemnification of Board Members

So far we have focused entirely on the concept of immunity, and how to preserve it. But immunity is not the only way to protect state employees from the costs of suit, or to provide the reassurance necessary to secure their willingness and ability to perform their duties. Indemnification can also go a long way toward providing board members the protection they need to do their jobs. It is important for policy makers to keep this in mind in weighing the costs of creating supervision structures adequate to ensure blanket state action immunity for board members. If the costs of implementing a given supervisory structure are especially high, it makes sense to consider whether immunity is an absolute necessity, or whether indemnification (with or without additional risk-management measures such as training or reporting) is an adequate alternative.

As the law currently stands, the state has a duty to defend and indemnify members of licensing boards against antitrust litigation to the same extent, and subject to the same exceptions, that it defends and indemnifies state officers and employees in general civil litigation. The duty to defend and indemnify is governed by the Government Claims Act.[59] For purposes of the Act, the term "employee" includes officers and uncompensated servants.[60] We have repeatedly determined that members of a board,

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[57] See 1A Areeda & Hovenkamp, Antitrust Law, *supra*, 225, at pp. 135-137; e.g. *A1 Ambulance Service, Inc. v. County of Monterey* (9th Cir. 1996) 90 F.3d 333, 335 (discussing Health & Saf. Code, § 1797.6).

[58] *Parker v. Brown*, *supra*, 317 U.S. at 351.

[59] Gov. Code, §§ 810-996.6.

[60] See Gov. Code § 810.2.

commission, or similar body established by statute are employees entitled to defense and indemnification.[61]

A. Duty to Defend

Public employees are generally entitled to have their employer provide for the defense of any civil action "on account of an act or omission in the scope" of employment.[62] A public entity may refuse to provide a defense in specified circumstances, including where the employee acted due to "actual fraud, corruption, or actual malice."[63] The duty to defend contains no exception for antitrust violations.[64] Further, violations of antitrust laws do not inherently entail the sort of egregious behavior that would amount to fraud, corruption, or actual malice under state law. There would therefore be no basis to refuse to defend an employee on the bare allegation that he or she violated antitrust laws.

B. Duty to Indemnify

The Government Claims Act provides that when a public employee properly requests the employer to defend a claim, and reasonably cooperates in the defense, "the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed."[65] In general, the government is liable for an injury proximately caused by an act within the scope of employment,[66] but is not liable for punitive damages.[67]

One of the possible remedies for an antitrust violation is an award of treble damages to a person whose business or property has been injured by the violation.[68] This raises a question whether a treble damages award equates to an award of punitive damages within the meaning of the Government Claims Act. Although the answer is not

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[61] E.g., 81 Ops.Cal.Atty.Gen. 199, 200 (1998); 57 Ops.Cal.Atty.Gen. 358, 361 (1974).

[62] Gov. Code, § 995.

[63] Gov. Code, § 995.2, subd. (a).

[64] Cf. *Mt. Hawley Insurance Co. v. Lopez* (2013) 215 Cal.App.4th 1385 (discussing Ins. Code, § 533.5).

[65] Gov. Code, § 825, subd. (a).

[66] Gov. Code, § 815.2.

[67] Gov. Code, § 818.

[68] 15 U.S.C. § 15(a).

entirely certain, we believe that antitrust treble damages do *not* equate to punitive damages.

The purposes of treble damage awards are to deter anticompetitive behavior and to encourage private enforcement of antitrust laws.[69] An award of treble damages is automatic once an antitrust violation is proved.[70] In contrast, punitive damages are "uniquely justified by and proportioned to the actor's particular reprehensible conduct as well as that person or entity's net worth . . . in order to adequately make the award 'sting' . . . ."[71] Also, punitive damages in California must be premised on a specific finding of malice, fraud, or oppression.[72] In our view, the lack of a malice or fraud element in an antitrust claim, and the immateriality of a defendant's particular conduct or net worth to the treble damage calculation, puts antitrust treble damages outside the Government Claims Act's definition of punitive damages.[73]

C. Possible Improvements to Indemnification Scheme

As set out above, state law provides for the defense and indemnification of board members to the same extent as other state employees. This should go a long way toward reassuring board members and potential board members that they will not be exposed to undue risk if they act reasonably and in good faith. This reassurance cannot be complete, however, as long as board members face significant uncertainty about how much litigation they may have to face, or about the status of treble damage awards.

