



Avoiding Legal Conflicts

By Niles Nordquist, Forensic Landscape Architect, LA 1893

Professional conflicts between landscape architects and clients, the public, and oversight agencies are common. When these disputes result in litigation, extensive costs and other professional impacts can result. When significant civil or criminal actions occur against a landscape architect, license status can be adversely affected.

The range of allegations related to landscape architects in recent lawsuits is broad. Most litigation involves construction defects or personal injury to third parties not part of the landscape architect's original design contract. Third parties may be the owners of condominiums purchased from the landscape architect's builder clients or common citizens injured in some way at properties associated with the landscape architect's work. The trend is that landscape architects are being named more often in legal disputes, either as direct defendants or cross-defendants.

The issues involved in these cases usually concern placement of elements, such as trees and irrigation equipment, details for the installation of landscape elements, and design of grading and drainage associated with the civil engineering of a site. Other concerns include the adequacy or appropriateness of specifications for composition, construction or finishing of various elements.

While many of the allegations brought against landscape architects have little or no basis, some are receiving increased attention in consideration of the "Standard of Care." The Standard of Care is generally defined as the quality level that most landscape architects would provide in a given situation; it is neither the most stringent nor the least stringent.

Professional conflicts cannot be eliminated, but they can be dramatically reduced with attention to several deficiencies in the practice by landscape architects today. While these are not a problem in many offices, they constitute a

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Licensee Rosters Available

A licensee roster (current through July 2001) is available for distribution to Building Officials and interested parties. The roster is printed annually. To obtain a free copy, contact the LATC at (916) 445-4954 or by e-mail at latc@dca.ca.gov.

Since the status of an individual's license is subject to change, be sure to check the LATC's Web site at www.latc.dca.ca.gov for the most current information.

Gretchen Kjose Leaves the LATC

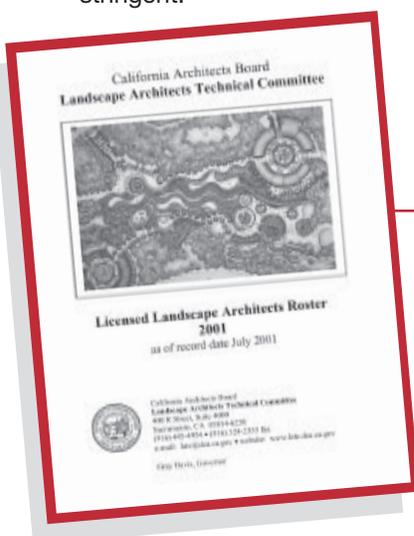
Gretchen Kjose, Program Manager of the LATC since May 1999, left her position on September 21, 2001 to take over as Executive Officer of the California Board of Occupational Therapy.



Staff and Committee members offered their sincere appreciation for her dedication and contributions to the LATC.

Gretchen came to the LATC as our third Program Manager since I arrived in 1993. She was quick to roll up her sleeves and begin the study of what it is that landscape architects do. Through her leadership, she spearheaded the Strategic Planning effort, which has been one of the greatest reasons for our success in the past few years. Gretchen quickly assimilated, not only to our LATC members, but has become well respected in CLARB, our national licensing organization, where she has developed friendships with many landscape architects and board administrators throughout the country and Canada. She has been a true leader in our short history as the LATC. It is my hope that she will remain a contact, with whom we can consult and gain advice. I wish her the best, and have no doubt she will be successful in all her future endeavors. She will be missed.

Sandra J. Gonzalez, LATC Chair



Upcoming Events

November 2001	Exam Reviews	TBA
December 3-4, 2001	LARE	Sacramento, Riverside
December 14, 2001	LATC Meeting	Sacramento

LAF/CLASS Fund

By Andy Bowden, ASLA

Principal, Land Concern, LA 1801

In 1980, a group of dedicated individuals, comprised of landscape architects, landscape contractors, wholesale nursery growers, and several green industry suppliers and manufacturers realized an obligation to support the educational advancement of landscape architecture and the green industry in California and formed a non-profit organization called the Landscape Architecture Foundation/California Landscape Architectural Student Scholarship Fund (LAF/CLASS Fund).

