STATE OF CALIFORNIA
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DEPARTMENT OF CONSUMER AFFAIRS

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MEMORANDUM

DATE	September 7, 2010
TO	Patricia Rodriguez Program Manager Landscape Architects Technical Committee
FROM	D Chang Don Chang Supervising Senior Counsel Legal Affairs
SUBJECT	**Local Jurisdictions Refusing To Accept Plans Prepared By Landscape Architects**

You have asked whether the city of Torrance may refuse to accept plans and specifications prepared and stamped by a landscape architect for a deck that was prepared in conjunction with a residential landscape architectural design project.

Conclusion

The design of a deck as part of a residential landscape architectural project is within the scope of practice of a landscape architect. Accordingly, a landscape architect may not be lawfully prohibited by a city from preparing plans and specifications for a residential deck that is part of a larger landscape architectural project.

Analysis

The Design Of A Residential Deck Is A Function Of the Practice of Landscape Architecture

It is our understanding that a landscape architect submitted residential landscape and deck construction plans to the city of Torrance ("city"). The city would not accept the landscape architect's signature and stamp on deck plans, even though the plans also included the stamp and signature of a structural engineer for the portion of work that had been prepared by the structural engineer.

Landscape architects are regulated under Chapter 3.5 (commencing with section 5615) of Division 3 of the Business and Professions Code.[1]

Business and Professions Code section 5615 defines "landscape architect" as follows:

> "5615. As used in this chapter:
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> "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.
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> 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.
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> *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.
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> *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

[1] All section references are to that Code unless otherwise noted.

> in this section in connection with the settings, approaches, or environment for buildings, structures, or facilities, in accordance with the accepted public standards of health, safety, and welfare.
>
> This chapter shall not empower a landscape architect, licensed under this chapter, to practice, or offer to practice, architecture or engineering in any of its various recognized branches." (Emphasis added)

The definition of the scope of practice for a landscape architect is extensive. However, distilled to its essence as it relates to this inquiry, a landscape architect performs professional services for the purpose of landscape development and enhancement, such as design, preparation of drawings, construction documents and specifications. The implementation of landscape development and enhancement includes the location and construction of functional approaches and settings for structures and the design for pedestrian walkway systems, and includes the production of overall site plans and construction details. Landscape architects are also permitted to design those tangible objects and features as are incidental and necessary to the purpose of landscape development and enhancement. The design of a residential deck as part of a residential landscape project would fall within the meaning of the design for a pedestrian walkway system and a tangible object incidental and necessary for the development of the landscape project.

Where The Scope Of Practice Between Professions Overlap,
Either Profession May Perform Activities That Fall Within The Area Of Overlap

Section 6735 of the Professional Engineer's Act (section 6700 et seq.) provides that all civil engineering, including structural and geotechnical engineering, plans, calculations, specifications and reports shall be prepared by or under the responsible charge of a licensed civil engineer. Section 6737, exempts an architect from the provisions of the Professional Engineer's Act insofar as he or she practices architecture. There is no similar exemption in the Professional Engineer's Act for landscape architects. It appears that the city is relying upon the provisions of section 6735 for its general proposition that all civil engineering plans and specifications must be prepared by or under the responsible charge of a civil engineer. It also appears that the city is relying on the exemption from the Professional Engineers Act for architects as its basis for accepting plans prepared by architects. Apparently, the absence of an exemption in the Professional Engineers Act for landscape architects is the basis for the city's refusal to accept plans and specification prepared by landscape architects.

As discussed above, the statutory scope of practice for a landscape architect would include the design of a deck as part of a residential landscape design project.

The Courts have ruled that the absence of an exemption for a profession in the another profession's practice act does not necessarily preclude the "omitted" profession from engaging in aspects of the other profession where both professions are permitted to engage in a particular activity as part of their respective professions.

In *Lehmann v. Dalis*, 119 Cal.App.2d 152 [259 P.2d 727], where a civil engineer was allowed to recover for drawing plans and sketches for the erection of a bowling alley building and the contention was made that this was the practice of architecture, the court said at page 154: "Defendant contends that because the Civil Engineers' Act expressly exempts architects (§ 6733 of the code) and the Architectural Practice Act (Bus. & Prof. Code, §§ 5500-5604) does not expressly exempt civil engineers, the Legislature intended not to permit a civil engineer to perform any architectural service without an architect's license unless he gives written notice that he is not an architect.