Uncertainty about the legal status of treble damage awards could be reduced significantly by amending state law to specify that treble damage antitrust awards are not punitive damages within the meaning of the Government Claims Act. This would put them on the same footing as general damages, and thereby remove any uncertainty as to whether the state would provide indemnification for them.[74]

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[69] *Clayworth v. Pfizer, Inc.* (2010) 49 Cal.4th 758, 783-784 (individual right to treble damages is "incidental and subordinate" to purposes of deterrence and vigorous enforcement).

[70] 15 U.S.C. § 15(a).

[71] *Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953, 981-982.

[72] Civ. Code, §§ 818, 3294.

[73] If treble damage awards were construed as constituting punitive damages, the state would still have the option of paying them under Government Code section 825.

[74] Ideally, treble damages should not be available at all against public entities and public officials. Since properly articulated and supervised anticompetitive behavior is

As a complement to indemnification, the potential for board member liability may be greatly reduced by introducing antitrust concepts to the required training and orientation programs that the Department of Consumer Affairs provides to new board members.[75] When board members share an awareness of the sensitivity of certain kinds of actions, they will be in a much better position to seek advice and review (that is, active supervision) from appropriate officials. They will also be far better prepared to assemble evidence and to articulate reasons for the decisions they make in market-sensitive areas. With training and practice, boards can be expected to become as proficient in making and demonstrating sound market decisions, and ensuring proper review of those decisions, as they are now in making and defending sound regulatory and disciplinary decisions.

V. Conclusions

North Carolina Dental has brought both the composition of licensing boards and the concept of active state supervision into the public spotlight, but the standard it imposes is flexible and context-specific. This leaves the state with many variables to consider in deciding how to respond.

Whatever the chosen response may be, the state can be assured that *North Carolina Dental*'s "active state supervision" requirement is satisfied when a non-market-

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permitted to the state and its agents, the deterrent purpose of treble damages does not hold in the public arena. Further, when a state indemnifies board members, treble damages go not against the board members but against public coffers. "It is a grave act to make governmental units potentially liable for massive treble damages when, however 'proprietary' some of their activities may seem, they have fundamental responsibilities to their citizens for the provision of life-sustaining services such as police and fire protection." (*City of Lafayette, La. v. Louisiana Power & Light Co.* (1978) 435 U.S. 389, 442 (dis. opn. of Blackmun, J.).)

In response to concerns about the possibility of treble damage awards against municipalities, Congress passed the Local Government Antitrust Act (15 U.S.C. §§ 34-36), which provides that local governments and their officers and employees cannot be held liable for treble damages, compensatory damages, or attorney's fees. (See H.R. Rep. No. 965, 2nd Sess., p. 11 (1984).) For an argument that punitive sanctions should never be levied against public bodies and officers under the Sherman Act, see 1A Areeda & Hovenkamp, *supra*, ¶ 228, at pp. 214-226. Unfortunately, because treble damages are a product of federal statute, this problem is not susceptible of a solution by state legislation.

[75] Bus. & Prof. Code, § 453.

participant state official has and exercises the power to substantively review a board's action and determines whether the action effectuates the state's regulatory policies.