To help perpetuate the number of quality graduates that would come from the various landscape architecture programs in California, the LAF/CLASS Fund agreed to offer scholarships to individuals who demonstrate academic ability and a desire to seek a career in landscape architecture, ornamental horticulture, irrigation science, or a green industry-related field.

To raise funds for scholarships, internships, and fellowships, the LAF/CLASS Fund organizes programs and events to support educational advancement. These funds are then awarded to students in financial need from institutions offering curricula in landscape architecture and industry-related fields of study.

The programs and events organized by the LAF/CLASS Fund also bring elements of the green industry together on a regular basis to help promote

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Examination News

The Landscape Architect Registration Examination (LARE) was held on June 11-13, 2001, at the Riverside Convention Center and Sacramento's California Exposition and State Fair facilities. A total of 259 candidates took the exam. Results were released in September.

Candidates who were unsuccessful with the graphic sections of the exam will have the opportunity to review those sections by participating in a Standard or Red-Line Review offered through the LATC. The cost for a Standard Review is \$25 per section and the Red-Line Review is \$100 per section. The Standard Review allows the candidate to compare his/her section with the criteria used to grade that section. The Red-Line Review allows the candidate to also receive general comments on the weaknesses exhibited that caused each vignette to fail. The review sessions will take place during mid November 2001 in northern and southern California. The date and locations have not yet been determined.

On December 3 – 4, 2001, sections C and E of the LARE will be administered in northern and southern California. The final filing date for this exam was September 24, 2001.

All Candidates

Section	Section Format*	# of Candidates	#/% Passed	#/% Failed
A – Legal & Admin Aspects of Practice	MC	182	88/48%	94/52%
B – Analytic Aspects of Practice	MC	172	121/70%	51/30%
C – Planning and Site Design	G	164	43/26%	121/74%
D – Structural Considerations & Materials & Methods of Construction	MC	181	110/61%	71/39%
E – Grading, Drainage & Stormwater Management	G	166	53/32%	113/68%

First Time Candidates

Section	Section Format*	# of Candidates	#/% Passed	#/% Failed
A – Legal & Admin Aspects of Practice	MC	98	47/48%	51/52%
B – Analytic Aspects of Practice	MC	97	77/79%	20/21%
C – Planning and Site Design	G	85	14/16%	71/84%
D – Structural Considerations & Materials & Methods of Construction	MC	97	59/61%	38/39%
E – Grading, Drainage & Stormwater Management	G	85	25/29%	60/71%

Retake Candidates

Section	Section Format*	# of Candidates	#/% Passed	#/% Failed
A – Legal & Admin Aspects of Practice	MC	84	41/49%	43/51%
B – Analytic Aspects of Practice	MC	75	44/59%	31/41%
C – Planning and Site Design	G	79	29/37%	50/63%
D – Structural Considerations & Materials & Methods of Construction	MC	84	51/61%	33/39%
E – Grading, Drainage & Stormwater Management	G	81	28/35%	53/65%

* MC = Multiple Choice Format

* G = Graphic Format

Greening of North Natomas

With its proximity to downtown Sacramento and the region's major freeways, North Natomas has been viewed as an antidote to suburban sprawl by providing one of the last large areas within the city limits available for development. The unique geographic characteristics of North Natomas, namely its proximity to the region's prime agricultural farmlands, wetlands and endangered species habitat, the confluence of the Sacramento and American rivers, and a system of flood control levees with associated drainage canals and waterways, make it a priority area to preserve local wildlife habitat and provide a high quality of life to new residents.

The California Integrated Waste Management Board (CIWMB) is partnering with the City of Sacramento to conduct a pollution prevention outreach program in the North Natomas area. The program will focus on developing landscape design/water use guidelines and distributing educational materials to promote the use of environmentally beneficial landscape management practices that conserve water, minimize nonpoint source pollution, and reduce the generation of green waste. The program has three main components:

Plant Spacing and Water Use Guidelines:

Current landscape installation practices in the new North Natomas developments often space or bunch plants close together in new planting beds in order to get faster coverage of bare areas or give the site an "instant mature landscape" look to attract clients. Such practices produce landscapes at maturity that are over watered, need constant pruning and generate large volumes of green waste that will wind up in the street gutters for collection. Plants must be chosen and spaced so their size at maturity is appropriate for a particular site and function. In order to address this

issue, Plant Spacing Guidelines will be developed by a local landscape architect for the trees and shrubs already listed in the plant selection list in the North Natomas Development Guidelines. These Plant Spacing Guidelines will be based on current data and reliable information gathered from credible published sources.