> "We derive no such legislative intent from those statutes. It is a simple case of requiring an architect's license or the indicated written notice when architectural services are rendered and of requiring a civil engineer's certificate if civil engineering services are rendered. To the extent that architectural services and civil engineering services overlap, they may be rendered either by a licensed architect or by a registered civil engineer. The fact that the Civil Engineers' Act expressly exempts the licensed architect 'insofar as he practices architecture' and the Architectural Practice Act does not expressly exempt the registered civil engineer insofar as he practices civil engineering, is of no significance in ascertaining the nature and scope of the work which the former authorizes a registered civil engineer to perform and the latter authorizes a licensed architect to do.
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> "Of similar import is defendant's argument predicated upon the express mention and recognition of 'structural engineer' in the Architectural Practice Act. (Bus. & Prof. Code, §§ 5501 and 5537.) This means, says defendant, that a registered civil engineer who is not authorized to use the title of 'structural engineer' cannot lawfully perform any service that an architect is licensed to perform. Here again defendant ignores the authority which the Civil Engineering Act confers upon a registered civil engineer, including as it does, some services of an architectural nature."

As in *Lehman* case, the design of a residential deck as part of a larger landscape architectural project is a professional service that can be performed by either a landscape architect or a civil engineer or architect. In this area of overlap of professional services between landscape architecture, architecture and civil engineering, either of the professions may perform the service and a specific exemption in the Professional Engineer's Act is not needed to permit a landscape architect to perform this service.

We note that section 5615 provides that a landscape architect may not offer to practice architecture or engineering in any of its recognized branches. In the instant case, the design of a residential deck is the practice of landscape architecture and the fact that it is also the practice of architecture and civil engineering does not cause a landscape architect from being precluded from performing a professional service that is the practice of landscape architecture merely because it also constitutes the practice of architecture and civil engineering. The prohibition in section 5615 is intended to prohibit a landscape architect from performing professional services that are exclusively within the practice of civil engineering or architecture.

Local Jurisdictions May Not Limit A Licensee of the Department Of Consumer Affairs From Engaging In An Act That Falls Within The Scope Of Practice Of That Licensee

Finally, section 460 provides as follows:

> 460. (a) No city or county shall prohibit a person or group of persons, authorized by one of the agencies in the Department of Consumer Affairs by a license, certificate, or other such means to engage in a particular business, from engaging in that business, occupation, or profession or any portion thereof.
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> (b) No city, county, or city and county shall prohibit a healing arts professional licensed with the state under Division 2 (commencing with Section 500) from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice of that licensee.
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> (1) This subdivision shall not be construed to prohibit the enforcement of a local ordinance in effect prior to January 1, 2010, related to any act or procedure that falls within the professionally recognized scope of practice of a healing arts professional licensed under Division 2 (commencing with Section 500).
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> (2) This subdivision shall not be construed to prevent a city, county, or city and county from adopting or enforcing any local ordinance governing zoning, business licensing, or reasonable health and safety requirements for establishments or businesses of a healing arts professional licensed under Division 2 (commencing with Section 500).
>
> (c) Nothing in this section shall prohibit any city, county, or city and county from levying a business license tax solely for revenue purposes, nor any city or county from levying a license tax solely for the purpose of covering the cost of regulation.

This section prohibits a city or county from preventing any person presently licensed by the Department of Consumer Affairs from engaging in the functions and duties of that profession. As discussed above, the design of a residential deck as part of a larger landscape architectural project is a function of the practice of landscape architecture and therefore the city of Torrance's attempt to prohibit a landscape architect from submitting plans and specifications prepared and stamped the landscape architect prevents the landscape architect from engaging in a portion of his or her profession and is in direct violation of section 460.

In conclusion, it is our opinion that a landscape architect may not be lawfully prohibited from preparing plans and specifications for a residential deck that is part of a larger landscape architectural project.