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FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants*

I. Introduction

States craft regulatory policy through a variety of actors, including state legislatures, courts, agencies, and regulatory boards. While most regulatory actions taken by state actors will not implicate antitrust concerns, some will. Notably, states have created a large number of regulatory boards with the authority to determine who may engage in an occupation (*e.g.*, by issuing or withholding a license), and also to set the rules and regulations governing that occupation. Licensing, once limited to a few learned professions such as doctors and lawyers, is now required for over 800 occupations including (in some states) locksmiths, beekeepers, auctioneers, interior designers, fortune tellers, tour guides, and shampooers.[1]

In general, a state may avoid all conflict with the federal antitrust laws by creating regulatory boards that serve only in an advisory capacity, or by staffing a regulatory board exclusively with persons who have no financial interest in the occupation that is being regulated. However, across the United States, "licensing boards are largely dominated by active members of their respective industries . . ."[2] That is, doctors commonly regulate doctors, beekeepers commonly regulate beekeepers, and tour guides commonly regulate tour guides.

Earlier this year, the U.S. Supreme Court upheld the Federal Trade Commission's determination that the North Carolina State Board of Dental Examiners ("NC Board") violated the federal antitrust laws by preventing non-dentists from providing teeth whitening services in competition with the state's licensed dentists. *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (2015). NC Board is a state agency established under North Carolina law and charged with administering and enforcing a licensing system for dentists. A majority of the members of this state agency are themselves practicing dentists, and thus they have a private incentive to limit

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* This document sets out the views of the Staff of the Bureau of Competition. The Federal Trade Commission is not bound by this Staff guidance and reserves the right to rescind it at a later date. In addition, FTC Staff reserves the right to reconsider the views expressed herein, and to modify, rescind, or revoke this Staff guidance if such action would be in the public interest.

[1] Aaron Edlin & Rebecca Haw, *Cartels By Another Name: Should Licensed Occupations Face Antitrust Scrutiny*, 162 U. PA. L. REV. 1093, 1096 (2014).

[2] *Id.* at 1095.

competition from non-dentist providers of teeth whitening services. NC Board argued that, because it is a state agency, it is exempt from liability under the federal antitrust laws. That is, the NC Board sought to invoke what is commonly referred to as the "state action exemption" or the "state action defense." The Supreme Court rejected this contention and affirmed the FTC's finding of antitrust liability.

In this decision, the Supreme Court clarified the applicability of the antitrust state action defense to state regulatory boards controlled by market participants:

> "The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal's* [*Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980)] active supervision requirement in order to invoke state-action antitrust immunity." *N.C. Dental*, 135 S. Ct. at 1114.

In the wake of this Supreme Court decision, state officials have requested advice from the Federal Trade Commission regarding antitrust compliance for state boards responsible for regulating occupations. This outline provides FTC Staff guidance on two questions. *First*, when does a state regulatory board require active supervision in order to invoke the state action defense? *Second*, what factors are relevant to determining whether the active supervision requirement is satisfied?

Our answers to these questions come with the following caveats.

- Vigorous competition among sellers in an open marketplace generally provides consumers with important benefits, including lower prices, higher quality services, greater access to services, and increased innovation. For this reason, a state legislature should empower a regulatory board to restrict competition only when necessary to protect against a credible risk of harm, such as health and safety risks to consumers. The Federal Trade Commission and its staff have frequently advocated that states avoid unneeded and burdensome regulation of service providers.[3]

- Federal antitrust law does <u>not</u> require that a state legislature provide for active supervision of any state regulatory board. A state legislature may, and generally should, prefer that a regulatory board be subject to the requirements of the federal antitrust

[3] *See, e.g.*, Fed. Trade Comm'n Staff Policy Paper, *Policy Perspectives: Competition and the Regulation of Advanced Practice Registered Nurses* (Mar. 2014), https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf; Fed. Trade Comm'n & U.S. Dept. of Justice, Comment before the South Carolina Supreme Court Concerning Proposed Guidelines for Residential and Commercial Real Estate Closings (Apr. 2008), https://www.ftc.gov/news-events/press-releases/2008/04/ftcdoj-submit-letter-supreme-court-south-carolina-proposed.

laws. If the state legislature determines that a regulatory board should be subject to antitrust oversight, then the state legislature need not provide for active supervision.