Outreach to Homeowners:

Homeowners in North Natomas need to be informed and educated on how to:

- 1) protect the stormwater detention basins from excessive contamination;
- 2) design and install low-maintenance, drought tolerant, and waste efficient landscapes;
- 3) use environmentally friendly landscape maintenance practices; and
- 4) use urban derived organic materials (e.g., compost and mulch) in landscape applications.

Program partners will oversee the development and distribution of educational materials to new homeowners via mass mailings and at locally sponsored outreach activities and events in the North Natomas area.

Educational Outreach for Professional Landscapers:

Professional landscapers will be installing and maintaining all publicly supervised and commercial landscape areas as well as many residential properties in North Natomas. Landscapers need to be educated and motivated to use resource-efficient landscape management practices that will:

- 1) reduce the use of pesticides, herbicides and fast release chemical fertilizers;
- 2) minimize site run-off and prevent soil erosion;
- 3) conserve water; and
- 4) reduce green waste generation.

Proper disposal methods for toxic (e.g., pesticides, herbicides, etc.) and non-toxic (e.g., greenwaste) materials will also be emphasized. Outreach efforts and development of educational materials will be coordinated with the Sacramento Stormwater Management Program,

which has developed a Clean Water Business Partner Program (CWBP) with the California Landscape Contractors Association's Sacramento Valley Chapter. The goal of the CWBP is to educate landscape businesses about stormwater pollution issues and promote landscape management practices that protect area surface waters from pollution and contamination.

For more information, contact Ken Decio of the CIWMB at (916) 341-6586 or by e-mail at kdecio@ciwmb.ca.gov.

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risk for firms and individuals, as well.

1. Specifications and details in many offices are more than 25 years old. The staff employing these tools may not fully understand them or review them in detail to challenge the adequacy of the content. Newer technologies and plant species are sometimes included in designs without investigation as to their effectiveness or negative characteristics. **Standard details and specifications should be reviewed for current adequacy. Each new design should receive careful review as to the application of standard details or the need for custom design.**

2. With the proliferation of landscape ordinances and other agency requirements, landscape architects are often deferring design decisions to these abstract standards with the apparent belief that the agency assumes responsibility and that the issues are adequately addressed. Landscape architects are responsible for the content of their designs regardless of the influences of other parties. This may seem to be an

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Insurers Notified of Reporting Requirements

In the last issue of the LATC Newsletter, licensees and interested parties were reminded of the settlement and arbitration award reporting requirements, outlined in Business and Professions Code sections 5678.5 and 5679.5 of the Landscape Architects Practice Act.

To reiterate, all licensees (or their attorneys) and insurers providing professional liability insurance to licensees are required to submit a complete report to the Board on any settlement or arbitration award in excess of \$5,000 of a claim or action for damages caused by the license holder's fraud, deceit, negligence, incompetence, or recklessness in practice. Whether the settlement or arbitration award was made with or without an admission or finding of guilt does not matter. There need only be a **"claim"** or **"action for damages"** that the licensee acted fraudulently, deceitfully, negligently, incompetently, or recklessly in practice for the reporting requirement to be in effect. The report must be sent within 30 days after the settlement agreement has been consented to by the license holder or within 30 days after service of the arbitration award on the parties.

Failure to comply with the reporting requirement when the licensee does not have professional liability insurance is a misdemeanor punishable by a fine of not less than \$100 or more than \$1,000. Willful failure to comply is a misdemeanor punishable by a fine of not less than \$10,000 or more than \$100,000.

In October, a letter was sent to all insurers providing professional liability insurance to landscape architects to remind them of the reporting requirements.

LAF/CLASS Fund

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an open line of communication, provide a central networking information source, as well as provide information on new products and techniques in this rapidly changing field. In this way, the entire green industry can support the students who will later become employed in offices and, in turn, will become a future source for new work opportunities.