- Antitrust analysis – including the applicability of the state action defense – is fact-specific and context-dependent. The purpose of this document is to identify certain overarching legal principles governing when and how a state may provide active supervision for a regulatory board. We are not suggesting a mandatory or one-size-fits-all approach to active supervision. Instead, we urge each state regulatory board to consult with the Office of the Attorney General for its state for customized advice on how best to comply with the antitrust laws.

- This FTC Staff guidance addresses only the active supervision prong of the state action defense. In order successfully to invoke the state action defense, a state regulatory board controlled by market participants must also satisfy the clear articulation prong, as described briefly in Section II. below.

- This document contains guidance developed by the staff of the Federal Trade Commission. Deviation from this guidance does not necessarily mean that the state action defense is inapplicable, or that a violation of the antitrust laws has occurred.

II. Overview of the Antitrust State Action Defense

"Federal antitrust law is a central safeguard for the Nation's free market structures . . . . The antitrust laws declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market." *N.C. Dental*, 135 S. Ct. at 1109.

Under principles of federalism, "the States possess a significant measure of sovereignty." *N.C. Dental*, 135 S. Ct. at 1110 (*quoting Community Communications Co. v. Boulder*, 455 U.S. 40, 53 (1982)). In enacting the antitrust laws, Congress did not intend to prevent the States from limiting competition in order to promote other goals that are valued by their citizens. Thus, the Supreme Court has concluded that the federal antitrust laws do not reach anticompetitive conduct engaged in by a State that is acting in its sovereign capacity. *Parker v. Brown*, 317 U.S. 341, 351-52 (1943). For example, a state legislature may "impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives." *N.C. Dental*, 135 S. Ct. at 1109.

Are the actions of a state regulatory board, like the actions of a state legislature, exempt from the application of the federal antitrust laws? In *North Carolina State Board of Dental Examiners*, the Supreme Court reaffirmed that a state regulatory board is not the sovereign. Accordingly, a state regulatory board is not necessarily exempt from federal antitrust liability.

More specifically, the Court determined that "a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates" may invoke the state action defense only when two requirements are satisfied: first, the challenged restraint must be clearly articulated and affirmatively expressed as state policy; and second, the policy must be actively supervised by a state official (or state agency) that is not a participant in the market that is being regulated. *N.C. Dental*, 135 S. Ct. at 1114.

- The Supreme Court addressed the clear articulation requirement most recently in *FTC v. Phoebe Putney Health Sys., Inc.*, 133 S. Ct. 1003 (2013). The clear articulation requirement is satisfied "where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals." *Id*. at 1013.

- The State's clear articulation of the intent to displace competition is not alone sufficient to trigger the state action exemption. The state legislature's clearly-articulated delegation of authority to a state regulatory board to displace competition may be "defined at so high a level of generality as to leave open critical questions about how

and to what extent the market should be regulated." There is then a danger that this delegated discretion will be used by active market participants to pursue private interests in restraining trade, in lieu of implementing the State's policy goals. *N.C. Dental*, 135 S. Ct. at 1112.

- The active supervision requirement "seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming [antitrust] immunity." *Id.*

Where the state action defense does not apply, the actions of a state regulatory board controlled by active market participants may be subject to antitrust scrutiny. Antitrust issues may arise where an unsupervised board takes actions that restrict market entry or restrain rivalry. The following are some scenarios that have raised antitrust concerns:

- A regulatory board controlled by dentists excludes non-dentists from competing with dentists in the provision of teeth whitening services. *Cf. N.C. Dental,* 135 S. Ct. 1101.

- A regulatory board controlled by accountants determines that only a small and fixed number of new licenses to practice the profession shall be issued by the state each year. *Cf. Hoover v. Ronwin*, 466 U.S. 558 (1984).

- A regulatory board controlled by attorneys adopts a regulation (or a code of ethics) that prohibits attorney advertising, or that deters attorneys from engaging in price competition. *Cf. Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977); *Goldfarb v. Va. State Bar*, 421 U.S. 773 (1975).

III. Scope of FTC Staff Guidance

A. This Staff guidance addresses the applicability of the state action defense under the federal antitrust laws. Concluding that the state action defense is inapplicable does not mean that the conduct of the regulatory board necessarily violates the federal antitrust laws. A regulatory board may assert defenses ordinarily available to an antitrust defendant.

1. **Reasonable restraints on competition do not violate the antitrust laws, even where the economic interests of a competitor have been injured.**

Example 1: A regulatory board may prohibit members of the occupation from engaging in fraudulent business practices without raising antitrust concerns. A regulatory board also may prohibit members of the occupation from engaging in untruthful or deceptive advertising. *Cf. Cal. Dental Ass'n v. FTC*, 526 U.S. 756 (1999).

Example 2: Suppose a market with several hundred licensed electricians. If a regulatory board suspends the license of one electrician for substandard work, such action likely does not unreasonably harm competition. *Cf. Oksanen v. Page Mem'l Hosp.*, 945 F.2d 696 (4th Cir. 1991) (en banc).

2. **The ministerial (non-discretionary) acts of a regulatory board engaged in good faith implementation of an anticompetitive statutory regime do not give rise to antitrust liability. See 324 Liquor Corp. v. Duffy, 479 U.S. 335, 344 n. 6 (1987).**

Example 3: A state statute requires that an applicant for a chauffeur's license submit to the regulatory board, among other things, a copy of the applicant's diploma and a certified check for $500. An applicant fails to submit the required materials. If for this reason the regulatory board declines to issue a chauffeur's license to the applicant, such action would not be considered an unreasonable restraint. In the circumstances described, the denial of a license is a ministerial or non-discretionary act of the regulatory board.

3. **In general, the initiation and prosecution of a lawsuit by a regulatory board does not give rise to antitrust liability unless it falls within the "sham exception." Professional Real Estate Investors v. Columbia Pictures Industries, 508 U.S. 49 (1993); California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972).**

Example 4: A state statute authorizes the state's dental board to maintain an action in state court to enjoin an unlicensed person from practicing dentistry. The members of the dental board have a basis to believe that a particular individual is practicing dentistry but does not hold a valid license. If the dental board files a lawsuit against that individual, such action would not constitute a violation of the federal antitrust laws.

B. Below, FTC Staff describes when active supervision of a state regulatory board is required in order successfully to invoke the state action defense, and what factors are relevant to determining whether the active supervision requirement has been satisfied.

1. When is active state supervision of a state regulatory board required in order to invoke the state action defense?

General Standard: "[A] state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity." *N.C. Dental*, 135 S. Ct. at 1114.

Active Market Participants: A member of a state regulatory board will be considered to be an active market participant in the occupation the board regulates if such person (i) is licensed by the board or (ii) provides any service that is subject to the regulatory authority of the board.

- If a board member participates in any professional or occupational sub-specialty that is regulated by the board, then that board member is an active market participant for purposes of evaluating the active supervision requirement.

- It is no defense to antitrust scrutiny, therefore, that the board members themselves are not directly or personally affected by the challenged restraint. For example, even if the members of the NC Dental Board were orthodontists who do not perform teeth whitening services (as a matter of law or fact or tradition), their control of the dental board would nevertheless trigger the requirement for active state supervision. This is because these orthodontists are licensed by, and their services regulated by, the NC Dental Board.

- A person who temporarily suspends her active participation in an occupation for the purpose of serving on a state board that regulates her former (and intended future) occupation will be considered to be an active market participant.