Since the first scholarships were granted in 1986, over \$211,000 has been awarded to 148 landscape architectural, ornamental horticulture, and irrigation science students from Cal Poly Pomona, Cal Poly San Luis Obispo, U.C.L.A., U.C. Davis, and U.C. Berkley. For the year 2002, \$25,000 has been set aside to be given out to approximately 14 recipients.

In honor of Ralph Hudson, manager of the Orange County Environmental Management Agency's Harbor, Beaches, and Parks Department for many years (and who's pioneering efforts led to the establishment of 20,000 acres of open space in Orange County), the LAF/CLASS Fund established the Ralph Hudson Environmental Fellowship. This fellowship grant is awarded to a landscape architect in the private, public, or academic sector, private organization or academic institution throughout the United States for research study on open space preservation or environmental quality issues.

In addition to scholarships and grants, LAF/CLASS Fund offers a unique internship program. The students chosen for these internships spend three weeks

Enforcement Actions

The California Architects Board (CAB) is responsible for investigating complaints against licensees and those engaged in unlicensed activity. The LATC assists the Board in this endeavor. The Board retains the authority to make final decisions on all enforcement actions taken against licensees and unlicensed individuals.

The following is a brief description of recent enforcement action taken against an unlicensed person who was found to be in violation of the Landscape Architects Practice Act.

Every effort is made to ensure that this information is correct. Further information on specific violations may be obtained by contacting the Board.

Citation

The Board issued a citation that included a \$500 administrative fine to an unlicensed individual for a violation of Business and Professions Code section 5640, Unlicensed Person Engaging in Practice. The action was taken based on evidence that the individual was practicing landscape architecture without a current and valid license. The individual paid the administrative fine, satisfying the citation. The citation became effective on June 7, 2001.

working in a landscape architectural firm, three weeks in a landscape contractor's office, and three weeks working in an industry-related firm. This gives students a hands-on experience in the landscape architectural, construction, and manufacturing fields prior to graduation to help give them a well-rounded education.

To find out more about the LAF/CLASS Fund, or to become a member, contact Andy Bowden at Land Concern, abowden@landconcern.com, or Bob Cardoza at Nuvis, rcardoza@nuvis.net.

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apparent conflict with the need to follow applicable regulations. When agencies impose requirements that result in poor design or undesirable future consequences, **the landscape architect is obligated to clearly communicate those facts to his/her client and to the agency in an effort to properly resolve the problem.**

3. Specifications, details and plans sometimes are not coordinated. Inconsistencies and outright conflicts can be found that will either impact the implementation of the work or produce future consequences to third party users. **This is simply a matter of sound plan checking, careful coordination, and developing a reluctance to resolve coordination problems through addendum or change orders.**

4. Coordination with other disciplines is becoming a significant issue in legal actions. For example, grading and drainage, aspects often shared with civil engineers and sometimes architects, have become major elements in mold/mildew and concrete deterioration claims. Poor drainage in landscape areas is often viewed as a shared responsibility of the civil engineer, landscape contractor and the landscape architect. Questions are raised as to the degree of cross-verification performed by a landscape architect in regards to the adequacy of related engineering. The divisions of responsibility are far from clear. **Consistent and sometimes redundant coordination between disciplines is a requirement for landscape architects.**

5. In a system of “fees-for-services,” the scope of contracted work is sometimes diminished to a level of inadequacy. Site observation is usually included in the scope of landscape architect’s services, but often performed in an abbreviated manner or not per-