Method of Selection: The method by which a person is selected to serve on a state regulatory board is not determinative of whether that person is an active market participant in the occupation that the board regulates. For example, a licensed dentist is deemed to be an active market participant regardless of whether the dentist (i) is appointed to the state dental board by the governor or (ii) is elected to the state dental board by the state's licensed dentists.

***A Controlling Number, Not Necessarily a Majority, of Actual Decisionmakers*:**

- Active market participants need not constitute a numerical majority of the members of a state regulatory board in order to trigger the requirement of active supervision. A decision that is controlled, either as a matter of law, procedure, or fact, by active participants in the regulated market (*e.g.*, through veto power, tradition, or practice) must be actively supervised to be eligible for the state action defense.

- Whether a particular restraint has been imposed by a "controlling number of decisionmakers [who] are active market participants" is a fact-bound inquiry that must be made on a case-by-case basis. FTC Staff will evaluate a number of factors, including:

  - ✓ The structure of the regulatory board (including the number of board members who are/are not active market participants) and the rules governing the exercise of the board's authority.

  - ✓ Whether the board members who are active market participants have veto power over the board's regulatory decisions.

Example 5: The state board of electricians consists of four non-electrician members and three practicing electricians. Under state law, new regulations require the approval of five board members. Thus, no regulation may become effective without the assent of at least one electrician member of the board. In this scenario, the active market participants effectively have veto power over the board's regulatory authority. The active supervision requirement is therefore applicable.

  - ✓ The level of participation, engagement, and authority of the non-market participant members in the business of the board – generally and with regard to the particular restraint at issue.

  - ✓ Whether the participation, engagement, and authority of the non-market participant board members in the business of the board differs from that of board members who are active market participants – generally and with regard to the particular restraint at issue.

  - ✓ Whether the active market participants have in fact exercised, controlled, or usurped the decisionmaking power of the board.

Example 6: The state board of electricians consists of four non-electrician members and three practicing electricians. Under state law, new regulations require the approval of a majority of board members. When voting on proposed regulations, the non-electrician members routinely defer to the preferences of the electrician members. Minutes of

board meetings show that the non-electrician members generally are not informed or knowledgeable concerning board business – and that they were not well informed concerning the particular restraint at issue. In this scenario, FTC Staff may determine that the active market participants have exercised the decisionmaking power of the board, and that the active supervision requirement is applicable.

Example 7: The state board of electricians consists of four non-electrician members and three practicing electricians. Documents show that the electrician members frequently meet and discuss board business separately from the non-electrician members. On one such occasion, the electrician members arranged for the issuance by the board of written orders to six construction contractors, directing such individuals to cease and desist from providing certain services. The non-electrician members of the board were not aware of the issuance of these orders and did not approve the issuance of these orders. In this scenario, FTC Staff may determine that the active market participants have exercised the decisionmaking power of the board, and that the active supervision requirement is applicable.

2. What constitutes active supervision?

FTC Staff will be guided by the following principles:

- "[T]he purpose of the active supervision inquiry . . . is to determine whether the State has exercised sufficient independent judgment and control" such that the details of the regulatory scheme "have been established as a product of deliberate state intervention" and not simply by agreement among the members of the state board. "Much as in causation inquiries, the analysis asks whether the State has played a substantial role in determining the specifics of the economic policy." The State is not obliged to "[meet] some normative standard, such as efficiency, in its regulatory practices." *Ticor*, 504 U.S. at 634-35. "The question is not how well state regulation works but whether the anticompetitive scheme is the State's own." *Id*. at 635.

- It is necessary "to ensure the States accept political accountability for anticompetitive conduct they permit and control." *N.C. Dental*, 135 S. Ct. at 1111. *See also Ticor*, 504 U.S. at 636.

- "The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; and the 'mere potential for state supervision is not an adequate substitute for a decision by the State.' Further, the state supervisor may not itself be an active market participant." *N.C. Dental*, 135 S. Ct. at 1116–17 (citations omitted).

- The active supervision must precede implementation of the allegedly anticompetitive restraint.

- "[T]he inquiry regarding active supervision is flexible and context-dependent." "[T]he adequacy of supervision . . . will depend on all the circumstances of a case." *N.C. Dental*, 135 S. Ct. at 1116–17. Accordingly, FTC Staff will evaluate each case in light of its own facts, and will apply the applicable case law and the principles embodied in this guidance reasonably and flexibly.

3. What factors are relevant to determining whether the active supervision requirement has been satisfied?

FTC Staff will consider the presence or absence of the following factors in determining whether the active supervision prong of the state action defense is satisfied.

- The supervisor has obtained the information necessary for a proper evaluation of the action recommended by the regulatory board. As applicable, the supervisor has ascertained relevant facts, collected data, conducted public hearings, invited and received public comments, investigated market conditions, conducted studies, and reviewed documentary evidence.

  - ✓ The information-gathering obligations of the supervisor depend in part upon the scope of inquiry previously conducted by the regulatory board. For example, if the regulatory board has conducted a suitable public hearing and collected the relevant information and data, then it may be unnecessary for the supervisor to repeat these tasks. Instead, the supervisor may utilize the materials assembled by the regulatory board.

- The supervisor has evaluated the substantive merits of the recommended action and assessed whether the recommended action comports with the standards established by the state legislature.

- The supervisor has issued a written decision approving, modifying, or disapproving the recommended action, and explaining the reasons and rationale for such decision.

  - ✓ A written decision serves an evidentiary function, demonstrating that the supervisor has undertaken the required meaningful review of the merits of the state board's action.

  - ✓ A written decision is also a means by which the State accepts political accountability for the restraint being authorized.

Scenario 1: Example of satisfactory active supervision of a state board regulation designating teeth whitening as a service that may be provided only by a licensed dentist, where state policy is to protect the health and welfare of citizens and to promote competition.

- The state legislature designated an executive agency to review regulations recommended by the state regulatory board. Recommended regulations become effective only following the approval of the agency.

- The agency provided notice of (i) the recommended regulation and (ii) an opportunity to be heard, to dentists, to non-dentist providers of teeth whitening, to the public (in a newspaper of general circulation in the affected areas), and to other interested and affected persons, including persons that have previously identified themselves to the agency as interested in, or affected by, dentist scope of practice issues.

- The agency took the steps necessary for a proper evaluation of the recommended regulation. The agency:

  - ✓ Obtained the recommendation of the state regulatory board and supporting materials, including the identity of any interested parties and the full evidentiary record compiled by the regulatory board.

  - ✓ Solicited and accepted written submissions from sources other than the regulatory board.

  - ✓ Obtained published studies addressing (i) the health and safety risks relating to teeth whitening and (ii) the training, skill, knowledge, and equipment reasonably required in order to safely and responsibly provide teeth whitening services (if not contained in submission from the regulatory board).

  - ✓ Obtained information concerning the historic and current cost, price, and availability of teeth whitening services from dentists and non-dentists (if not contained in submission from the regulatory board). Such information was verified (or audited) by the Agency as appropriate.

  - ✓ Held public hearing(s) that included testimony from interested persons (including dentists and non-dentists). The public hearing provided the agency with an opportunity (i) to hear from and to question providers, affected customers, and experts and (ii) to supplement the evidentiary record compiled by the state board. (As noted above, if the state regulatory board has previously conducted a suitable public hearing, then it may be unnecessary for the supervising agency to repeat this procedure.)

- The agency assessed all of the information to determine whether the recommended regulation comports with the State's goal to protect the health and

welfare of citizens and to promote competition.

- The agency issued a written decision accepting, rejecting, or modifying the scope of practice regulation recommended by the state regulatory board, and explaining the rationale for the agency's action.

Scenario 2: Example of satisfactory active supervision of a state regulatory board administering a disciplinary process.