Student Outreach

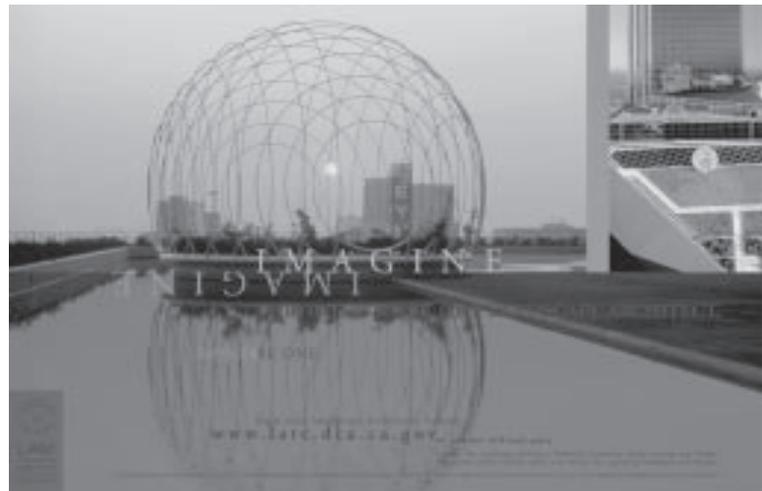
As part of its Student Outreach Program, the LATC held a licensure presentation for students of landscape architecture at California State Polytechnic University, Pomona on October 25, 2001. Following the presentation, the LATC held it’s quarterly meeting on October 26, 2001, open to all interested parties.

Since November 2000, the LATC has met with students at California Polytechnic State University, San Luis Obispo, University of California, Berkeley, University of California, Los Angeles, and University of California, Davis. As part of a Communications Plan, the purpose of this outreach effort is to make students aware of licensure requirements early in their academic careers so that they can plan for the broad range of education and experience they’ll need to prepare for the licensing exam.

After the presentation, LATC members and staff were available to answer any additional licensure questions that students had.

LATC Posters

Licensure posters, printed earlier this year, were distributed to landscape architectural degree and certificate programs in October. If you are interested in receiving a poster, contact the LATC at (916) 445-4954 or by e-mail at latc@dca.ca.gov.



formed at all. Field confirmation of the landscape architect’s design is the most important phase of work to insure an adequate landscape installation. Projects that only receive a “final walk-through” as design confirmation are ripe for future problems. **Complete landscape installation confirmation at critical phases of work is mandatory.**

6. Future maintenance practices will determine the ultimate success of a site installation. Landscape architects are realizing that they must become fully knowledgeable of current maintenance practices in order to provide adequate design services. Assuming that the landscape maintenance will take care of itself is no longer effective or acceptable. Many landscape architects include a custom, maintenance specification as part

of their design services. **Landscape architects must enhance and maintain their knowledge of current maintenance practices.**

Landscape architects cannot avoid involvement in these issues by attempting to shift responsibility to other parties or ignoring necessary coordination. Substantial continuing education is a necessity for all landscape architects from principals to new graduates.

The Standard of Care for landscape architects is rising to meet the advancing needs of clients and the public. What was common practice ten years ago may not be acceptable today. The complexity of these issues requires the renewed attention of all landscape architects in their daily practice.

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What's Inside

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Questions & Answers About the LARE

Q: I do not believe that my exam was graded properly and/or my scores are incorrect. What can I do about it?

A: Examination results cannot be appealed. The grading procedures ensure that exams are graded properly. If any discrepancies exist after an exam has been graded by two independent master graders, a third master grader and, if needed, a fourth master grader reviews the exam to resolve the matter.

Q: Can I review my exam?

A: Yes. Candidates can review the graphic performance sections of the LARE (sections C and E) after the results from the most recent exam are issued. A Standard Review (\$25) allows the candidate to compare his/her section

with the criteria used to grade that section. The Red Line Review (\$100) allows the candidate to also receive general comments on weaknesses exhibited that caused each vignette to fail.

Q: Can I take notes at the review session?

A: No. Candidates have one hour to review each section but are not allowed to take notes or discuss the exam with anyone. Use of non-programmable calculators and scales are permitted. LATC staff will answer procedural questions but will not answer questions regarding the candidate's solution.

Q: Why isn't there a definite date and location for the review session at the time

when I order my review?

A: Once CLARB receives the review order from the LATC, it takes approximately four to six weeks for CLARB graders to red-line each failed vignette. Timeframes are driven by the number of reviews requested. The LATC does not set a date until the receipt of review materials from CLARB can be determined (to avoid any scheduling conflicts and/or rescheduling problems).

Q: If I receive a critical failure on one vignette, does that mean I automatically fail that section of the exam?

A: No. One critical failure does not constitute an automatic failure of that section.