A common function of state regulatory boards is to administer a disciplinary process for members of a regulated occupation. For example, the state regulatory board may adjudicate whether a licensee has violated standards of ethics, competency, conduct, or performance established by the state legislature.

Suppose that, acting in its adjudicatory capacity, a regulatory board controlled by active market participants determines that a licensee has violated a lawful and valid standard of ethics, competency, conduct, or performance, and for this reason, the regulatory board proposes that the licensee's license to practice in the state be revoked or suspended. In order to invoke the state action defense, the regulatory board would need to show both clear articulation and active supervision.

- In this context, active supervision may be provided by the administrator who oversees the regulatory board (*e.g.*, the secretary of health), the state attorney general, or another state official who is not an active market participant. The active supervision requirement of the state action defense will be satisfied if the supervisor: (i) reviews the evidentiary record created by the regulatory board; (ii) supplements this evidentiary record if and as appropriate; (iii) undertakes a de novo review of the substantive merits of the proposed disciplinary action, assessing whether the proposed disciplinary action comports with the policies and standards established by the state legislature; and (iv) issues a written decision that approves, modifies, or disapproves the disciplinary action proposed by the regulatory board.

Note that a disciplinary action taken by a regulatory board affecting a single licensee will typically have only a de minimis effect on competition. A pattern or program of disciplinary actions by a regulatory board affecting multiple licensees may have a substantial effect on competition.

The following do <u>not</u> constitute active supervision of a state regulatory board that is controlled by active market participants:

- The entity responsible for supervising the regulatory board is itself controlled by active market participants in the occupation that the board regulates. *See N.C. Dental*, 135 S. Ct. at 1113-14.

- A state official monitors the actions of the regulatory board and participates in deliberations, but lacks the authority to disapprove anticompetitive acts that fail to accord with state policy. *See Patrick v. Burget*, 486 U.S. 94, 101 (1988).

- A state official (*e.g.*, the secretary of health) serves ex officio as a member of the regulatory board with full voting rights. However, this state official is one of several members of the regulatory board and lacks the authority to disapprove anticompetitive acts that fail to accord with state policy.

- The state attorney general or another state official provides advice to the regulatory board on an ongoing basis.

- An independent state agency is staffed, funded, and empowered by law to evaluate, and then to veto or modify, particular recommendations of the regulatory board. However, in practice such recommendations are subject to only cursory review by the independent state agency. The independent state agency perfunctorily approves the recommendations of the regulatory board. *See Ticor*, 504 U.S. at 638.

- An independent state agency reviews the actions of the regulatory board and approves all actions that comply with the procedural requirements of the state administrative procedure act, without undertaking a substantive review of the actions of the regulatory board. *See Patrick*, 486 U.S. at 104-05.

Agenda Item K

ELECTION OF LATC OFFICERS FOR FISCAL YEAR 2016/17
DISCUSS AND POSSIBLE ACTION ON LATC OFFICER ELECTION PROCEDURES

Members of the Landscape Architects Technical Committee will nominate and elect a Chair and Vice Chair for fiscal year 2016/17 at today's meeting.

Agenda Item L

REVIEW TENTATIVE SCHEDULE AND CONFIRM FUTURE LATC MEETING DATES

<u>October</u>		
21-24	American Society of Landscape Architects Annual Meeting	New Orleans, LA
<u>November</u>		
11	*Veterans Day*	*Office Closed*
24–25	*Thanksgiving Holiday*	*Office Closed*
<u>December</u>		
15-16	California Architects Board Meeting & Strategic Planning Session	Sacramento
26	*Christmas Observed*	*Office Closed*
<u>January 2017</u>		
2	*New Year's Day Observed*	*Office Closed*
16	*Martin Luther King Jr. Day*	*Office Closed*
17-18	LATC Meeting & Strategic Planning Session	Sacramento

Agenda Item M

ADJOURNMENT

Time: _____